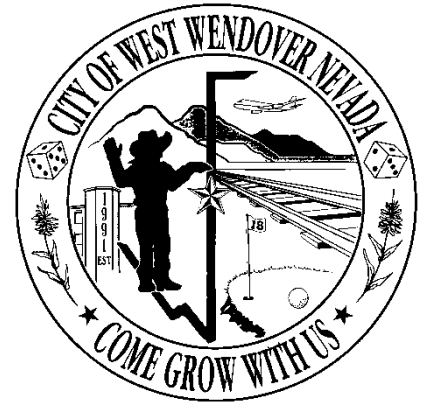


CITY OF WEST WENDOVER OFFICE OF CITY MANAGER

1111 N. Gene L. Jones Way
P.O. Box 2825
West Wendover, Nevada 89883
Telephone: 775-664-3081
Fax: 775-664-2683



Memo

To: Mayor & City Council
From: Chris J. Melville, City Manager/Director Community Development
CC: [Click [here](#) and type name]
Date: 8/14/2020
Re: Agenda – August 18, 2020 – Non-Exclusive Franchise Agreement Central Telecom, Cable

Mayor/Council:

Attached for your review and consideration is the Franchise Agreement with Central Telecom (Centracom) for Cable TV. Centracom has been operating under the provisions of the former agreement with Precis Cable, which they acquired in 2008.

The franchise to which they operate under is a non-exclusive franchise meaning that any other cable company may come in and operate and use the same Rights of Way, thus the agreement is not an “exclusive” agreement. In larger markets you can have multiple carriers but in limited markets such as ours, especially given Cable TV is and of itself giving way to alternative and broader telecom use, it is unlikely that will happen.

With your approval of the current agreement **I would like you to make such approval conditional upon the Final Review and Approval of the City Manager and the City Attorney.** The reason for this is that Centracom is still reviewing this final document and if there are some modifications needed, I would like the ability in working with the City Attorney to make/negotiate those changes and then proceed with execution.

The agreement as noted is 5 year agreement.

**NONEXCLUSIVE FRANCHISE AGREEMENT
FOR PURPOSE OF CONSTRUCTING AND OPERATING
A CABLE SYSTEM**

Between

THE CITY OF WEST WENDOVER, NEVADA

and

**CENTRAL TELECOM SERVICES, LLC, a Utah Limited
Liability Company**

_____, 2020

TABLE OF CONTENTS

Section 1: DEFINITIONS.....	4
Section 2: GRANT OF NONEXCLUSIVE AUTHORITY	6
Section 3: TERM OF FRANCHISE.....	6
Section 4: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.....	6
Section 5: CONDITIONS ON OCCUPANCY OF PUBLIC ROADS.....	7
Section 6: RELOCATION.....	7
Section 7: SAFETY REQUIREMENT AND CONSTRUCTION STANDARDS	7
Section 8: EXTENSIONS OF SERVICE.....	8
Section 9: SERVICE TO PUBLIC BUILDINGS.....	9
Section 10: PUBLIC/CUSTOMER SERVICE AND ACCESSIBILITY	9
Section 11: EMERGENCY USE.....	11
Section 12: ANNEXED AREAS.....	12
Section 13: FRANCHISE FEES AND COMPENSATION.....	12
Section 14: RENEWAL OF AGREEMENT	12
Section 15: CONDITIONS OF SALE.....	13
Section 16: TRANSFER OF AGREEMENT	13
Section 17: SERVICE TO THE CITY	14
Section 18: RECORDS AND REPORTS.....	14
Section 19: GENERAL LIABILITY INSURANCE.....	14
Section 20: WORKER’S COMPENSATION	15
Section 21: NOTICE TO CITY, EVIDENCE OF INSURANCE	15
Section 22: FRANCHISE BOND.....	15
Section 23: SERVICE STANDARDS.....	16
Section 24: PUBLICATION COSTS:.....	16
Section 25: GRANTEE LIABILITY; INDEMNIFICATION.....	16
Section 26: Hazardous Substances and CERCLA Indemnification	17
Section 27: REMEDIES	17
Section 28: PENALTIES, BREACH AND TERMINATION	17
Section 29: SEPARABILITY.....	18
Section 30: TAXES.....	18
Section 31: GRANTEE’S STATUS.....	18
Section 32: FORCE MAJEURE.....	18
Section 33: RIGHTS, REMEDIES AND BENEFITS CUMMULATIVE.....	18

Section 34: WAIVERS	18
Section 35: NOTICES UNDER AGREEMENT	18
Section 36: LEGAL JURISDICTION	19
Section 37: ENTIRE AGREEMENT.....	19
Section 38: BANKRUPTCY	19
Section 39: INVALID PROVISIONS	19
Section 40: ATTORNEY’S FEES	2020

THIS NONEXCLUSIVE FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 2020, by and between the CITY OF WEST WENDOVER, NEVADA, a municipal corporation (hereinafter referred to as the “City”) and **CENTRAL TELECOM SERVICES, LLC, a Utah limited liability company** doing business in the state of Nevada (hereinafter referred to as “Grantee”).

