

TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into on the 19th day of October, 2016 by and between the **CITY OF SANDY, Utah** (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 10000 South Centennial Parkway, Sandy, Utah 84070, and **CENTRAL TELCOM SERVICES, LLC.**, a Utah limited liability company, with its principal offices at 35 South State Street, Fairview, Utah 84629, (hereinafter "Company" or "Provider").

WITNESSETH:

WHEREAS, the Provider desires to provide telecommunications, data, and broadband services within the City primarily through fiber-optic lines, and in connection therewith, to establish a telecommunications network in, under, along, over and across present and future Public Ways of the City; and

WHEREAS, the City has enacted Title 16, Chapter 32 of the Revised Ordinances of Sandy City, a copy of which is attached hereto ("**Telecommunications 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 Ways, 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, as well as the Telecommunications Service Providers Tax, Chapter 16-3, Revised Ordinances of Sandy City. 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. If any term or condition of this Agreement shall be in conflict with any applicable State or federal law, City ordinance, rule, or regulation, then the provisions of such law, ordinance, rule or regulation shall govern and control.

1.3 **Ordinance Amendments.** Nothing herein shall prevent the City from lawfully amending the Telecommunications Rights-of-Way Ordinance from time to time, as its City Council may deem necessary. Provided, however, City shall not enact any amendments to the Telecommunications Rights-of-Way Ordinance that will adversely impact Provider without allowing Provider 30 days or such longer time as is necessary if 30 days is insufficient in which to comply with the amendment. The City shall give the Provider notice and an opportunity to be heard concerning any proposed amendment and shall not enact any amendment which materially alters the rights and obligations of the Parties, or that is in conflict with any material term of this Agreement. 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 the term of this Agreement in which the ordinance amendment was adopted, but the ordinance amendments so adopted shall govern during subsequent renewal terms of this Agreement, if any. The Parties agree to comply with any such lawful governing amendments.

1.4 **Franchise Description, No Assignment.** The Telecommunications Franchise provided hereby shall confer upon the Provider, subject to the City's receipt of monetary and services compensation, the nonexclusive right, privilege, and franchise to construct, operate and maintain a fiber optic telecommunications network in, under, above and across the present and future Public Ways in the City. **The grant of this franchise includes the service of providing Dark Fiber to end users. The Provider shall not permit the use of its fiber optic system, its duct or pathways, its pole attachments or any plant equipment on the Public Ways in any manner that would avoid or seek to avoid the need for a franchise from the City for the business of another person as provided herein below. Provider shall not provide services directly regulated by the Utah Public Service Commission (PSC) unless authorized by the PSC. Provider shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521, *et seq.*, as amended) without first having obtained a separate cable franchise from 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. The rights granted by this Agreement may not be subdivided, assigned, or subleased to another person unless agreed to in writing by the City, unless to an affiliate of Provider or to an entity succeeding to or acquiring substantially all of the assets of**

Provider, in which case the City's permission shall not be required. Notwithstanding the foregoing sentence, where the City's permission is required, the City may condition, deny or delay approval of an assignment, sublease, or subdivision of the rights granted herein for any reason related to the assignee's ability to perform the Provider's obligations in this Agreement, including, but not limited to, financial weakness, a history of noncompliance with lawful franchise or contractual requirements in other jurisdictions, or evidence of inability or unwillingness to perform.

1.5 **Licenses.** The Provider represents 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 a manner that would indicate any such relationship with each other.

ARTICLE 2. DEFINITIONS

2.1 **Defined/Undefined Terms.** For the purposes of this Agreement, the following words and terms shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning. Unless otherwise expressly stated or clearly contrary to the context, words and terms not defined herein shall be given the meaning set forth in the City's Standard Specifications; if a definition is not contained therein, then the word or term shall have the meaning defined in the Revised Ordinances of Sandy City; if not defined in the Revised Ordinances of Sandy City, the meaning set forth in Utah Code Section 10-1-402, any Utah Administrative Code rules governing telecommunications; and if not defined in the foregoing sources, then such words and terms shall be given their common and ordinary meaning.

2.2 **Definitions, Construction, Headings.** When not inconsistent with the context, words used in the present tense include the future tense and vice versa; words in the plural number include the singular number and vice versa; and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory; the word "may" is permissive. Genders and plurals are understood to refer to a corporation, partnership or other legal entity when the context so requires. The article, paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

(a) "City" shall mean Sandy City, Utah, and its successors and assigns.

(b) "City Property" shall mean all properties or objects currently or in the future owned or operated by the City within the present and/or future corporate limits of the City.

(c) “**Company**” or “**Provider**” shall mean Central Telcom Services, LLC. and its successors and/or assigns.

(d) “**Company Facilities**” or “**Facilities**” shall include, but not be limited to a network of fiber optic cables and all related property, including conduit, carrier pipe, cable fibers, repeaters, power sources, poles, and other attachments and appurtenances necessary for the telecommunications system located within the Public Ways within the City limits, whether located above or below ground, currently or in the future owned or operated or otherwise controlled by the Provider needed to provide telecommunications service.

(e) “**Construction**” or “**Construct**” shall mean, without limitation, constructing, acquiring, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using Company Facilities.

