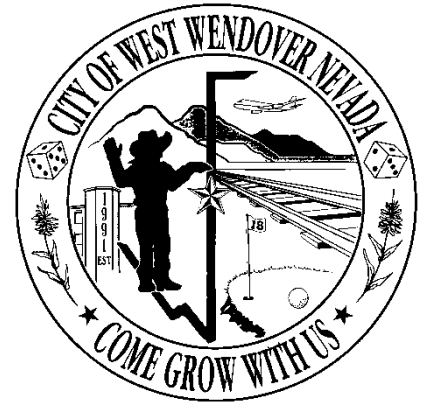


CITY OF WEST WENDOVER OFFICE OF CITY MANAGER

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, Telecommunications

Mayor/Council:

Attached for your review and consideration is the Franchise Agreement with Central Telecom (Centracom) for Telecommunications. Though Centracom has been operating under the provisions of the former agreement with Precis Cable to which they acquired in 2008, we do need to also have a non-exclusive franchise agreement related to the general telecommunications segment which includes phone service, broadband, fiber, etc., which Centracom operates. Centracom has been adhering to all the related code requirements (service terms, construction standards, franchise fees, etc.) with regard to this operation but we had not as of yet put in place the actual agreement.

This franchise as with the Cable is a non-exclusive franchise meaning that other companies can as well operate within our jurisdiction. Currently we have two other such companies operating in the community: Frontier Communications and Beehive Broadband. Frontier operates under a specific franchise code Title 6, Chapter 4, which was put in place well prior to the other companies coming on scene and Frontier does not offer the broader telecommunications services such as broadband. Beehive executed an agreement and operates under Title 6, Chapter 8 of the City Code which is also applicable to this proposed agreement. This agreement is near identical to the Beehive Agreement.

As with the Centracom Cable agreement, **I would like you to make such approval conditional upon the Final Review and Approval of the City Manager and the City Attorney.** Again, 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.

As with the Beehive Broadband agreement, this agreement is for a period of 10 years.

**NONEXCLUSIVE FRANCHISE AGREEMENT
FOR PURPOSE OF CONVEYING DATA
COMMUNICATIONS OVER, UNDER, IN, ALONG AND
ACROSS PUBLIC ROADS OF THE CITY**

Between

THE CITY OF WEST WENDOVER, NEVADA

and

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

_____ , 2020

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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 (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.

CITY: The City of West Wendover, Nevada.

DARK FIBER: an unused optical fiber in a fiber optic cable available for use in fiber optic communications.

ERECT, INSTALL, OPERATE AND MAINTAIN: To lease, construct, erect, install, operate, maintain, use, repair or replace.

FIBER OPTIC CABLE: An optical fiber cable containing one or more optical fibers for used for the specific purpose of transmitting data to and from the user, herein referred to as “fiber.”

FRANCHISE: The rights, privileges and franchises hereinafter more particularly described.

GRANTEE: Central Telecom Services, LLC, a Utah Limited Liability Company, and its lawful successors and assigns with respect to the franchise hereby granted.

LINES AND APPURTENANCES: Fiber transmission and distribution lines, services, wires, poles, vaults, ducts, apparatus, conduits, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located, in, along, across, under or over the public roads within the City and used or useful in conveying telephone communications.

PUBLIC ROAD AND PUBLIC ROADS: The public highways, streets, avenues, alleys, bridges, rights of ways, easements and ways as the same may now or hereafter exist within the City and future additions thereto over which the City has jurisdiction.

Section 2: GRANT OF NONEXCLUSIVE AUTHORITY:

Grantee is hereby granted the franchise right and privilege to lay, construct, install and operate fiber lines and associated facilities, and other structures for the purpose of conveying data communications under, in, along and across public roads, rights of ways and easements of the city. 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 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 references, as required by WWCC 6-8-22.

Section 3: TERM OF FRANCHISE:

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 ten (10) years after the effective date of this franchise, unless sooner terminated pursuant to the terms of the franchise; provided, that if the acceptance is not filed within sixty (60) days, the provisions of the franchise 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 6-8-28. If Grantee desires to renew this franchise it must follow the notice provisions and be in compliance with WWCC 6-8-29.