Section 1: DEFINITIONS

For the purpose of this Agreement, 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 singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- BASIC CABLE:** The lowest priced tier of service that includes the retransmission of local broadcast television signals.
- CABLE ACT:** The Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996.
- CABLE SERVICE:** (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- CABLE SYSTEM:** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.
- FCC:** Federal Communications Commissioner successor governmental entity thereto.

FRANCHISE: The initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.

GROSS REVENUES: Any revenue received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, which term shall not include sales taxes or other taxes which are imposed directly or indirectly on any Subscriber thereof by a governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

NORMAL BUSINESS HOURS: Those hours during which most similar businesses in the community are open to serve Subscribers, including, but not limited to, some evening hours at least one night per week and/or some weekend hours.

NORMAL OPERATING CONDITIONS: Those service conditions which are within the control of the Grantee, including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

PERSON: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

PUBLIC WAY: The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court boulevards, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvement located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

SERVICE AREA: The present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

SERVICE

INTERRUPTION: The loss of picture or sound on one or more channels.

STANDARD

INSTALLATION: Installation that is located up to 125 feet from the existing distribution system.

SUBSCRIBER: A Person who lawfully receives services of the Cable System with the Grantee's express permission.

Section 2: GRANT OF NONEXCLUSIVE AUTHORITY

The Grantee is hereby granted the franchise right and privilege to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connect with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Agreement shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law. The franchise, right, privilege and permission hereby granted is not an exclusive franchise or right, and the right of the City to grant like franchises, rights, privileges or permissions is hereby reserved; provided, that such grant of like franchises, rights, privileges or permissions shall not interfere with the reasonable use of franchise right, privilege and permission hereby granted to the Grantee, its successors and assigns, and said franchise, right, privilege and permission is granted subject to all of the ordinances and regulations of the City and the laws of the state governing such application and privilege for franchise now existing or hereafter to be made, enacted or passed. The franchise rights granted herein are limited to the specific geographic area of the City as shown in Exhibit A and incorporated herein by reference.

Section 3: TERM OF AGREEMENT

The franchise and rights herein granted shall take effect and be in force from and after the final passage of this Agreement by the City Council and execution thereof by the parties and shall continue in force and effect for a term of five (5) years after the effective date of this Agreement, unless sooner terminated pursuant to the terms of this Agreement; provided, that if the acceptance is not filed within sixty (60) days, the provisions of this Agreement shall be null and void. The franchise area and terms of this Agreement may not be amended or modified except in writing and in compliance with WWCC 6-4-6. If the Grantee desires to renew this Agreement it must follow the notice provisions and be in compliance with WWCC 6-4-6.

Section 4: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, at all times during the life of this Agreement, be subject to all lawful exercise of police powers by the City, and to such reasonable regulation as the City shall hereafter by

resolution or ordinance provide. Further, the Grantee shall comply with all applicable laws and ordinances, including, but not limited to, Title 6 Chapter 4 of the West Wendover City Code (“WWCC”). In the event of a conflict between the provisions of this Agreement and WWCC Title 6 Chapter 4, the provisions of the WWCC shall be controlling.

Section 5: CONDITIONS ON OCCUPANCY OF PUBLIC ROADS

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

No street or alleyway shall be used by the Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such street or alley was created or dedicated or presently used. In case of disturbance of any Public Way, the Grantee must first obtain the written consent of the City and shall, at its own cost and expense and in a manner approved by the City’s Engineering Department, replace and restore such Public Way in as good a condition as before the work causing such disturbance was done.

Section 6: RELOCATION

Upon its receipt of reasonable advance notice, not to be less than five (5) business days from the City, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any Person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the City shall make application for such funds on behalf of the Grantee.

The Grantee shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lowers its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said Person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

Section 7: SAFETY REQUIREMENTS AND CONSTRUCTION STANDARDS

Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

In those portions of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission

and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those portions of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, end electric services are both aerial and underground, the City shall have the sole discretion to direct the Grantee whether to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the Effective Date of this Agreement, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

The City shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The City agrees to require as a condition of issuing the permit that Developer give the Grantee access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor, and cable facilities. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or Developer unless otherwise provided.

