

FRANCHISE AGREEMENT
Central Telcom Services, LLC

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between The City of Bluffdale City (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 14350 South 2200 West Bluffdale, Utah 84065, and Central Telcom Services, LLC, and its affiliates, (hereinafter "PROVIDER") with its principal offices at 35 South State Street, Fairview, Utah 84629.

WITNESSETH:

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY;

WHEREAS, the CITY has enacted Title 7 Chapter 3 of the Bluffdale City Municipal Code (hereinafter the "Telecommunications Use of Rights of Way Ordinance") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to grant the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE

1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 Ordinance. The CITY has adopted the Telecommunications Rights-of-Way Ordinance, which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond the CITY's authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time. The CITY shall give the PROVIDER notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the PROVIDER's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term, provided however, that the PROVIDER agrees that it is subject to the lawful exercise of the police power of the CITY as further set forth in Article 6 below. Otherwise, the PROVIDER agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network (the "System") in, under, above and across the present and future public Rights-of-Way in the City. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a franchise fee, in accordance with the Utah Municipal Telecommunications License Tax Act, of three and a half percent (3.5%) of its gross receipts from telecommunications services attributed to the City as set forth in the Municipal Telecommunications License Tax Act, less any business license fee or business license tax enacted by the CITY. All payments shall be made to the City, and sent as follows, unless the PROVIDER is otherwise notified of a change in address in writing by the CITY:

City of Bluffdale
14350 South 2200 West
Bluffdale, Utah 84065

2.2 Application Fee. Upon the granting this Franchise, the Provider shall pay a

\$3,000.00 up-front application fee. The PROVIDER may offset the franchise fee paid to the City pursuant to Article 2.1, up to the amount of the up-front franchise fee paid to the City.

2.3 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, or waive collection of the fees provided for herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of five (5) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated and herein provided. At the end of the initial five (5) year term of this Agreement, the franchise granted herein shall automatically renew upon the same terms and conditions as contained in this Agreement for an additional five (5) year term for an unlimited number of 5-year terms. Either party may terminate this agreement as provided in Section 7.

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, the PROVIDER may, at its option, abandon the System in place, or remove from the Rights-of-Way any and all of its System. If the PROVIDER elects to abandon the System in place, it shall become the property of the CITY. If the PROVIDER elects to remove the System, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

3.3 PROVIDER Use of Poles and Overhead Structures. PROVIDER shall not attach to, or otherwise use or commit to use any pole owned by the CITY until a separate pole attachment agreement has been executed by the CITY and PROVIDER.

ARTICLE 4. PUBLIC USE RIGHTS

4.1 City Use of Poles and Overhead Structures. The CITY shall have the right, without cost, to use all poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the

PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments.

ARTICLE 5. RELOCATION

5.1 Upon its receipt of reasonable advance written notice, PROVIDER shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the PROVIDER 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, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the PROVIDER'S services. For purposes of this subsection, "reasonable advance written notice" shall be not less than ten (10) days for temporary relocation, and not less than thirty (30) days for permanent relocation or removal. In any event the PROVIDER may ask for a meeting with the CITY to discuss the relocation and alignment for the relocated facilities and/or property.

5.2 In the event that the CITY requests relocation efforts from PROVIDER for reasons not included in Section 5.1 above, or for aesthetic reasons, then the CITY agrees to pay all costs associated with relocation. PROVIDER shall not be required to pay for the relocation of the System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by the CITY through the permitting process.

5.2 Except as otherwise provided herein, CITY, without prior written approval of PROVIDER, shall not intentionally alter, remove, relocate, or otherwise interfere with PROVIDER's facilities. In the event of an emergency involving the System, the CITY shall notify PROVIDER. To the extent reasonably practical, PROVIDER shall immediately respond to the emergency. However, if the PROVIDER is unable to respond in a timely manner, and it becomes necessary, in the reasonable judgment of CITY personnel, to cut, move, remove, or damage any of the cables, appliances, fixtures or other property of PROVIDER because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of PROVIDER, and the repairs rendered necessary shall be made by PROVIDER, without charge to City.

5.3 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, then the CITY shall make application for such funds on behalf of the PROVIDER. The requirements of this Section shall not be construed to be in derogation of any right or cause of action for reimbursement the PROVIDER may have against a developer or other private interest which causes the need to move its lines or facilities.

