

ORDINANCE NO. 1419

AN ORDINANCE GRANTING NEX-TECH LLC, A LIMITED LIABILITY COMPANY, ITS PARENT COMPANY (RURAL TELEPHONE SERVICE COMPANY, INC., A KANSAS CORPORATION), SUBSIDIARIES, SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY LIMITS OF PHILLIPSBURG, KANSAS, PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR PAYMENTS TO BE MADE TO THE CITY OF PHILLIPSBURG, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PHILLIPSBURG, PHILLIPS COUNTY, KANSAS:

ARTICLE 1  
DEFINITIONS

For the purpose of granting this Franchise, the following terms shall have the meaning as described herein:

1.1. City. "City" shall mean the City of Phillipsburg, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the city limits of Phillipsburg, Kansas, as they now or shall hereafter exist.

1.2. City Council. "City Council" shall mean the present governing body of the City or any successor to the legislative powers of the present City Council.

1.3. Franchise. "Franchise" shall mean the permission, license or authority given hereunder to conduct and operate a telecommunications system in the City, pursuant to this Ordinance passed by the City Council.

1.4. Grantee. "Grantee" shall mean Nex-Tech LLC, its parent company (Rural Telephone Service Company, Inc.), subsidiaries, successors, transferees and assigns of the Franchise granted herein.

1.5. Franchise Revenue. "Franchise Revenue" shall mean a flat monthly fee or a percentage of annual Franchise Revenue received by Grantee for basic service rates collected from subscribers of Grantee's local telephone service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the telecommunications system; (ii) revenues from optional calling features; (iii) any taxes imposed directly or indirectly on any subscriber by any governmental unit or agency, and collected by Grantee on behalf of such governmental unit or agency; (iv) any revenues derived from installation charges; or (v) revenues derived from Internet access.

1.6. Street. "Street" shall mean the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City for the purpose of public travel. It shall also include such other easements or rights-of-way as shall be now or hereafter held by the City, and which shall, within their proper use and meaning, entitle the City and Grantee to install or transmit telecommunications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Telecommunications System.

1.7. Property of Grantee. "Property of Grantee" shall mean all property owned and installed or used by Grantee in the conduct of its telecommunications business in the City and under the authority of the Franchise granted herein.

1.8. Telecommunications System. "Telecommunications System" shall mean all equipment used to transport voice communications.

1.9. Subscriber. "Subscriber" shall mean any person or entity receiving, for any purpose, one or more of the services offered within Grantee's Telecommunications System.

1.10. Person. "Person" shall mean any individual or association of individuals, or any firm, corporation or other business entity.

1.11. Telecommunications Facilities. "Telecommunications Facilities" shall mean property of the Grantee used in operation of the Telecommunications System.

## ARTICLE 2 GRANT OF FRANCHISE

2.1. General Grant. The City hereby grants to Grantee the right and privilege to construct, erect, operate and maintain a Telecommunications System within the City and, in so doing, to use the Streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such Street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a Telecommunications System within the City.

2.2. Non-Exclusivity. The authority given to Grantee in Section 2.1 is not and shall not be deemed to be an exclusive right or permission. The City expressly reserves the right to grant similar non-exclusive franchises to other Persons and allow them to use the Streets of the City within the same or other areas of the City as Grantee at any time; provided, however, that such other franchises do not interfere or create interference with Grantee's Telecommunications System already established and said other franchisees shall not be extended preferential treatment over Grantee.

2.3. Notice Concerning Complaints. Notice of the procedures for reporting and resolving complaints shall be given to each Subscriber at the time of the initial subscription to the Telecommunications System.

2.4. Modifications. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this Franchise within one (1) year of the adoption of the modification, or at the time of renewal, whichever occurs first. It shall also be the policy of the City to amend this Franchise, upon application of Grantee, when necessary, to enable Grantee to take advantage of any developments in the telecommunications field which would afford Grantee an opportunity to more effectively, efficiently or economically serve its Subscribers, and to enable Grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

### ARTICLE 3 TERM

The initial term of this Ordinance shall be for a period of three (3) years. The Ordinance shall automatically renew for successive three (3) year terms unless written notice of intent to terminate is given by either the City or Grantee, to the other, at least six (6) months prior to expiration of the then-current term.

