

RESOLUTION NO. R21-70

A RESOLUTION GRANTING PROJECT TELEPHONE COMPANY A FRANCHISE AGREEMENT WITH THE CITY OF LAUREL

WHEREAS, the City of Laurel possesses self-governing powers including the general powers set forth in Title XI of the Montana Constitution, Title 7 of the Montana Code Annotated and Laurel City Ordinance O04-06 to require Franchises Agreements with applicants prior to them performing activities in, on, under or above a public right-of-way within the City of Laurel; and

WHEREAS, Project Telephone Company has applied for a ten (10) year Franchise Agreement with an automatic five (5) year renewal pursuant to the authority provided by Laurel City Ordinance O04-06; and

WHEREAS, Project Telephone Company's application is in compliance with Ordinance O04-06, and it is in the best interests of the City to grant the Franchise Agreement, attached hereto, to Project Telephone Company.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Laurel, Montana, that Project Telephone Company's Franchise Agreement, attached hereto, is hereby approved and affirmed under the authority of Laurel City Ordinance O04-06.

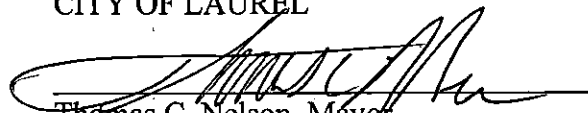
BE IT FURTHER RESOLVED, this resolution is approved retroactive to August 10, 2021.

Introduced at a regular meeting of the City Council on August 10, 2021, by Council Member Wilke.

PASSED and APPROVED by the City Council of the City of Laurel this 10th day of August 2021.

APPROVED by the Mayor this 10th day of August 2021.

CITY OF LAUREL


Thomas C. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk/Treasurer

APPROVED AS TO FORM:


Sam Painter, Civil City Attorney

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Laurel, Montana hereinafter referred to as the "Grantor or City" and Project Telephone Company hereinafter referred to as the "Grantee." This Franchise is entered into pursuant to the authority provided by the City's Charter, City Ordinance O04-06, and Sections 7-14-4101 and 7-1-4123(8) MCA.

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms and conditions required by the City's Franchise Ordinance. Based on the documents prepared and submitted by Grantee, Grantor has concluded it appears the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the requirements of the proposed facilities and services, proposed area of service while protecting the City's best interest when utilizing the City's public rights-of-way ("Streets").

1. Definitions:

- a. "City or Grantor" means the City of Laurel, a municipal corporation of the State of Montana and includes all areas incorporated within the City Limits as of the effective date of this Agreement and any other areas subsequently added by annexation or other means.
- b. "Facilities" means all infrastructure and equipment, including but not limited to, fiber optic cable, wire, and conduit installed within the Service Area and Streets of the City.
- c. "Franchise" means the non-exclusive authorization granted hereunder of a franchise, privilege, permit or license to install, construct, operate and maintain a Fiber Optic System within the Service Area and Streets of the City.
- d. "Service Area" shall mean the geographic boundaries of the Grantor and any other areas subsequently added by annexation or other means.
- e. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, sidewalks, boulevards, and other rights-of-way and easements, and the public grounds, places or water within the existing geographic boundaries of Grantor and any other areas subsequently added by annexation or other means.
- f. "Subscriber" means any person lawfully receiving service from the Grantee.

2. Granting of Franchise. The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of certain portions of the Streets within the Service Area for the installation, construction, operation and maintenance of the Fiber Optic System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Fiber Optic System that is not prohibited by federal or state law, or city ordinance.

3. **Term.** The Franchise shall be for a term of *ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 14. This Franchise will be automatically extended for an additional term of *five (5) years* from the expiration date as set forth in Section 14, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations) at least one (1) years before the expiration of this Franchise. If such a notice is given, the parties will begin negotiating a new Franchise.

4. **Use of the Streets and Dedicated Easements.**

- a. Grantee shall have the right to use the Streets of the Grantor for the installation, construction, operation and maintenance of the Fiber Optic System, including the right to repair, replace and enlarge and extend the Fiber Optic System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
- b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. Grantee shall obtain authorization to utilize above ground utility poles as required and submit documentation to Grantor showing authorization has been obtained.
- c. Grantee shall have the right to remove, trim, cut and keep clear of the Fiber Optic System, the trees in and along the Streets of the Grantor.
- d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any Street or sewer, electric facility, water main, fire alarm, police communication or traffic control.