Section 4: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:

The Grantee shall, at all times during the life of this franchise, 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, Grantee shall comply with all applicable laws and ordinances, including, but not limited to, Title 6 Chapter 8 of the West Wendover City Code (“WWCC”). In the event of a conflict between the provisions of this Agreement and WWCC Title 6 Chapter 8, the provisions of the WWCC shall be controlling.

Section 5: CONDITIONS ON OCCUPANCY OF PUBLIC ROADS

- A. All fiber lines and associated facilities and appurtenances constructed, laid or placed by the Grantee shall be so located in the public roads in the City so as not to obstruct or interfere with any pipes, sewers, drains, valves or other structures already installed. When practical, installation must occur in existing underground conduits as provided in WWCC 6-8-23A and otherwise comply with the approval and installation provisions of WWCC 6-8-23. Routes must be approved by the City Engineer as provided in 6-8-23F.
- B. Subject to the conditions herein contained and the provisions of this chapter, Grantee shall have the right of installing, maintaining and using any or all of such lines and appurtenances from time to time as may be necessary or proper. Grantee must cooperate with City and other franchisees and coordinate activities and schedules to minimize public inconvenience, disruption or damages. Grantee must obtain construction permits as required by WWCC 6-8-24 and 6-8-31B. The conditions of grant of franchise provided in WWCC 6-8-31 are applicable and hereby incorporated by reference.
- C. If any portion of a sidewalk, curb, gutter, street, alley, public road or right of way shall be damaged by reason of defects in any of the lines and appurtenances utilized, maintained or constructed under this grant, or by reason of any other cause arising from the Grantee's operations, or the existence of any lines and appurtenances constructed or maintained under the grant, Grantee shall, at its own costs and expense, within fifteen (15) days, unless delayed by abnormal weather conditions or acts of God, labor disputes or

unavailability of materials, repair any such damage and restore such sidewalk, curb, gutter, street, alley, public road or right of way, or portion thereof, to as good a condition as it existed before such excavation disturbance, work or other cause of damage occurred.

- D. The Grantee shall, upon 60 days advance written notice except in cases of emergency, relocate, without expense to the City, any fiber lines, associated facilities and appurtenances therefore installed and then maintained or used under this franchise if and when made necessary by any lawful change of grade, alignment or width of any public road by the City; provided, however, that this provision shall remain in effect only so long as such public road shall remain under the jurisdiction of said City as a public road, and further provided that the City shall provide a suitable substitute right of way within which Grantee may relocate its fiber lines, associated facilities and/or appliances. This provision shall cease to be applicable to any public road if and when the City shall cease to have jurisdiction over or shall cease to be obligated to maintain such public road, and nothing herein contained shall be construed as constituting a contractual obligation of the Grantee running to the authority assuming jurisdiction over or the obligation to maintain such public road. Nothing herein shall be construed to prohibit or restrict repayment by the state or a third party for relocation of Grantee's facilities.
- E. All fiber lines and associated facilities of the Grantee which shall be constructed and used under and pursuant to the provisions of this franchise and in the exercise hereof shall be installed, constructed and maintained in a good and workmanlike manner and shall be maintained in compliance with all valid laws and ordinances from time to time in force, and the orders, rules and regulations of the public service commission of the State of Nevada. Before the work of installing new or upgrade of existing lines and appurtenances is commenced, the Grantee shall coordinate the location thereof with the City, and the City will provide information for the location of such lines and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits and other structures lawfully in or under the streets, alleys and public road of the City; however, the City shall not incur any liability to Grantee or others on the basis of such information and Grantee shall have the sole responsibility for avoiding sewers, water pipes, conduits and other structures present.
- F. When performing underground construction, the Grantee and the City must follow U.S. Dig guidelines. The Grantee shall, at its own cost and expense, immediately repair or replace as necessary any and all water pipes, mains, service lines, valves, meters, sewer lines, culverts, conduits and all other materials and equipment utilized in connection with water service, sewer service and drainage or facilities of other utilities damaged by the Grantee.
- G. Grantee shall comply with all provisions of the WWCC or applicable standards concerning utility occupancy of public roads and City street cuts and repairs.
- H. Grantee shall be required to provide performance, construction and completion bonds before construction is commenced pursuant to WWCC6-8-31(R) and (S) unless otherwise provided in writing by the City.