### ARTICLE 4 FORFEITURE

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional, separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder for any of the following reasons:

- a. Grantee fails, after thirty (30) days' prior written notice, to comply with any of the provisions of this Ordinance granting this Franchise or has, by act or omission, violated any term or condition thereof;
- b. Any provision of this Ordinance is adjudged by a court of law as invalid or unenforceable, and the City Council finds that such provision constitutes a consideration material to the continuance of the Franchise granted herein;
- c. Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
- d. Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or its Subscribers under this Franchise; or
- e. The City condemns all Property of Grantee within the City by lawful exercise of eminent domain.

ARTICLE 5  
ORDINANCE OF REVOCATION

No revocation provided for in Article 4, except for reasons of condemnation as described in Article 4(e), shall be effective unless or until the City Council provides written notice to Grantee, and Grantee is given at least thirty (30) days to cure any alleged breach of Article 4 herein. If, upon expiration of the time to cure, City Council believes Grantee has failed to cure, the City Council must adopt an Ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. Such Ordinance shall not be adopted without thirty (30) days' prior written notice thereof to Grantee, along with an opportunity for Grantee to be heard on the proposed adoption of said proposed Ordinance. If the revocation as proposed in said Ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by Grantee.

ARTICLE 6  
COMPENSATION

In consideration of granting this Franchise to Grantee, Grantee shall pay the City an amount equal to one dollar (\$1.00) per access line for the operation of the business in said City. This fee will be collected as a "pass-through" from the Subscribers. Such payment shall be made by Grantee to the City in arrears on a quarterly basis, within forty-five (45) days of the end of each remittal period, for the duration of this Ordinance. The City agrees to accept this sum as full and fair compensation.

ARTICLE 7  
INDEMNIFICATION

Grantee shall, concurrently with the filing of the acceptance of this Franchise, furnish to the City and file with the City Clerk, proof of a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City and in a form satisfactory to the City Attorney. Such policy shall indemnify and defend the City, its officers, councils, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expenses or damages resulting from or arising out of the exercise or enjoyment of this Franchise.

ARTICLE 8  
USE AND INSTALLATION

8.1. Degree of Care. Grantee or any Persons erecting, constructing or maintaining any of the Property of Grantee shall, at all times, employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the Property of Grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

8.2. Location of Facility. All Telecommunications Facilities shall be located so as to cause minimum interference with the proper use of Streets and the rights and reasonable convenience of property owners abutting the Streets. In no event shall such Telecommunications Facilities be located so as to substantially interfere with the usual public travel on any Street within the City.

8.3. Damage to Public Property. Whenever Grantee or any person on its behalf causes any injuries or damage to any public property or Street by or because of the installation, maintenance or operation of the Telecommunications Facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Public Works Director at Grantee's expense.

8.4. Tree Trimming. Grantee shall have authority to trim trees upon and over the Streets of the City so as to prevent the branches of such trees from coming in contact with wires, cables and other Telecommunications Facilities. All trimming shall be done under the supervision of the City Public Works Director at Grantee's expense.

8.5. Facilities Upgrades/Changes. Grantee shall exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances as the business, and purposes for which may, from time to time, require along, across, on, over, through, above and under any public rights-of-way including, but not limited to, Streets, avenues, alleys, bridges and the public grounds and places within the limits of the City at Grantee's expense.

## ARTICLE 9 REMOVAL AND ABANDONMENT OF PROPERTY

If this Franchise is terminated or revoked, Grantee shall remove from the Streets all of its Telecommunications Facilities other than those which the City may permit to be abandoned in place. In the event of such removal, Grantee shall return the Streets to the similar conditions they were in before the Telecommunications Facilities were placed.

## ARTICLE 10 OPERATION AND MAINTENANCE

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its services under this Franchise and to assure an uninterrupted service to all of its customers. Grantee shall render efficient service, make repairs promptly and only interrupt service for good cause for the shortest time possible. In order to limit failure and malfunctions of the Telecommunications System and to enable prompt correction at all times after notice of malfunction or failure, Grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day, Sunday through Saturday, including holidays.

Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of

such temporary action shall be paid by the person requesting the same, and Grantee shall have the authority to require advance payment. Grantee shall be given no less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

ARTICLE 11  
COMPLIANCE WITH THE LAW

Grantee shall, at all times during the term of this Franchise, be subject to all lawful exercises of the police power of the City and to such reasonable regulations as the City shall prescribe for the general conduct of persons providing telecommunications service within the City.

ARTICLE 12  
SALE OR LEASE OF FRANCHISE

This Franchise shall be deemed a privilege to be held in personal trust by Grantee. It may not be sold, transferred, leased, assigned or disposed of, in whole or in part, either by force or voluntary sale, consolidation or otherwise, without prior written consent from the City Council.

ARTICLE 13  
GRANTEE WITHOUT RECOURSE

Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of the Franchise.

ARTICLE 14  
GRANTEE'S RATES AND REGULATIONS

Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the services it provides through its Telecommunications System; provided, that such rates shall not be established on a discriminatory basis.

ARTICLE 15  
NOTICES

Whenever, under the terms of this Franchise, either party shall be required or permitted to give notice to the other, such notice shall be made in writing, and delivered by certified mail, postage prepaid, return receipt requested, as follows:

If to the City:

Phillipsburg Mayor & City Council  
c/o Phillipsburg City Clerk  
945 2<sup>nd</sup> Street  
Phillipsburg, KS 67661

If to Grantee:

Regulatory/Legal Analyst  
Nex-Tech LLC  
145 North Main  
Lenora, KS 67645

ARTICLE 16  
MISCELLANEOUS PROVISIONS

16.1. Supersedes Prior Ordinances. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed as of the Effective Date of this Ordinance. This Ordinance specifically supersedes previously adopted Ordinances.

16.2. Binding Effect. All provisions of this Ordinance shall be binding upon Grantee and all of its subsidiaries, successors, transferees and assigns, whether expressly stated herein or not.

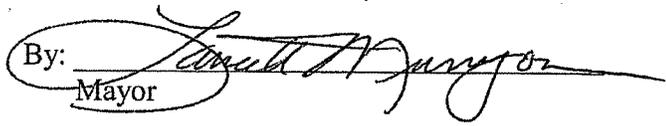
16.3. Assignment. The City shall not sell, assign or transfer this Agreement, or any part thereof, without the prior written consent of Grantee.

16.4. Negotiations. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties, by written mutual agreement, may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new contract franchise ordinance or amendment.

PASSED AND ADOPTED by the City Council of the City of Phillipsburg, Kansas, on this 18<sup>th</sup> day of February, 2019.

EFFECTIVE DATE: April 1, 2019

CITY OF PHILLIPSBURG, KANSAS

By:   
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

**ACCEPTANCE  
ORDINANCE NO. 1419**

WHEREAS, the governing body of the City of Phillipsburg, Kansas, did on the 18<sup>th</sup> day of February, 2019, adopt and pass an ordinance entitled:

“A CONTRACT FRANCHISE ORDINANCE GRANTED TO  
NEX-TECH LLC, A TELECOMMUNICATIONS LOCAL EXCHANGE  
SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE  
WITHIN THE CITY OF PHILLIPSBURG, KANSAS.”

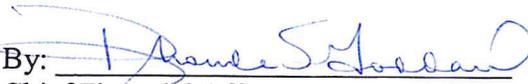
WHEREAS, said Ordinance was duly signed by the Mayor of said City of Phillipsburg, Kansas, and the seal of said City affixed and attested thereto by the City Clerk of the said City, Phillipsburg, and

WHEREAS, said Ordinance further provided that it should be in full force and effect after its adoption and publication and its acceptance by Nex-Tech LLC.

NOW, THEREFORE, in compliance with the terms of said Ordinance so enacted and so approved and attested, Nex-Tech LLC hereby accepts said Ordinance and files this, its written acceptance, with the City Clerk of said City in said City Clerk’s office.

Dated this 19<sup>th</sup> day of February, 2019.

Nex-Tech, LLC

By:   
Chief Financial Officer

Acceptance filed in the office of the City Clerk of Phillipsburg, Kansas, this 19<sup>th</sup> day of February, 2019.

  
City Clerk