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including that of the Grantee which are then located overhead, the Grantee shall participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirement of the City. The Grantee may include its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law.

Section 8: EXTENSIONS OF SERVICE

The Cable System, as constructed as of the date of the passage and final adoption of this Agreement, substantially complies with the material provisions hereof. In the event the Grantee receives a request for service from at least fifteen (15) residences within 1320 cable-bearing strand feed (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and that it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for in the following paragraph of this Agreement.

No Subscriber shall be refused service arbitrarily. However, if a Subscriber requests to locate the cable drop underground and there is an existence of more than 150 feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) 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 easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee 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 trunks or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

Section 9: SERVICE TO PUBLIC BUILDINGS

The Grantee shall, upon request, provide without charge, one outlet of Basic Service to the City public facilities, and public school building(s) that are passed by its Cable 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. The City shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds or unless the appropriate governmental entity agrees to pay the incremental cost of such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

Section 10: PUBLIC/CUSTOMER SERVICE AND ACCESSIBILITY

A. Availability of Representative:

A knowledgeable representative of the Grantee shall be available during Normal Business Hours. In addition, the City shall be provided a number where a representative of the Grantee can be reached at all times in the event of an emergency.

B. Telephone:

The Grantee shall maintain a telephone system in operation at its office during Normal Business Hours. The Grantee shall arrange for its telephone number to be listed in telephone directories generally distributed in the City and on all of the Grantee's bills and invoices. During Normal Business Hours, trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries.

The Grantee shall maintain a local, toll-free or collect call telephone access line which will be available to Subscribers 24 hours a day, seven (7) days a week. After Normal Business Hours, an access line will be available to be answered by a service or an

automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety (90) percent of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis.

The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless a historical record of complaints indicates a clear failure to comply with such standards.

Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three (3) percent of the time.

C. Service Center:

Customer service center and bill payment locations will be open at least during Normal Business Hours.

D. Installations, outages and service calls:

Under Normal Operating Conditions, each of the following five (5) standards will be met no less than ninety-five (95) percent of the time, as measured by the Grantee on a quarterly basis:

1. Standard Installations shall be performed within seven (7) business days after an order has been placed.
2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.
3. The Grantee will provide “appointment window” alternatives for installations, service calls, and other installation activities, which will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours.
4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
5. If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. Notifications to Subscribers:

The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon

request: products and services offered; prices and options for services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the service; channel positions of programming carried on the Cable System; and billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers and the City will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

F. Billing:

Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty (30) days from the receipt of the complaint.

Refund checks will be issued promptly, but no later than either (i) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated.

Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Section 11: EMERGENCY USE

In accordance with the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.51.

The City shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the Cable System or the EAS equipment by the City, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, the City shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other Cable System equipment which may be used during a declared emergency.

Section 12: ANNEXED AREAS

This franchise and the provisions of this Agreement shall apply to any areas which may hereafter be added to the City by annexation or otherwise; provided, however, that upon any such annexation, or other procedure whereby the city limits are expanded or changed, the Grantee shall, and by acceptance of this franchise, agrees, to waive, relinquish or abandon any and all franchise rights, privileges, easements and rights of way owned or held by the Grantee within the area which hereafter becomes part of the public roads of the City and such additional area shall become subject to the franchise rights granted herein and the terms and provisions and conditions of this Agreement.

Section 13: FRANCHISE FEES AND COMPENSATION

As compensation for the right, privilege and franchise herein conferred, the Grantee shall pay to the City during the term of this franchise a sum collected from the customers of the Grantee equal to five percent (5%) of the Grantee's Gross Revenues from the operation of the Cable System to provide Cable Services on an annual basis. Such gross revenues shall exclude: 1) any tax, fee or assessment of any kind imposed by the City or other governmental entity on a cable operator, or Subscriber, or both; 2) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers; and 3) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. For the purpose of this Section, the twelve (12) month period applicable under this Agreement for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the City and the Grantee. The franchise fee payment shall be due and payable forty-five (45) days after the end of each quarter of the City's fiscal year. Each payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation.

The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless the City initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, within five (5) years from and after such payment due date, such recovery shall be barred and the City shall be estopped from asserting any claims against the Grantee relating to any such alleged deficiencies.

The City may regulate rates for the provision of Basic Cable and equipment as expressly permitted by applicable law.