(f) “**Dark Fiber**” is optical fiber infrastructure cabling and repeaters that is currently in place but through which light pulses are not being transmitted.

(g) “**Emergency**” means any unforeseen circumstance or occurrence, the existence of which constitutes an immediate and substantial risk of personal injury or damage to property, or which causes interruption of utility or public services or an interruption of telecommunications services.

(h) “**Maintenance,**” “**maintaining,**” or “**maintain**” shall mean, without limitation, repairing, replacing, relocating, examining, testing, and inspecting.

(i) “**Person**” shall mean any individual, person, firm, partnership, association, corporation, company, governmental entity, or organization of any kind.

(j) “**Public Ways**” shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public ways court, boulevard, parkway, or drive owned by the City for the purpose of public use, and shall include other rights of way as are now held or hereafter held by the City which shall, within their proper use and meaning entitle the Provider to the use thereof for the purposes of installing, maintaining and operating Company Facilities.

(k) “**Service**” or “**Services**” shall mean all telecommunications service lawfully provided by the Provider under this Agreement.

(l) “**Standard Specifications**” shall mean the Sandy City Standard Specifications and Details – Construction Projects, which govern construction in the Public Ways.

(m) “**Gross receipts from Telecommunications Services**” or “**Gross Receipts derived from Telecommunications Services**” shall have the meaning defined in Utah Code Anno. Section 10-1-402 or its replacement section for the term “gross receipts

from telecommunications services” as the definition may be changed from time to time.

(n) “**Telecommunications services**” shall have the meaning defined in Utah Code Anno. Section 59-12-102 or its replacement section as the definition may be changed from time to time.

ARTICLE 3. FRANCHISE TAX

3.1 **Franchise Fee.** For the Franchise granted herein, the Provider shall pay to the 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 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.

3.2 **Default Franchise Fee.** If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law and except as otherwise agreed by the parties, the Provider shall pay to the City a tax levy or franchise fee of three and one-half percent (3.5%) of its gross receipts derived from local telephone or other telecommunications services [accepted strikeout by Central Telcom: *attributed*] provided to Provider’s subscribers within the City (“**Default Franchise Fee**”), but does not include revenue from any taxes or fees imposed directly upon the customer by any governmental entity which is, or may be collected by the Provider, or any services, including but not limited to internet access service, as prohibited by law. “Gross receipts” for purposes of this subsection 3.2, also does not include sales, if any, at wholesale by Provider to another franchisee of the City who is separately responsible for paying a franchise fee on its gross receipts derived from the use of Provider’s Facilities. The City and Provider agree to meet, confer, and negotiate about any amendments to this Agreement as shall be necessary to accommodate the change or elimination of the Municipal Telecommunications Act or the taxes or fees provided for under the Act.

3.3 **Report of Franchise Fee Payment.** Upon the written request of the City, the Provider shall prepare and deliver to the City, at such frequency as the City shall request, but not more frequently than monthly, a report summarizing Provider payments to the Utah State Tax Commission for the requested period. Such report shall include such information related to such payment as the City shall reasonably request, including by way of example, and not limitation, the gross receipts of the Provider from telecommunications service that are attributed to the City during such period, and the methodology for calculating such gross receipts.

3.4 **Record Inspection.** The Provider shall keep records of invoices and payments of gross receipts for not less than three years after the payments are assessed or received. The

records of the Provider pertaining to the reports and payment required in this Agreement, including but not limited to any records deemed reasonably necessary or useful by the City to calculate or confirm gross receipts, and all other records of the Provider reasonably required by the City to assure compliance by the Provider with the terms of this Agreement (“**Provider Records**”), shall be open to inspection by the City and its authorized representatives upon reasonable notice at all reasonable business hours of the Provider. The Provider may require such inspection to be performed at any Provider Facilities where such Provider Records may be located; provided that in the event such Provider Records are not located at Provider Facilities within the City, those Provider Records shall be delivered by the Provider for inspection by the City at the City’s address.

3.5 **Service of Process.** The Provider agrees to use its best efforts to provide a local office within the State of Utah for purposes of acceptance of process. Otherwise, the Provider agrees to advise City of a person or office where such process may be served.

ARTICLE 4. TERM AND RENEWAL

4.1 **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 is sooner terminated as herein provided. At the end of the initial five-year term of this Agreement, the franchise granted herein may be renewed for up to three additional five-year terms upon the mutual written agreement of the parties for each additional five-year term.

4.2 **Rights and Duties of Provider Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture as provided herein, the Provider shall remove from the Public Ways any and all of its Provider Facilities, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the Public Ways from which such System is removed to as good condition as the same was before the removal was effected, ordinary wear and tear and damages not caused by Provider excepted. In the alternative, Provider may, with the written approval of the City Engineer, abandon some or all of the Provider Facilities in place.

ARTICLE 5. PUBLIC USE RIGHTS

5.1 **City Uses of Poles and Overhead Structures.** The City shall have the right, without cost, to use all above-ground electric or telecommunication-wire poles owned solely by the Provider (or co-owned by other telecommunications company providers or public utilities who agree or have agreed with Provider to allow the City to use the poles) 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 non-governmental third parties or otherwise in a manner which would commercially compete with Provider’s operations and services and provided that such City use does not substantially interfere with Provider’s operations and services. Nothing in this section shall be construed to allow Provider to place its Facilities above ground except as provided under Section ~~7.87.10~~

hereof.

