

FRANCHISE AGREEMENT

BETWEEN DRAPER CITY AND CENTRAL TELCOM SERVICES, LLC

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between the City of Draper, Utah (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah with principal offices at 1020 East Pioneer Road, Draper, Utah, 84020, and Central Telcom Services, LLC (hereinafter "PROVIDER") with its principal offices at 35 South State Street, P.O. Box 7, Fairview, Utah 84629.

WITNESSETH:

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

WHEREAS, CITY has enacted Title 8, Chapter 1 of the Draper City Municipal Code (hereinafter the "Telecommunication Rights-of-Way Ordinance") which governs the application and review process for Telecommunication Franchises in CITY; and

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

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, CITY and 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. CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. 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 in effect as of the date of the execution of this Agreement. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is specifically indicated herein. Nothing in this Section shall be deemed to require PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined to be unlawful or beyond CITY's authority.

1.3 Ordinance Amendments. CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time; provided, however, CITY shall give PROVIDER thirty (30) days advance notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between 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. Otherwise, PROVIDER agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in CITY. The franchise does not grant to PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize PROVIDER's System within 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. 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, PROVIDER shall pay to CITY a tax in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. §§10-1-401 to 10-1-410), less any business license fee or business license tax enacted by CITY. The Franchise Fee 3.5% of the PROVIDER'S gross receipts from telecommunications service attributable to the CITY. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

2.2 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, 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 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 ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein may be renewed by PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to CITY's representative designated herein written notice of PROVIDER's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between PROVIDER and CITY, or by revocation or forfeiture, PROVIDER shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of 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. In the alternative, PROVIDER may, in its discretion, abandon some or all of PROVIDER's system in place.

ARTICLE 4. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. CITY shall have the right, without cost, to use all poles owned by PROVIDER within CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by CITY shall be for activities owned, operated or used by CITY for any public purposes and shall not include the provision of telecommunications service to third parties or otherwise in a manner which would commercially compete with PROVIDER's operations or services; and provided that such CITY use does not unreasonably interfere with PROVIDER's operations or services.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require PROVIDER to increase pole capacity, alter the manner in which PROVIDER attached equipment to the poles, or alter the manner in which PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. CITY's use rights shall also be subject to the parties reaching an agreement regarding CITY's maintenance of 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, weather permitting, not less than ten (10) business days for temporary relocation, and not less than one hundred twenty (120) calendar days for 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.

5.3 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 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 there repairs rendered necessary shall be made by PROVIDER, without charge to City.

5.4 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 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.

5.5 PROVIDER shall, on the request of any person holding a lawful permit issued by 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.

CITY expressly reserves, and PROVIDER expressly recognizes, CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as 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. PROVIDER and 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 PROVIDER conducts its business and the way CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, PROVIDER and 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, however, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for 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 CITY's Excavation Permit Ordinance. For PROVIDER, "material consideration" is its 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 CITY's Excavation Permit Ordinance.

7.3 Assignment. If PROVIDER is the subject of a sale, transfer, lease, assignment, sublease, or is disposed of in whole or in part, either by forced or involuntary sale, or by ordinary sales, consolidation, or otherwise, such that its successor entity is obligated to inform or seek the approval of the Public Service Commission of Utah, PROVIDER or its successor shall notify CITY of the nature of the transaction and if applicable, request a transfer of the Franchise to the

successor entity. The notification shall include the successor entity's certification that it unequivocally agrees to all of the terms of this Agreement. Upon receipt of a notification in accordance with this section CITY shall send notice affirming the transfer/assignment of the Agreement to the successor entity. If CITY has good cause to believe that the successor entity may not comply with this Agreement, it may require an application for the transfer/assignment.

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

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

(a) 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 CITY of such failure;

(b) PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, 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 PROVIDER notice of such determination, 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. After the expiration of such 90-day period and failure to correct such conditions, CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, 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, 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 PROVIDER; or

(c) 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 PROVIDER within sixty (60) days.

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

8.3 Remedies at Law. In the event PROVIDER or CITY fails to fulfill any of its respective obligations under this Agreement, CITY or 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 CITY and 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.

9.1 CITY designee and Address. CITY Manager or his or her designee(s) shall serve as CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from PROVIDER to CITY pursuant to or concerning this Agreement, shall be delivered to CITY's representative at Draper City Hall, 1020 E. Pioneer Road, Draper, Utah 84020, or such other officer and address as CITY may designate by written notice to PROVIDER.

9.2 PROVIDER Designee and Address. PROVIDER's Vice President of Administration or his or her designee(s) shall serve as PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from CITY to PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's headquarter offices at 35 South State Street, P.O. Box 7, Fairview, Utah 84629, and such other office as PROVIDER may designate by written notice to CITY.