Section 14: RENEWAL OF AGREEMENT

The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee's Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections 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 Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of the Grantee under the then current Agreement term. The City further agrees that such preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the

Cable Act and complete renewal of the Agreement prior to the expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the City agree that at any time during the term of the then current Agreement, while affording the public appropriate notice and opportunity to comment, the City and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Agreement and the City may grant a renewal thereof. The Grantee 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.

Section 15: CONDITIONS OF SALE

If a renewal or extension of this Agreement is denied or this Agreement is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another 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 Grantee and the City agree that in the case of a final determination of a lawful revocation of this Agreement, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The City further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Agreement; 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 Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its Cable 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 Grantee.

Section 16: TRANSFER OF AGREEMENT

The Grantee shall not sell, transfer or assign this Agreement, or any rights or privileges under this Agreement, to any person, corporation, partnership or entity without prior City approval and subject to 6-4-18 of the WWCC; provided, that no sale, transfer or assignment shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise and WWCC Title 6 Chapter 4, and agreeing to perform all the conditions hereof, and in addition thereto, the proposed transferee has obtained all necessary operating authority and certificates of public convenience as are required by the Nevada public service commission or such other governmental department, agency or commission as may then be regulating or controlling the activities or services of the Grantee or the proposed transferee. Within thirty (30) days of receiving the request for transfer, the City shall, in accordance with FCC rules and regulations, notify the Grantee 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 Grantee's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given.

Section 17: SERVICE TO THE CITY

The Grantee shall make its fiber services available to the City at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement.

Section 18: RECORDS AND REPORTS

The City shall have access at all reasonable hours to all of the Grantee's books, records, reports, contracts and bookkeeping and accounting procedures to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee 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 Grantee and 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 Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

Section 19: GENERAL LIABILITY INSURANCE

The Grantee shall, at the Grantee's sole cost and expense, obtain and maintain in full force and effect for the term of this Agreement, Commercial General Liability Insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury, and property damage. The Grantee shall provide a Certificate of Insurance designating the City as an additional insured. Such insurance shall be noncancelable except upon thirty (30) days prior written notice to the City.

Each of the following endorsements shall be made a part of the above required policies as provided below:

1. "The City of West Wendover, its employees, officers, agents and contractors are hereby added as additionally insured."
2. "This policy shall be considered primary insurance as respects any other valid and collectable insurance the City of West Wendover may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only."
3. "The insurance shall act for each insured, and additional insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
4. "Prior written notice shall be given in accordance with the applicable policy to the City of West Wendover in the event of cancellation or non-renewal of this policy for whatever reason. Such notice shall be sent to: City Manager, City of West Wendover, PO Box 2825, West Wendover, Nevada 89883."

Section 20: WORKER’S COMPENSATION

The Grantee shall, at the Grantee’s sole cost and expense, obtain and maintain in full force and effect for the term of this Agreement a Worker’s Compensation policy, provided any such insurance coverage shall comply with the laws of the State of Nevada and provide coverage for any and all employees of the Grantee, with limits of not less than One Million Dollars (\$1,000,000).

Section 21: NOTICE TO CITY, EVIDENCE OF INSURANCE

Concurrently with executing this Agreement, the Grantee shall furnish the City certificates of each policy of insurance required herein in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies, and shall have all required endorsements attached.

Renewal certificates shall be furnished periodically to the City to demonstrate maintenance of the required coverages throughout the term of this Agreement.

Any insurance company providing insurance or any surety providing a bond hereunder shall be an admitted insurer/surety in the State of Nevada. No change in these requirements may be made without the prior written approval of the City, which it is under no obligation to provide.

If the Grantee fails to maintain any insurance required by this Agreement, the City may procure and maintain, at the Grantee’s expense, such insurance as it may deem appropriate.

The Grantee shall give the City thirty (30) days prior written notice in the event of cancellation, reduction in coverage, or non-renewal of this policy for whatever reason. Such notice shall be sent to: City Manager, City of West Wendover, PO Box 2825, West Wendover, Nevada 89883.

Section 22: FRANCHISE BOND

The Grantee shall, within twenty (20) days after the effective date of this Agreement, file with the City Manager and at all times thereafter maintain in full force and effect for the entire term of this Agreement, at its expense, a faithful performance bond executed by a surety company approved by the Council and in form satisfactory to the Council, in the amount of Twelve Thousand Dollars (\$12,000) renewable annually and conditioned on the faithful performance by the Grantee of all the terms, conditions and covenants contained in this Agreement. If the Grantee fails to comply with any one or more of the provisions of this Agreement, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or losses suffered by the City as a result thereof.