5.2 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 attaches 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 then-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, conditioned or delayed.

5.3 Maintenance of City Facilities. The City's use rights shall also be subject to the parties reaching a written agreement regarding the maintenance of the City attachments.

ARTICLE 6. POLICE POWERS

The City expressly reserves the right 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 lawful exercise of its police power for the protection of the City's property, the Public Ways, and the health, safety and welfare of its citizens and their properties. Provider agrees to comply with all such applicable ordinances, rules, and regulations presently in effect, and with all such lawful, nondiscriminatory, competitively neutral ordinances rules and regulations the City may subsequently enact.

ARTICLE 7. WORK IN THE CITY PUBLIC WAYS

7.1 Follow City Road Excavation Ordinance. The Provider shall comply with and follow all City applicable ordinances, including the City's road excavation ordinance, Title 13 Chapter 1, Revised Ordinances of Sandy, in all work it performs in the Public Ways.

(a) The Provider shall obtain all required permits or approvals for construction, maintenance and operations, and shall at all times be subject to and comply with all applicable laws, statutes, codes, rules, regulations, standards, and procedures regarding the construction, operation and maintenance of the Provider's Facilities in the Public Ways, now in force or which, hereafter, may be promulgated (including but not limited to applicable zoning, land use, historic preservation ordinances, safety standards, and other applicable requirements) and good industry practices. The City may inspect the manner of such work and require remedies as may be necessary to assure compliance. In the event the Provider should fail to comply with the terms of any City ordinance, regulation or requirement, the City shall give the Provider written notice of such non-compliance and the time for correction provided by ordinance or as provided herein.

(b) All work in City streets shall be done in a timely, expeditious and safe manner,

and in a manner which minimizes the inconvenience to the public or individuals, and shall follow the City ordinances and Sandy City Standard Specifications and Details for Municipal Construction and the Manual of Uniform Traffic Control Devices (MUTCD). Upon the City's request, the Provider will provide the City with a status report of such measures.

(c) All Facilities constructed by the Provider shall be located so as to cause minimum interference with and injury to (i) public use of Public Ways; (ii) the City's water mains, storm water infrastructure, street lights, or any other municipal use of the Public Ways; and (iii) trees and other natural features.

(d) All public and private property in or adjacent to dedicated easements disturbed by Provider's construction or excavation activities shall be restored as soon as possible by the Provider, at its expense, to substantially its former condition, subject to inspection by the City and compliance by the Provider with remedial action required by the City Engineer or his representative pursuant to said inspection. The Provider shall comply with the City's requests for prompt action to remedy all damage caused by Provider, its officers, employees, agents and contractors to public property adjacent to streets or dedicated easements where the Provider is performing excavation or construction work.

7.2 Workmanlike Manner. The installation, maintenance, renovation, and replacement of Provider's Facilities in the Public Ways shall be performed in a good and workmanlike manner.

7.3 Emergency Repairs. In any Emergency event in which Provider needs to cut or excavate a Public Way, and in which the Provider must act immediately and is unable to obtain a permit for excavating in the Public Ways from the City beforehand, the Provider shall provide the City Public Works Department with notification of such work as soon as practicable by calling the City Public Works Department at its regular number, or if after the Department's business hours, by calling (801) 799-3000 or such other emergency telephone number provided to Provider by the City, and shall report the Emergency and all related information requested by the City representative on call. In the event the Provider is unable to reach a City representative by calling the City's emergency telephone number, then the Provider shall continue to try to reach a City representative by calling that number or by reaching the City's Public Works Department by the fastest means possible, but shall in any event call the Public Works Department to report the Emergency within the first hour of the next day on which the City is open for business. The Provider shall give the City the telephone number of the Provider's representative for contact in an Emergency.

7.4 Damage to Public Property. If, during the course of installation, removal, inspection, or work on its Facilities, the Provider, its officers, agents, contractors, or employees causes damage to or alters any Public Ways or City property other than damage from ordinary wear and tear and other damages not caused by Provider, the Provider shall (at

its own cost and expense, and in accordance with the City's Standard Specifications) replace and restore it to as good a condition as existed before the work commenced within such reasonable time as the City shall require, and shall be liable to the City for any reasonable costs and expenses incurred by the City as a result of such damage or alteration. Except in case of Emergency in which the Provider is unable to obtain a permit for excavating in the Public Ways from the City beforehand, the Provider shall, prior to commencing work in the Public Ways City street or other City public places, obtain a permit to perform such work from the City. The Provider will abide by all lawful applicable ordinances, rules, regulations, including the City's Standard Specifications for such work. The Provider shall give the City the telephone number of the Provider's representative for contact in an emergency. This section shall survive termination of this Agreement.

7.5 Removal and Protection of City Property. Except as required in an Emergency Event, no City property shall be removed from the Public Way, including signage on utility poles, without prior permission from an authorized representative of the City.