Section 6: CONSTRUCTION STANDARDS:

All fiber lines and associated facilities and appurtenances which shall be constructed and used under and pursuant to the provisions of this franchise and in the exercise hereof shall be installed, constructed and maintained in accordance with the WWCC 6-8-32 and any applicable

codes, ordinances, standards and regulations of the City, Nevada statutes and the rules, regulations and orders of the Nevada public service commission, and in a good and workmanlike manner and shall be maintained in compliance with all such valid laws, ordinances, rules, regulations and codes from time to time in force. Prior to any construction/excavation, the Grantee shall submit plans stamped by a registered Nevada PE, unless such requirement is waived by the City Engineer, depicting the locations of the proposed facilities. Plans must be approved by the City Engineer and proper permits obtained prior to commencing such work. Grantee shall further supply the City at no cost and on a yearly basis an accurate as-built record of all facilities located in the City's rights of way. The as-built records shall be submitted in an electronic AutoCAD format on the City's coordinate system, along with one (1) paper copy of the facilities located in the City.

Section 7: GRANTEE LIABILITY; INDEMNIFICATION:

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 Grantee, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Agreement; (2) the failure of 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 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, Grantee, at Grantee's 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 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 Grantee and which therefore preclude the same counsel from representing the City and Grantee jointly, then the City shall have the right to select separate counsel, with the consent of Grantee which will not be withheld unreasonably, at the sole cost and expense of 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 Grantee is not permissible because of conflicts of interest between the City and Grantee. 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 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 8: 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 9: APPROVAL OF TRANSFER:

Grantee shall not sell, transfer or assign this franchise, or any rights or privileges under this franchise, to any person, corporation, partnership or entity without prior City approval and subject to 6-8-31U 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 8, 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.

Section 10: FRANCHISE FEES AND COMPENSATION

- A. As compensation for the right, privilege and franchise herein conferred, Grantee shall pay to the City during the term of this franchise a sum collected from the customers of Grantee equal to five percent (5%) of Grantee's gross revenues from the rendition of tariffed local exchange and extended area Fiber transmission service, if any, to subscribers located within the corporate limits of the City. Such gross revenues shall exclude: 1) long distance access charges; 2) emergency 911 fees and surcharges; and 3) equipment and other non-tariffed items which may be provided to the subscribers by others not subject to Title 6 Chapter 8 of the WWCC. Such payments shall be made quarterly, within thirty (30) days after the expiration of each calendar quarter, or portion thereof, during which such franchise is in effect. The franchise fee shall take effect as soon as practical after receipt of tariff approval from the Nevada public service commission.
- B. Nothing herein contained shall relieve the Grantee of obtaining such City business license as are now required for the furnishing, sale or distribution of Fiber services.
- C. The fees for City Street City Permits shall be as set forth in City policy. In the event that time constraints dictate performance immediately, the Grantee is authorized to initiate and complete the patching in accordance with City specifications without City fee, except for the City base fee for cut permit which at the time of signing this agreement is

\$____. __, provided that the Grantee or it's contractor is properly licensed to perform that scope of work.

- D. Any street cuts must be preapproved by the City. The repair performed by the Grantee is subject to inspection and acceptance by the City. If the work fails the City inspection, the City must notify the grantee within two (2) work days of the repair failure or failures. The Grantee shall have 10 days to address and remedy the repair failure. If the repair failure still does not meet City inspection, the City will then have the authority to complete the failed work and bill the grantee for the City's cost of completion.
- E. The City may impose upon Grantee such other fees as are fair and reasonable and authorized by WWCC 6-8-25 and/or 6-8-30. Such fees are due and payable within 30 days written notice to the Grantee.

Section 11: SERVICE TO THE CITY

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 12: 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 relating to the determination of the sums to be determined in Section 10 of this Agreement, or any other purposes related to this franchise. The following records and reports shall be filed with the City Clerk by the grantee:

- A. A true and correct conformed copy of the rules, regulations, terms and conditions adopted by the Grantee for the conduct of its business in the City.
- B. An annual summary report showing gross revenues received by the Grantee from its operations within the City during the preceding twelve (12) month period and such other information as the City shall reasonably request with respect to the Grantee's use of the public roads within the City.