Neither the provisions of any bond accept by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under this Agreement or for damages or preclude the exercise of any other right or remedy given to the City by law.

Section 23: SERVICE STANDARDS

The Grantee shall maintain and operate its system and render efficient service in accordance with the provisions of this Agreement and in accordance with the rules, regulations and orders of the public service commission of the state of Nevada as they now exist and as they may hereafter be amended or changed. The Grantee shall make its services available to any customer within the franchise area who shall request such service, without discrimination as to the terms, condition, rates or charges for grantee's services; provided, however, nothing herein shall prohibit the Grantee from making any reasonable classifications among differently situated customers. The Grantee shall make its services available to the city at its most favorable rate for similarly situated users, unless otherwise provided in a license or the franchise agreement. Whenever new facilities exhaust the capacity of a public street or utility easement to reasonably accommodate future services by other carriers or facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

Section 24: PUBLICATION COSTS:

The Grantee shall assume the costs of publication, if any, of the franchise Agreement if required by law. A bill for publication costs shall be presented to the Grantee by the City Clerk if such is incurred.

Section 25: GRANTEE LIABILITY; INDEMNIFICATION

The Grantee shall indemnify, defend (with counsel approved by City) and hold harmless the City, its officers, employees and agents (collectively, "indemnitees"), from and against any and all loss, liability, penalty, fine, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial, legislative or administrative in nature including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties (collectively, the "Claims"), to the extent arising out of or occasioned in any way by, directly or indirectly, (1) the intentional, reckless, negligent or willful acts or omissions of the Grantee, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Agreement; (2) the failure of the Grantee, its officers, employees, agents, affiliates and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws) and regulations, and/or applicable permits and licenses; and/or (3) the acts of the Grantee, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); provided, however, that this indemnity does not extend to Claims to the extent that they are caused by the intentional, reckless, or willful acts or omissions of the City, its officers, employees or agents.

Upon the occurrence of any Claim, the Grantee, at its sole cost and expense, shall defend the City, its officers, employees, and agents, provided, however, that in the event the named parties to any such Claim (including any impleaded parties) include both the Grantee and the City, and if the City has one or more legal defenses available to it which are in direct conflict with the best interests of the Grantee and which therefore preclude the same counsel from representing the City and the Grantee jointly, then the City shall have the right to select separate counsel, with the consent of the Grantee which will not be withheld unreasonably, at the sole cost and expense of

the Grantee to pursue such legal defenses and to otherwise participate in the defense of such action on behalf of the City to the extent that joint representation of the City and the Grantee is not permissible because of conflicts of interest between the City and the Grantee. The Grantee's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

The City shall in no way be liable or responsible for any acts or damages that may occur in the construction, operation or maintenance by the Grantee of its fiber lines and associated facilities any appurtenances hereunder, and the acceptance of this franchise shall be deemed an agreement on the part of the Grantee. The City shall notify the Grantee's representative in the City promptly after the presentation of any claim or demand, either by suit or otherwise, made against the City as are hereby agreed to be indemnified.

Section 26: Hazardous Substances and CERCLA Indemnification

The Grantee shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assigns, volunteers and any successor or successors to City's interest (collectively, "indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid (collectively, "Claims"), incurred or suffered by, or asserted against, City or its officers, employees, agents, or the Grantee to the extent arising from or attributable to the violation of any Environmental Laws by the Grantee, its officers, employees, agents, affiliates and/or subcontractors; provided that this indemnity does not extend to Claims to the extent that they are caused by the intentional, reckless, negligent or willful acts or omissions of, or breach of this Agreement by, an indemnitee. The indemnity provided in this section shall apply to Claims arising from acts or omissions of the Grantee which occur during the term of this Agreement from the date the Grantee first began performance under this Agreement.

Section 27: REMEDIES

Acceptance of the franchise Agreement by the Grantee shall result in the Agreement becoming a contract between the City and the Grantee and the parties hereby agree that the City shall have all remedies in law and in equity, including injunctive relief, for the enforcement of the provisions of the Agreement. The City may revoke this grant and Agreement as provided in WWCC 6-4. Any revocation procedure shall be subject to the Notice and Duty to Cure provisions of WWCC 6-4.

Section 28: PENALTIES, BREACH AND TERMINATION

Any violation by the Grantee, or its successors or assigns of the provisions of this franchise or of any material portions hereof, or the failure promptly to perform any of the provisions hereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Grantee and continuation of such violation, failure or default for thirty (30) days after the date of such notice.