7.6 Safety. The Provider shall at all times operate, repair, and maintain its Facilities in a safe and careful manner.

7.7 Relocation. Whenever the City shall, in the interest of the public convenience, necessity, health, safety and general welfare require the inspection, maintenance, repair, relocation or reinstallation of any Provider Facility within a Public Way, the Provider shall, upon not less than 90 days prior notice, promptly commence and diligently complete such work to remove and relocate or reinstall such Provider Facility as may be necessary to meet the requirements of the City. Notwithstanding the foregoing requirement, the Provider shall relocate its facilities upon 45 days prior written notice from the City when requested by the City due to an Emergency, or as the parties may otherwise agree in writing. Such relocation, removal or reinstallation by the Provider shall be at no cost to the City. The Provider may ask for a meeting with the City to discuss the relocation, and alignment for the relocated Provider Facilities. If a City project is funded by federal or State monies that specifically includes an amount allocated to defray the expenses of relocation of Provider Facilities, the City shall reimburse the Provider up to the extent of such specified amount for any actual relocation costs mandated by the project to the extent that the City actually receives such federal or State funds earmarked for that purpose. The requirements of this Section 7.7 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. Such right or cause of action, however, shall not be used as an excuse to delay or avoid its obligations under this section.

7.8 Underground Installations. The Provider will be permitted to install Facilities overhead if it meets the following conditions: (a) it shall at its sole cost place the Facilities underground when the City directs, and so long as the City, at the same time directs other telecommunication providers with overhead facilities in the same location to move their facilities underground; (b) it is not operationally or technically feasible to go underground at the time; and (c) lines can be placed on already existing poles. Notwithstanding the foregoing,

if all other telecommunication lines which can go underground are currently underground in any Public Way in which Provider installs its Facilities, then Provider shall install its fiber optic cables and other Facilities underground. Those Facilities which cannot practically be placed underground may be left above ground.

7.9 Cooperation With Others In Placing Lines Underground. The Provider shall make reasonable efforts, when undertaking a project of placing its fiber optic lines and other Facilities underground, to cooperate with other utilities, agencies, or companies which have their lines overhead to have all lines placed underground as part of the same project. When other public utility companies or telecommunication companies are placing their lines underground, the Provider shall, where feasible, cooperate with these utilities and companies and undertake to place its Facilities underground as part of the same project. Nothing in this Section shall be deemed to require Provider to materially delay its construction to comply with this Section.

7.10 Prohibitions. Except as otherwise provided herein, Facilities maintained or installed by Provider within the City shall be so located and constructed as not to do any of the following acts, unless permitted in writing by the City Engineer or Director of Public Works:

- (a) Interfere with access to or use of any water or fire hydrant; obscure the vision of or interfere with the installation of any traffic-control device or traffic or information sign or signal;
- (b) Interfere with sight distance established by any ordinance or law;
- (c) Obscure the light from any street light;
- (d) Cross any water or sewer line except at a 90-degree angle, except in accordance with a specific permit for such crossing issued by the City;
- (e) Damage irrigation, landscaping or trees owned or maintained by the City;
- (f) Damage any communications lines owned or maintained by the City; and
- (g) Install Facilities in the paved sidewalk area unless authorized in advance by the City.

7.11 Removal and Relocation. The City shall have authority to require Provider to remove or relocate any facility located in violation of this Article 7 at Provider's sole expense. Such relocation or removal shall be completed within sixty (60) days (or other period of time as the parties may mutually agree to be acceptable for the required work) of written notice from the City. The notice shall prescribe the area where the facility is located and any other special conditions deemed reasonably necessary by the City.

7.12 As-Built Drawings. After construction of new Provider Facilities or extensions of existing Facilities, Provider shall within a reasonable time, but no more than 90 days,

develop and deliver to the City as-built drawings and maps in a format requested by the City.

7.13 **Damage to Others' Facilities.** During construction or maintenance, if Provider, its contractors, subcontractors, employees, agents or assigns causes damage to or a break in any lines, cables, ducts, conduit or other facilities located in or out of the Public Ways, the Provider shall immediately notify the affected party and the City by the fastest practical means.

7.14 **Hazardous Materials.** If contaminated or Hazardous Material is discovered within or adjacent to the Public Way, the Provider shall stop work in that affected area, notify the City Engineer of the hazardous material immediately, and report accurately and in writing the facts of the encounter to the City Engineer. Work in the affected area shall not thereafter be resumed except by written order of the City Engineer unless and until the material is determined not to be a Hazardous Material or the Hazardous Material is remediated. The City may choose to remediate the Hazardous Material with a separate contractor, or the City may contract with Provider or its contractor under terms and conditions mutually agreeable to the contracting parties. However, nothing herein shall be construed to obligate the City to remediate Hazardous Materials encountered by the Provider. Response to, remediation of, and liability for Hazardous Materials shall comply with Section 2.19 of the Standard Specifications and applicable federal and Utah law, provided, however, that Provider shall not be liable for the cost of any remediation or other work or any damages or liabilities arising from Hazardous Materials unless Provider, its employees, agents, contractor, or subcontractor, is directly responsible for introducing Hazardous Material, or negligently causing the release of the Hazardous Material, or is otherwise liable under applicable law. To the extent that Provider is responsible for or elects to perform any remediation or similar work regarding Hazardous Substance, before recommencing work within the Public Way, the Provider shall provide the City Engineer with plans and other documentation that demonstrates that the contaminated or Hazardous Material has been and will be properly handled, and that continued work within the Public Way poses no threat to the environment and/or human health or safety of public or private property. If the City chooses to perform the remediation with a separate contractor, then the City shall promptly notify Provider in writing when Provider's work may recommence. The terms of this section shall survive the termination of this Agreement.

