

**TOWN OF CEDAREDGE
ORDINANCE 2021-01**

AN ORDINANCE AUTHORIZING TDS TELECOM TO BUILD, CONSTRUCT, PURCHASE, MAINTAIN, OWN, OR LEASE TELEPHONE LINES, FIXTURES, AND APPURTENANCES FOR THE OPERATION OF A TELEPHONE SYSTEM EXCHANGE AND LINES IN THE TOWN OF CEDAREDGE, COLORADO, AND DEFINING ITS RIGHTS, POWERS AND PRIVILEGES.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CEDAREDGE, COLORADO:

Section 1 Authority. That TDS Telecom (TDS), be and is hereby granted the right, power, authority, and privilege to build, construct, equip, own, maintain, and operate in the Town of Cedaredge, Colorado (the "Town"), wires, lines, poles, arms, appurtenances, and fixtures for conducting a telephone business and exchange. It is granted also the right, authority, power, and privilege to use such streets, alleys, and public grounds of the Town now owned or hereafter acquired, as the Town may authorize, upon receipt of a permit application from TDS, to the extent such permit is required by the Town ordinances governing the operation of public utilities within the Town, subject to such restrictions and/or requirements as may now or hereafter be imposed by law or by the Board of Trustees of the Town, for the purpose of erecting and maintaining poles, constructing lines, operating telephone lines, a telephone system, telephone exchange or doing any of the things herein authorized, granted, or empowered.

Subject to such applicable laws, ordinances and regulations, now in effect or hereafter enacted, TDS is also granted the right to buy, purchase, lease, erect, equip, maintain, own, or operate such plants, machinery, equipment, or buildings as are necessary to maintain and operate such telephone lines, telephone system, or exchange; the right to buy, hold, or own, or lease any and all real estate necessary to conduct such business; the right to furnish telephone service to the people, firms, and corporations of the Town; the right to connect with other telephone lines within the Town; the right to own and conduct a rural telephone exchange; the right to do switching for any person, firm, or corporation; the right to conduct a telephone toll business; the right to furnish telephone power and service to any person, firm or corporation; and such other and further rights as are usually granted to and enjoyed by telephone companies.

Section 2 Installation Approval. Said wires, lines, poles, arms, appurtenances and fixtures shall be erected by TDS subject to the approval of the Public Works Director and shall be placed, erected, and constructed in the alleys or such other locations as the Town may authorize and shall be so placed and constructed as not to interfere with the use of the streets or alleys, as determined by the Town, TDS may make such excavations in the streets and alleys as are necessary for erecting and repairing such poles and cable (including underground cables), subject at all times to the requirements for permits and/or deposits, and the rules, ordinances, and resolutions of the Town

governing the operation of public utilities within the Town; when poles and/or cables are placed or erected in paved streets, TDS shall restore the paving and road base, immediately, to a condition satisfying Town specifications. All wires shall be mounted on insulators. The Public Works Director may, whenever they deem the public health, safety or convenience so requires order such wires, lines, poles, arms, appurtenances and fixtures or any of them removed from the said street and alleys at the expense of TDS or may if it sees fit order them removed from one place and may then grant the privilege of constructing them in another. TDS is hereby given permission to place all or any of its wires underground at any time. TDS shall hold the Town free and harmless from all damages, cost, and expense that may arise by reason of the negligence, carelessness, or misconduct of TDS, or its agents, or employees in erecting, maintaining, or operating said plant or because of the placing of the said wires, lines, poles, arms, appurtenances and fixtures used in connection with said plant, or locating poles and/or within five (5) feet of Town's buried infrastructure. TDS is hereby authorized and empowered to trim, in conformance with good horticulture practices, at TDS expense, the trees extending into any street, alley, or public ground to prevent the limbs or branches from interfering with TDS wires.

Section 3 TDS Infrastructure and Town Operations. Nothing herein shall be construed to prevent the Town and its proper authorities from sewerage, guttering, or improving streets and alleys and for that purpose to require TDS to remove its wires, lines, poles, arms, appurtenances or fixtures to conform thereto and facilitate the same. The Public Works Director as an official of the Town reserves the right to cause TDS to move any wire, line, pole, arm, appurtenance or fixture whenever they deems that the public interest requires their location elsewhere having due regard to the equities of the parties concerned. The expense of such removal is to be borne and paid for by TDS.

Section 4 Fees and Policy. As consideration for this franchise and as payment for the privileges granted hereby, TDS shall pay to the Town, during the term of this franchise, a sum equal to three percent (3%) of the gross monthly subscriber billings for residential or business access line charges within the Town of Cedaredge, less uncollectibles; which franchise fee shall be remitted to the Town on a monthly basis no later than the twentieth (20th) of the month following each billing period. For the purpose of ascertaining or auditing the correct amount to be paid hereunder, the Town Clerk or any committee or agent appointed by the Board of Trustees shall have access to the books and records of TDS for the purpose of verifying the gross monthly subscriber billings within the Town of Cedaredge from which the franchise fee is computed. The franchise fee provided hereinabove is a contractual payment and is not intended to be a levy or assessment under authority of the Town to impose any general or specific tax. The payment of the franchise fee does not excuse TDS from the payment of either sales and use taxes or property taxes as such taxes are levied from time to time, or from obtaining an excavation permit, as required by the ordinances and regulations governing the operation of public utilities within the Town, however, the franchise fee provided for herein shall constitute the exclusive monetary payment by TDS to the Town for TDS's use and occupancy of the streets except as specifically provided herein.

Section 5 Compliance. TDS shall within sixty (60) days after the passage and approval of

this Ordinance enter into an agreement with the Town in compliance with the terms and conditions of this Ordinance and accepting the terms and conditions hereof.

Section 6 Term. This Ordinance shall be in force and effect for a period of ten (10) years from the effective date.

Section 7 Conflicting Ordinances. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 8 Effective Date. In as much as the previous franchise ordinance expired in the year of 2020 per Ordinance 2010-34, and it is in the best interest of the Town and its residents to renew the continuation of telephone service, the Board of Trustees hereby finds, determines, and declares that this Ordinance shall be effective from March 26, 2021, and the franchise fee described in Section 4 is and continues to be due from the date of the original Franchise Agreement described in Section 5, herein.

Section 9 Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court of Delta County.

Introduced, read, passed and ordered published according to law this 18th day of January 2021 by the Board of Trustees of the Town of Cedaredge, Colorado.

Town of Cedaredge

Attest:

Raymond F. Hanson, Mayor

Kami Collins, Town Clerk

ACCEPTANCE OF TOWN FRANCHISE

Ordinance No. 2021-01, effective March 26, 2021

I, _____, am an authorized representative to accept the above referenced Town of Cedaredge franchise ordinance on behalf of Delta County Tele-Comm., Inc. dba TDS TELECOM. I certify that this franchise and all terms and conditions thereof are accepted without qualification or reservation.

DATED this _____ day of _____, 2021.