Section 13: RIGHT OF ENTRY

The City specifically reserves the right of entry by any authorized officer, employee, agent or contractor of the City for the purpose of doing any and all acts necessary or proper on the City public right-of-ways in connection with the protection, maintenance, repair, reconstruction and operation of the fiber lines.

Section 14: BUSINESS LICENSES REQUIRED

Should the Grantee herein engage in any business in the City in addition to that of the sale and distribution of fiber connectivity, the Grantee shall obtain all business licenses required for such additional businesses.

Section 15: 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. Grantee shall not discriminate regarding its services within its franchise area as provided in WWCC 6-8-26.

Section 16: PUBLICATION COSTS:

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 17: REMEDIES:

Acceptance of the franchise Agreement by 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 6-8-31W. Any revocation procedure shall be subject to the Notice and Duty to Cure provisions of WWCC 6-8-31X.

Section 18: 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 19: 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 20: PUBLIC/CUSTOMER SERVICE AND ACCESSIBILITY

A. Office: Grantee shall maintain a business office within the City for purposes of carrying out its obligations under this Agreement.

B. Availability of Representative: A knowledgeable representative of Grantee shall be available during normal business hours. In addition, the City shall be provided a number where a representative of Grantee can be reached at all times in the event of an emergency.

C. Telephone: Grantee shall maintain a telephone system in operation at its office during normal business hours. Grantee shall arrange for its telephone number to be listed in telephone directories generally distributed in the City and on all of Grantee's bills and invoices.

Section 21: GENERAL LIABILITY INSURANCE

Grantee shall, at Grantee's sole cost and expense, obtain and maintain in full force and effect for the Term each of the following minimum insurance requirements:

A. A comprehensive general liability policy with a minimum limit of not less than Five Million Dollars (\$5,000,000.00) combined single limit for bodily injury and death, property damage from any one accident and all other types of liability as provided in WWCC 6-8-31P providing at least all of the following minimum coverages:

1. Premises operation;
2. Blanket contractual; and
3. Completed operations.

B. A comprehensive automobile liability policy with minimum limit of not less than Three Million Dollars (\$3,000,000.00) combined single limit for bodily injury and property damage, providing coverage for any and all leased, owned, hired or non-owned vehicles used by Contractor in fulfilling the terms of this Agreement. Any and all mobile equipment which is not covered under this comprehensive automobile policy shall have said coverage provided for under the comprehensive general liability policy.

C. Comprehensive form premises-operations, explosion and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000.00).

D. 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 22: WORKER'S COMPENSATION

Grantee shall, at Grantee's sole cost and expense, obtain and maintain in full force and effect for the Term 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 Grantee, with limits of not less than one million dollars (\$1,000,000).

Section 23: NOTICE TO CITY, EVIDENCE OF INSURANCE

Concurrently with executing this Agreement, 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.

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

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 24: Hazardous Substances and CERCLA Indemnification

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 Grantee to the extent arising from or attributable to the violation of any Environmental Laws by 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 Grantee which occur during the Term from the date Grantee first began performance under this Agreement.

Section 25: Taxes

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 26: Grantee's Status

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

Section 27: 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 28: Rights, Remedies and Benefits Cumulative

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 29: Waivers

One or more waivers of any covenant, agreement or condition of default regarding provisions of this Agreement by either the City or 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 30: 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 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 31: 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 32: 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 Grantee and the City, as approved by the City Council. This Agreement replaces and supersedes any Agreement or Amendment between the City and Grantee pertaining to the subject matter hereof, to include the services described herein and the fees associated therewith.

Section 33: Bankruptcy

If Grantee shall at any time during the term of this Agreement become insolvent, or if proceedings in bankruptcy shall be instituted by Grantee, or if 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 Grantee shall be appointed in any suit or proceeding brought by or against Grantee, or if 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 Grantee for termination prior to the end of the Term.

Section 34: 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 Grantee or the City in their respective rights and obligations hereunder and to that extent the provisions of this Agreement are severable.

Section 35: 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 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.

CITY OF WEST WENDOVER

By: _____
Daniel Corona, Mayor

ATTEST:

By: _____
Anna Bartlome , City Clerk

CENTRAL TELECOM SERVICES, LLC

By: _____
_____ Title