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

ARTICLE 10. INSURANCE AND INDEMNIFICATION

10.1 General Insurance Requirements for all Policies.

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date before the effective date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the CITY.

B. All policies of insurance shall be issued by insurance companies legally authorized to do business in the state of Utah and either:

- 1 A. Currently rated A- or better by A.M. Best Company; and
- 1 B. For construction contracts only, the insurer must also have an A.M. Best Company financial size category rating of not less than VII.

—OR—

2. Listed in the United States Treasury Department's current Listing of Approved Sureties (Department Circular 570), as amended.

C. The PROVIDER shall furnish certificates of insurance, on an ACCORD form or equivalent, verifying compliance with the insurance requirements herein.

D. In the event any work is subcontracted, the PROVIDER shall require its contractor, at no cost to the CITY, to secure and maintain all minimum insurance coverages required of the PROVIDER hereunder.

E. The PROVIDER's insurance policies shall be primary and non-contributory to any other coverage available to the CITY with respect to losses for which the PROVIDER is responsible hereunder.

F. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, the PROVIDER shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the CITY, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the CITY.

G. All required policies shall provide that notice of cancellation will be given in accordance with policy provisions.

H. In the event the PROVIDER fails to maintain and keep in force any insurance policies as required herein CITY shall have the right at its sole discretion to exercise its remedies for default hereunder.

10.2 Required Insurance Policies. The PROVIDER, at its own cost, shall secure and maintain during the term of this Franchise, including all renewal terms, the following minimum insurance coverage:

A. Workers' compensation and employer's liability insurance as required by the State of Utah, and employers liability coverage in the amount of \$1,000,000 per loss. Proof of workers' compensation coverage is required unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, the PROVIDER shall require its contractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance, on an occurrence form, with the CITY as an additional insured, in the minimum amount of \$2,000,000 per

occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the CITY, the PROVIDER, and any contractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the PROVIDER's operations under this Agreement, whether performed by the PROVIDER itself, any contractor, or anyone directly or indirectly employed or engaged by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations. The policy shall be primary and not contributing to any other policy or coverage available to the CITY whether such coverage is primary, contributing or excess.

C. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$500,000 per person, \$500,000 per accident.

10.3 Indemnification. PROVIDER agrees to indemnify, defend and hold 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 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 CITY in defense of such claims. CITY shall promptly give written notice to PROVIDER of any claim, demand, lien, liability, or damage, with respect to which CITY seeks indemnification and, unless in CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, CITY shall permit PROVIDER to assume the defense of such with counsel of PROVIDER's choosing, unless CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, PROVIDER shall not be obligated to indemnify, defend or hold CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions, or the willful misconduct of CITY.

ARTICLE 11. INSTALLATION

11.1 **Coordinated Installation.** In order to prevent and/or minimize the number of cuts to and excavations within CITY Rights-of-Way, PROVIDER shall coordinate with CITY and other providers or users of CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within 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 CITY Rights-of-Way. CITY shall give PROVIDER a schedule of street repairs, installations, repairs, or maintenance of facilities, in advance of CITY's work. In addition, CITY will hold regular meetings with PROVIDER to provide updated to road projects and opportunities to share costs on burying lines.

11.2 **Underground Installation.** Unless otherwise provided, all of PROVIDER's facilities within CITY shall be constructed underground. PROVIDER may be permitted to install facilities overhead if: (1) it is infeasible to go underground at the time; (2) lines can be placed on already existing poles; and (3) PROVIDER agrees to move its facilities underground when CITY directs and so long as CITY, at the same time, directs other franchisees with overhead facilities in the same location to move their facilities 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, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this 16th day of may, 20 17

“CITY”
CITY OF DRAPER



By: [Signature]
Troy K. Walker, Mayor

ATTEST:

[Signature]
Rachelle Conner, City Recorder

APPROVED AS TO FORM:

[Signature]
Mike Barker
City Attorney

“PROVIDER”
CENTRAL TELCOM SERVICES, LLC

By: [Signature]
Title: ASST GM

BRANLEY WELCH ASST GM.
(Print Name and Title Here)

CORPORATE ACKNOWLEDGMENT

STATE OF Utah)

COUNTY OF Sanpete) :SS.

On the 10th day of May, 2017 personally appeared before me Bradley Welch, who being by me duly sworn did say that he or she is the Asst GM of Central Telcom Services, LLC, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors; and they acknowledged to me that said corporation executed the same.

Pamella Rigby
Notary Public
Residing at: Fairview, UT

My Commission Expires:

May 10, 2018