Section 29: SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of the franchise Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 30: TAXES

The Grantee shall pay all federal, state and local taxes, including sales taxes, social security taxes, etc., which may be chargeable against the labor, material, equipment or other items necessary in the performance of this Agreement.

Section 31: GRANTEE'S STATUS

The Grantee is and at all times shall be an independent contractor and nothing contained herein shall be construed as (1) making the Grantee, or any person employed or engaged by the Grantee, an agent or employee of the City, (2) creating a joint venture or partnership between the City and the Grantee, or (3) authorizing the Grantee to create or assume any obligation or liability for or on behalf of the City.

Section 32: FORCE MAJEURE

Either party to the Agreement is excused from default of performance because of conditions not the fault of and beyond its control, including but not limited to: war, strikes, lockouts, walkouts, and other labor disturbances, riots, civil insurrections, sabotage, civil disturbances, acts of terrorism, explosion, natural disasters such as floods, earthquakes, landslides and fires, excessive snow, acts of God, or other events which are beyond the reasonable control of the party invoking the provision of this Section.

Section 33: RIGHTS, REMEDIES AND BENEFITS CUMMULATIVE

It is agreed that each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative, and shall not be exclusive of any other said rights, remedies and benefits, nor of any other rights, remedies and benefits-allowed by law.

Section 34: WAIVERS

One or more waivers of any covenant, agreement or condition of default regarding provisions of this Agreement by either the City or the Grantee shall not be construed as a waiver of a further breach of the same covenant, agreement, condition or the right of such party thereafter to enforce each and every provision.

Section 35: NOTICES UNDER AGREEMENT

Under this Agreement, whenever provision is made for notice of any kind, it shall be deemed sufficient notice, and service thereof if the said notice is in writing and is deposited in the mail in a properly stamped envelope to be delivered by certified mail, addressed as follows:

If to the City:

Attention: City Manager
City of West Wendover
PO Box 2825
West Wendover, Nevada 89883

If to the Grantee:

Attention: _____

Changes in the respective addresses to which such notices shall be directed may be made from time to time by either party. Notice of any such change in address shall be directed to the other party in writing by certified mail.

Section 36: LEGAL JURISDICTION

This Agreement and the rights of the parties hereunder shall be interpreted under the laws of the State of Nevada. Further, jurisdiction and venue for any disputes arising out of this Agreement shall be in the appropriate court in Elko County, Nevada.

Section 37: ENTIRE AGREEMENT

This document contains the entire Agreement of the parties hereto with respect to matters covered hereby, and no other agreement, statement or promise made by any party hereto, or agent of such party, which is not contained herein, shall be binding or valid. No purported modification, amendment or other change in this Agreement shall be valid unless set forth in writing, and signed by both the Grantee and the City, as approved by the City Council. This Agreement replaces and supersedes any Agreement or Amendment between the City and the Grantee pertaining to the subject matter hereof, to include the services described herein and the fees associated therewith.

Section 38: BANKRUPTCY

If the Grantee shall at any time during the term of this Agreement become insolvent, or if proceedings in bankruptcy shall be instituted by the Grantee, or if the Grantee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of the Grantee shall be appointed in any suit or proceeding brought by or against the Grantee, or if the Grantee shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement and the rights and privileges granted thereby shall immediately terminate without notice and without suit or other proceeding, save and except for any remedies the City may have against the Grantee for termination prior to the end of the term of this Agreement.

Section 39: INVALID PROVISIONS

The parties agree that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity hereof shall in no way affect

any other provision in this Agreement if the provision does not materially prejudice either the Grantee or the City in their respective rights and obligations hereunder and to that extent the provisions of this Agreement are severable.

Section 40: ATTORNEY’S FEES

If either Party to this Agreement is required to initiate or defend a court action or proceeding brought by the other Party arising under this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney’s fees and court costs. Upon expiration, or earlier termination, the City shall have no continuing obligations to the Grantee other than those expressly provided for in this Agreement.

This Agreement shall be executed in triplicate, and each executed copy shall have the full force and effect of an original. The Effective Date of this Agreement is [insert date], pursuant to the provisions of applicable law. The Agreement shall expire on [insert date 5 years from effective date], unless extended by the mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the _____ day of _____, 2020.

CITY OF WEST WENDOVER

By: _____

ATTEST:

By: _____

CENTRAL TELECOM SERVICES, LLC

By: _____
_____ Title