7.15 The term "**Hazardous Material**" shall mean any substance:

(a) which is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of Utah or any political subdivision thereof; or

(b) which contains asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity or petroleum, including crude oil or any fraction thereof; or

(c) which is or becomes defined as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material or toxic substance under the Resource Conservation

and Recovery Act, 42 U.S.C. §§ 6901-6987; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801-1812; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clean Air Act, 42 U.S.C. §§ 7401-7642; the Toxic Substances Control Act, 15 U.S.C. §§ 2601- 2655; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11050; under title 19, chapter 6 of the Utah Code, as any of the same have been or from time to time may be amended; and any similar federal, State and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials on the Public Ways, including all interpretations, policies, guidelines and/or directives of the various governmental authorities responsible for administering any of the foregoing, now in effect or hereafter adopted, published and/or promulgated; or

(d) the presence of which in the Public Ways requires investigation or remediation under any federal, State or local statute, regulation, ordinance, order, action, policy, or common law.

7.16 City's Right to Perform. If Provider, its successors or assigns fails to perform any of its obligations under Article 7 of this Agreement, then the City shall have the right, but not the obligation, by its own employees or by a contractor, to perform the obligation upon fifteen (15) days prior written notice to the Provider. Sandy City shall in that event be reimbursed by the Provider within thirty (30) days after receipt of a detailed invoice for the work so performed. *[If it's required by this Agreement, then we don't want a dispute over whether it is reasonably necessary. If Provider thinks it isn't it can discuss this with the City after receiving the notice provided for herein.]*

ARTICLE 8. 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 unless the Agreement cannot reasonably be construed to effectively implement the intent of the parties as provided herein. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will meet and confer on a mutually acceptable amendment to this Agreement. As used herein, "**material consideration**" for the City is the State of Utah's right or ability to collect the Municipal Telecommunication License Tax, or if that tax may no longer be collected for Provider's use of the City's Public Ways, then the City's receipt of a competitively neutral and non-discriminatory franchise fee as provided in Sections 3.1 and 3.2 above during the term of this Agreement, and its ability to manage the Public Ways as provided in this Agreement, the Telecommunications Rights-of-Way Ordinance₂ and the City's Road Excavation Ordinance.

For the Provider, “**material consideration**” is the Franchise Fee it is required to pay the City, and is its ability to use the Public Ways for telecommunication purposes as provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City’s road excavation ordinance.

ARTICLE 9. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

9.1 **Grounds for Termination.** The City may terminate or revoke this Agreement and all rights and privileges herein provided, upon ninety (90) days prior written notice, for any of the following reasons:

(a) The Provider fails to make timely payments of the Municipal Telecommunication License Tax, or alternative payments due under Section 3.1 or 3.2 above and does not correct such failure within thirty (30) calendar days after receipt of written notice by the City of such failure; provided however, that any payment made pursuant to such request shall not be deemed to constitute a waiver of the City’s right to challenge the calculation of the franchise fee.

(b) The Provider, by act or omission, violates a 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 determines, after a hearing, that such violation has occurred and thereupon, after written notice to the Provider of such determination, the Provider, within thirty (30) calendar days of such notice, shall commence and diligently pursue efforts to remedy the conditions identified in the notice (“**Conditions**”) and shall have thirty (30) calendar days from the date it receives notice remedy the Conditions, or if the violation is of such nature or due to flood, earthquake, or other act of God, riot, civil unrest, war, or other event beyond the control of Provider, a longer time is necessary to remedy the Conditions, then the time needed to remedy the Conditions (“**Correction Time**”) shall be extended for such time as is actually necessary to remedy the Conditions, provided that the reason for the failure to remedy the Conditions within the Correction Time was not the intentional or negligent act or omission of the Provider. After the expiration of the Correction Time if the Provider has failed to remedy the Conditions, 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; or

(c) The Provider becomes insolvent, unable or unwilling to pay its debts when due; 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.

9.2 **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.

9.3 **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 10. PARTIES' REPRESENTATIVES

10.1 **City Representative and Address.** The City Engineer or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. All notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at the following address: City Engineer, Public Works Department, 8775 South 700 West, Sandy, Utah 84070 ("**City Representative**"), with a copy to the following address: Sandy City Attorney, 10,000 South Centennial Parkway Suite 301, Sandy, Utah 84070- 4148, or such other officer and address as the City may designate by written notice to the Provider.

10.2 **Provider Representative and Address.** President of Provider ("**Provider's Representative**") or his/her designee(s) shall serve as the Provider's representative regarding administration of and communication about this Agreement. Provider shall provide to the City's Representative the Provider's Representative's current office and wireless telephone numbers, facsimile and e-mail contact information. All notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to the Provider's Representative at the following address: 35 South State, Fairview, UT 84629 or such officer and address as the Provider may designate by written notice to the City.