5.4 PROVIDER shall, on the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of PROVIDER, provided: (A) the expense of such is paid by said person benefiting from the relocation, including, if required by PROVIDER making such payment in advance; and (B) PROVIDER is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

ARTICLE 6. POLICE POWERS

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 7. CHANGING CONDITIONS AND SEVERABILITY

7.1 Meet to Confer. The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, the PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

7.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. If the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's Excavation Permit Ordinance. For the PROVIDER, "material consideration" includes the amount of the Franchise Fee PROVIDER is required to pay, and PROVIDER's ability to use the Rights of Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the CITY's Excavation Permit Ordinance.

ARTICLE 8. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

8.1 Grounds for Termination. The CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The PROVIDER fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure;
- (b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions, provided that if the failure, violation, or default cannot reasonably be cured within such ninety (90) day period, PROVIDER will not be in default so long as it commences the cure within such period and pursues such cure diligently to completion. After the expiration of such 90-day period and failure to correct such conditions, or failure to take reasonable steps to correct such conditions as provided above, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; or
- (c) The PROVIDER becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the PROVIDER within sixty (60) days.

8.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of the CITY.

8.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.

8.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be

deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 9. PARTIES' DESIGNEES

891 CITY designee and Address. The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at 14350 South 2200 West Bluffdale, Utah 84065, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

9.2 PROVIDER Designee and Address. The PROVIDER's Manager or his or her designee(s) shall serve as the PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's address at 35 South State Street, Fairview, Utah 84629, Attn: President & COO.

9.3 Failure of Designee. The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppels by the CITY or PROVIDER.

ARTICLE 10. INSURANCE AND INDEMNIFICATION

10.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

10.2 Indemnification. The PROVIDER agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the PROVIDER's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to the PROVIDER of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the PROVIDER shall not be obligated to indemnify, defend or hold the CITY harmless to

the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

ARTICLE 11. INSTALLATION

11.1 **Coordinated Installation.** In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER shall coordinate with the CITY and other providers or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

11.2 **Underground Installation.** Unless otherwise authorized by the CITY or provided herein, all of Provider's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement, PROVIDER expressly agrees to install and maintain all of its facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

ARTICLE 12. GENERAL PROVISIONS

12.1 **Binding Agreement.** The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

12.2 **Utah Law.** This Agreement shall be interpreted pursuant to Utah law.

12.3 **Time of Essence.** Time shall be of the essence of this Agreement.

12.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

12.5 **No Presumption.** All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

12.6 **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

12.7 **Binding Agreement.** This Agreement shall be binding upon the heirs, successors,

CITY OF BLUFFDALE, UTAH

Resolution No. 2016-49

A RESOLUTION OF THE BLUFFDALE CITY COUNCIL APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF BLUFFDALE, UTAH, AND CENTRAL TELECOM SERVICES, LLC, A VOICE, DATA AND VIDEO SERVICE PROVIDER.

WHEREAS Central Telecom Services, LLC, desires to provide voice, data and video services within the City of Bluffdale (“City”), and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City;

WHEREAS the City has enacted Title 7, Chapter 3, of the Bluffdale City Code, Telecommunications Use of Rights of Way, which governs the application and review process for franchises in the City; and

WHEREAS the City has determined that Central Telecom has conformed to the ordinance and desires to grant Central Telecom access to its rights of way;

NOW, THEREFORE, BE IT RESOLVED BY THE BLUFFDALE CITY COUNCIL AS FOLLOWS:

Section 1. Approval of the Franchise Agreement. The Bluffdale City Council hereby approves the attached Franchise Agreement between the City of Bluffdale, Utah, and Central Telecom Services, LLC, a voice, data and video service provider and authorizes and directs the City Manager to execute the agreement.

Section 2. Effective Date. This Resolution shall become effective immediately upon passage.

PASSED AND APPROVED: August 24, 2016.



Mayor

ATTEST:



City Recorder



Voting by the Council:

Yes No

Councilmember Jackson	<u> X </u>	<u> </u>
Councilmember Nielsen	<u> X </u>	<u> </u>
Councilmember Preece	<u> X </u>	<u> </u>
Councilmember Westwood	<u> X </u>	<u> </u>
Councilmember Wingate	<u> X </u>	<u> </u>