5. **Maintenance of the System.**

- a. Grantee shall, at all times, employ ordinary care in the maintenance and operation of the Fiber Optic System so as not to endanger the life, health or property of any citizen of the City or the property of the City.
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Fiber Optic System shall be designed, constructed and operated to meet the standard conditions imposed by the City by and through its Public Works Director. At a minimum, the fiber optic cable:

(1) Shall be placed within 5 feet of the right-of-way regardless of other underground facilities in place, unless otherwise authorized by the City;

- (2) Shall be placed at least 42 inches deep, unless waived by the City;
- (3) Must have a warning tape 18 inches above the cable; and
- (4) Aboveground markings should be in at least 500 feet intervals and at all crossings.

6. **Service.** The Grantee shall continuously maintain and operate its Fiber Optic System within the Service Area so long as this Franchise is in effect. Grantee shall have the right, but not the obligation, to extend the Fiber Optic System into any other portion of the Service Area, including annexed areas. However, the provision of Cable Service as defined by federal law requires a Franchise issued pursuant to City Ordinance O04-06 and the Cable Television Consumer Competition Act of 1992.

7. **Insurance/Indemnity.**

a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence (C.S.L.)
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in installation, constructing, operating or maintaining the Fiber Optic System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) business days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor, Grantor's employees or agents.

8. **Revocation.**

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may revoke the Franchise through an action of the City Council at either a regular or special council meeting.
- b. At the Council Meeting, the Grantor shall provide the Grantee the opportunity to provide the City Council with its position on the matter, present evidence and question witnesses. After the presentation is concluded, the City Council shall take action to either revoke or not revoke the Franchise. Grantor shall maintain minutes of the Council Meeting and a copy of all exhibits and evidence submitted by Grantor and Grantee constituting the record. A copy of the findings and decision shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court for its review.
- c. Upon revocation of the Franchise, Grantee shall remove the Fiber Optic System from the Streets of the Grantor, or with the Grantor's express and written permission, abandon the Fiber Optic System in place.

9. **Equal Protection.** If any other provider of similar services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

10. **Confidentiality.** If Grantee provides any books and records to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential to any person.

11. Notices, Miscellaneous.

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below.

Grantor: Mayor, City of Laurel
P.O. Box 10, Laurel, Montana 59044
cityclerk@laurel.mt.gov

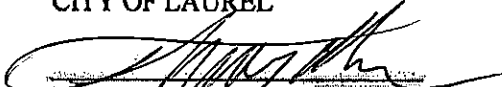
Grantee: Project Telephone Company
2457 Main Street
Worden, Montana 98857

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

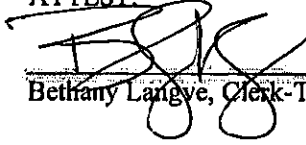
12. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's System may be attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
13. **Franchise Fee.** As a material term of this Franchise, and in consideration of the right provided Grantee to occupy City Streets for the purpose of installing and operating a Fiber Optic System within the City, Grantee agrees:
- a. To timely pay all future fees or taxes adopted by the City in accordance with Montana law pertaining to Grantee's operations within the City.
 - b. Proceeds of any future adopted fee or tax shall be paid to the City in accordance with the terms of any adopting document or, if not specified in such document, no later than 30 days after the end of each calendar quarter (quarters shall end at the end of March, June, September and December).
 - c. Should Grantee be prevented by law from collecting a fee or tax adopted by the City or any portions thereof, then Grantee shall be excused from the collection and distribution of the fee or tax.
14. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise and approval by the City Council. This Franchise shall expire as provided herein or by the mutual agreement of Grantor and Grantee.
15. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise and submittals Grantee provides the City pursuant to the Franchise and City's Franchise Ordinance constitute the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties.

Considered and approved this 10 day of August, 2021

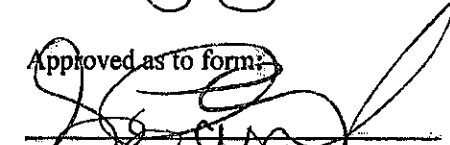
CITY OF LAUREL


Thomas C. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk-Treasurer


Approved as to form:


Sam S. Painter, Civil City Attorney

Accepted this 9 day of August 2021, subject to applicable federal, state and local law,

Project Telephone Company

Signature:



Name/Title: ROW Specialist

Date:

8/9/21