ARTICLE 11. INSURANCE AND INDEMNIFICATION

11.1 Insurance.

(a) On or before the effective date of this Agreement, Provider shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of Provider, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by Provider in the following minimum amounts:

- (1) Ten Million Dollars (\$10,000,000.00) combined single limit, bodily

injury and real property damage in any one occurrence.

(2) Ten Million Dollars (\$10,000,000.00) aggregate.

(b) Provider shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired and leased vehicles operated by Provider, with limits not less than Two Million Dollars (\$2,000,000.00) each accident, single limit, bodily injury and property damage combined.

(c) Provider shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars (\$500,000.00) for employer's liability.

(d) All liability insurance required pursuant to this section, except for employers' liability shall name the City of Sandy and its officers, employees, board members and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Provider during the existence of the franchise and until after the removal or abandonment with the City Engineer's approval of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Provider incident to the maintenance and operation of the communications system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to cancel by either Provider or the insuring company. Provider may utilize primary and umbrella liability insurance policies to satisfy insurance policy limit requirements in this section 11.1 Insurance.

11.2 Indemnification. Provider hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, reasonable attorney's fees, costs or actions of any kind and nature resulting from personal or bodily injury to any person, including employees of Provider or of any contractor or subcontractor employed by Provider (including bodily injury and death) or damages to any property, arising directly out of the negligent acts or omissions of Provider, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this Agreement, except for any loss, injury, or personal or property damage caused by the negligence or willful misconduct of the City, its officers, agents, and employees. This section and the following section shall survive the termination of this Agreement.

11.3 City Participation in Litigation. The Provider shall immediately notify the City of any litigation which would affect the franchise or the City's rights under this

Agreement. The City shall have the right, at its sole cost and expense, to take part in any suit, action, or proceeding instituted by or against Provider in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of Provider to do or not to do anything which, by its franchise, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, Provider's title to any facility. Provider shall not object to the City's exercise of such right. City shall promptly notify Provider in writing of any claim or suit for which City seeks indemnification and defense by Provider and request that Provider indemnify the City. Provider will give written notice to City of its acceptance of the defense and shall be entitled to engage legal counsel of its own choosing. City's failure to so notify and request indemnification shall not relieve Provider of any liability that Provider might have, except to the extent that such failure prejudices Provider's ability to defend such claim or suit. In the event that Provider refuses the tender of defense in any suit or any claim, as required under the indemnification provisions contained herein, and that refusal is subsequently determined by a court having appropriate jurisdiction (or such other tribunal that the Parties agree to decide the matter), to have been a wrongful refusal on the part of Provider, Provider shall pay all of City's reasonable costs for defense of the action, including all reasonable expert witness fees, costs, and attorneys' fees, and including costs and fees incurred in recovering under this indemnification provision. City shall have the right, at City's sole cost and expense, to employ separate counsel on behalf of City for City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order, or injunction. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim, and the relevant records of each Party shall be available to the other party with respect to any such defense. No compromise or settlement shall be approved or executed without the prior written consent of City and Provider. If the City refuses a compromise or settlement that has been approved by Provider, City shall, at its sole cost and expense, take over the defense and Provider shall not be responsible for, nor obligated to indemnify City, against any cost or liability in excess of such refused compromise or settlement.

ARTICLE 12. SECURITY FOR PERFORMANCE

12.1 **Form, Amount.** On or before commencement of the franchise term, the Provider shall post with the City a security fund in the form of a surety bond, letter of credit, or cash bond (together herein called "**Performance Bond**") in the amount \$50,000 ("**Bond Amount**"). It is the Provider's responsibility to maintain a Performance Bond in the Bond Amount throughout the Agreement term and for 90 days after the end of the term. Nothing in this paragraph shall preclude or prevent the City from requiring an additional bond amount pursuant to the City's Road Excavation Ordinance. The form of Performance Bond shall be subject to approval as to content and form by the City Attorney. Among other provisions, the Performance Bond shall provide:

12.1.1 That the City may recover on the Performance Bond upon the City's certification that the Provider is in substantial default of this Agreement or City ordinances, and the amounts recoverable under the Performance Bond shall be recoverable jointly and severally from the Provider and the surety, bank or financial institution which holds the account in which the cash bond is deposited, or from which the letter of credit issued.

12.1.2 Any surety bond submitted hereunder shall be placed with a company licensed to do business in the State of Utah, shall have an A.M. Best's financial rating of A:- IX or better, and shall contain an endorsement in substantially the following form: This surety bond may not be canceled, allowed to lapse or the amount thereof reduced until at least thirty (30) days after receipt by the City Engineer, by certified mail, of a written notice from the issuer of the surety bond of its intent to cancel the surety bond, to allow it to lapse, or to reduce the amount of the surety bond.

12.2 **Use.** The City may draw on or make a claim against the Performance Bond to ensure the Provider's faithful performance of its obligations of this Agreement in accordance with applicable law. If Provider fails to perform its obligations under this Franchise Agreement in any respect, including making any payment to the City required by this Agreement or by applicable law, and reimbursable costs incurred by the City, the City may, after thirty (30) days' written notice to the Provider, withdraw or make a claim for that amount from the Performance Bond. The City shall notify the Provider of the amount and date of any such withdrawal.

12.3 **Restoration of Fund.** Within forty-five (45) calendar days after the City gives Provider written notice that an amount has been withdrawn from the Performance Bond or that the value of the Performance Bond has been reduced pursuant to Section 12.2 above, the Provider must deposit a sum of money in the security fund or shall restore the surety bond, cash bond sufficient to restore it to the Bond Amount. If Provider fails to do so, such failure to restore shall be a material breach of this Agreement.

12.4 **Return of Fund.** If the Agreement terminates for any reason, and the Provider has ceased to provide service in the City, the balance of the letter of credit or cash in the cash bond that remains following termination of the Agreement and satisfaction of all of Provider's obligations secured by the security fund shall be returned to Provider, or if the Provider provided a surety bond to the City, then the City shall sign a release of the surety bond. The City shall be under no obligation to return funds until sufficient time has elapsed for the City to determine that all such obligations have been satisfied, which shall not be longer than 90 days from termination or the cessation of services in the City.

12.5 **Default.** Failure to maintain the Performance Bond required in this Article shall be a substantial violation of this Agreement.

12.6 **Other Remedies.** Nothing in this Article 12 shall prevent the City from other legal remedies it may have against the Provider if it defaults in any of its obligations under this Agreement, including filing a lawsuit.

ARTICLE 13. GENERAL PROVISIONS

13.1 **Binding Agreement.** The parties represent that (a) when executed by their respective representatives who sign below, this Agreement shall constitute legal and binding

obligations of the parties; and (b) that 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. This Agreement shall be binding upon the successors and assigns of each of the parties.

13.2 Utah Law, Litigation. This Agreement shall be interpreted pursuant to Utah law. Any claim or lawsuit arising out of this Agreement shall be brought in the Third District Court pursuant to the laws of the State of Utah, or in the U.S. District Court for the State of Utah located in Salt Lake County, Utah. The parties waive any right to trial by jury or to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between them arising out of this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transactions related hereto.

13.3 Meet and Discuss; Mediation. Notwithstanding any other provision contained herein, before the City or the Provider brings an action or claim before any court or regulatory body arising out of a duty or right arising under this Agreement, the Provider and the City shall first make a good-faith effort to resolve their dispute by discussion and then, if that fails, by nonbinding mediation by a mediator acceptable to both parties, the cost of which shall be borne equally by the parties.

13.4 Time of Essence. Time shall be of the essence of this Agreement.

13.5 Entire Agreement, Modification, No Waiver. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior negotiations, agreements or understandings between the parties related to the subject matter hereof. None of the provisions of this Agreement may be altered or modified except through an instrument in writing signed by both parties. No failure by any party to insist on the strict performance of any covenant, duty or condition of this Agreement or to exercise any right or remedy consequent on a breach of this Agreement shall constitute a waiver of any such breach or of such or any other covenant, duty or condition. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership or other legal entity when the context so requires.

13.6 No Presumption. Both 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.

13.7 Warranty of Authorization. The person signing for and on behalf of Provider warrants and represents that he or she is duly authorized and empowered to enter into this agreement for and on behalf of Provider, and that Provider is duly organized and validly existing under the laws of the State of Utah, and that by his or her signature, he or she does bind Provider to the terms of this Agreement. The person signing below for Provider warrants

to the City that all necessary company approvals, authorizations and consents have been obtained, and all company procedures required to be taken have been followed to enable Provider to enter into this Agreement and to perform its duties hereunder.

SIGNED AND APPROVED this 19th day of October, 2016.

CENTRAL TELCOM SERVICES, LLC

Name (print): Casey Cox Title: Vice President

Signature: [Handwritten Signature]

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)

County of Sanpete ss.

On the 19th day of October, 2016, personally appeared before me (names of signers) Casey Cox who, being by me duly sworn on oath did say that they are members, managers, or member-managers of the foregoing limited liability company they purport to represent, each of whom

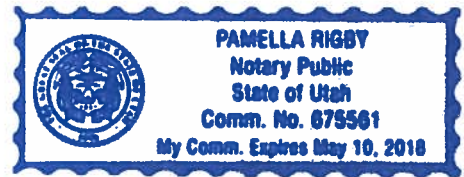
is is not personally known to me,
 whose identity I verified on the basis of

_____ whose identity I verified on the oath/affirmation of

_____, a credible witness, to be the signer of the foregoing document,

who each duly acknowledged to me that he or she executed the same, and has authority to bind said company by his signature to this Agreement, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its articles of organization.

Pamella Rigby
NOTARY PUBLIC, Residing in
Fairview, Utah



[SEAL]

SIGNED AND APPROVED this _____ day of _____, 2016.

SANDY CITY

ATTEST:


Thomas M. Dolan, Mayor


City Recorder



EXHIBIT "A"

TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE

TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE

Chapter 32 TELECOMMUNICATIONS RIGHTS-OF-WAY DECLARATION OF FINDINGS AND INTENT; SCOPE OF ORDINANCE

16-32-1. Declaration of Finding and Intent.

(1) **Findings Regarding Rights-of-Way.** The City Council of Sandy City finds that the Rights-of-Way within the City:

- (a) are critical to the travel and transport of persons and property in the business and social life of the City;
- (b) are intended for public uses and must be managed and controlled consistent with that intent;
- (c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
- (d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

(2) **Finding Regarding Compensation.** The City finds that the right to occupy portions of the Rights-of-Way for limited times for the business of providing Telecommunications Services is a valuable use of a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, and, therefore, the taxpayers of the City should receive fair and reasonable compensation for use of the Rights-of-Way.

(3) **Finding Regarding Local Concern.** The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.

(4) **Finding Regarding Promotion of Telecommunications Services.** The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscriminatory basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

(5) **Findings Regarding Franchise Standards.** The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

- (a) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
- (b) encourages competition by establishing terms and conditions under which Providers may use valuable public property to serve the public;
- (c) fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
- (d) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;
- (e) otherwise protects the public interests in the development and use of the City infrastructure;
- (f) protects the public's investment in improvements in the Rights-of-Way; and
- (g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 96-104].

(6) **Power to Manage Rights-of-Way.** The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

16-32-2 Scope of Ordinance.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 16-32-45.

16-32-3 Excluded Activity.

(1) **Cable TV.** This Ordinance shall not apply to cable television operators otherwise regulated by Chapters 16 and 26, Title 16, of the Revised Ordinances of Sandy City, Utah (the "Cable Television Ordinance").

(2) **Wireless Services.** This Ordinance shall not apply to Personal Wireless Service Facilities regulated by Chapter 36, Title 15 of the Land Development Code of Sandy City, Utah 1996.

(3) **Provisions Applicable to Excluded Providers.** Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

16-32-4 Definitions.

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(1) "Application" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider, and any other matter pertaining to a proposed System or Service.

(2) "City" means Sandy City, Utah.

(3) "Completion Date" means the date that a Provider begins providing Services to customers in the City.

(4) "Construction Costs" means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(5) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than thirty-five percent (35%) of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(6) "FCC" means the Federal Communications Commission, or any successor thereto.

(7) "Franchise" means the rights and obligations extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

(8) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

(9) "Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended. In the case of any Provider not covered within the ambit of Chapter 26, Title 11, Utah Code Annotated, the definition of "Gross Revenue" shall be that set forth in the Franchise Agreement.

(10) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.

(11) "Open Video Service" means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, *et seq.*, of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.

(12) "Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.

(13) "Operator" means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(14) "Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.

(15) "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(16) "Personal Wireless Services Facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

(17) "Provider" means an Operator, Infrastructure Provider, Resaler, or System Lessee.

(18) "PSC" means the Public Service Commission, or any successor thereto.

(19) "Resaler" refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

(20) "Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

(21) "Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(22) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide Services.

(23) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (*e.g.*, data, video, and voice), without change in the form or content of the information sent and received.

(24) "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(25) "Telecommunications Service(s)" or "Services" means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521, *et seq.*), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(26) "Wire" means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

16-32-5. Non-Exclusive Franchise.

The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, operation, use and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

16-32-6. Every Provider Must Obtain.

Except to the extent exempted by federal or state law, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System and shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

16-32-7. Nature of Grant.

A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non- exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

16-32-8. Current Providers.

Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 16-32-37.

16-32-9. Nature of Franchise.

The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, operate, repair, maintain, remove and replace its System on, over and under the Rights-of- Way in order to provide Services.

16-32-10. Regulatory Approval Needed.

Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

16-32-11. Term.

No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

16-32-12. Compensation.

As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

- (1) **Application Fee.** In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee. The Application fee shall also be paid when an amendment to an Application is filed with the City.
- (2) **Franchise Fees.** The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fees shall commence on the Completion Date". The Franchise fee is offset by any business license tax or fee enacted by the City.
- (3) **Excavation Permits.** The Provider shall also pay fees required for an excavation permit.
- (4) **Timing.** Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.
- (5) **Fee Statement and Certification.** Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.
- (6) **Future Costs.** A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, transfer, amendment or other modification of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.
- (7) **Taxes and Assessments.** To the extent taxes or other assessments re imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.
- (8) **Interest on Late Payments.** In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.
- (9) **No Accord and Satisfaction.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.
- (10) **Not in Lieu of Other Taxes or Fees.** The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees are not waived and remain applicable.
- (11) **Continuing Obligation and Holdover.** In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.
- (12) **Costs of Publication.** A Provider shall assume any publication costs associated with its Franchise that may be required by law.

16-32-13. Franchise Application.

To obtain a Franchise to construct, own, operate, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 16-32-26, granted pursuant to this Ordinance, an Application must be filed with City on a form designated by the City.

16-32-14. Application Criteria.

In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request or consider the following:

- (1) Obtaining an order from the PSC granting a Certificate of Convenience and Necessity, if any is necessary for Provider's offering of Services within the State of Utah.
- (2) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;
- (3) Provider's Agreements to comply with the requirements of Section 6 of this Ordinance.

16-32-15. Franchise Determination.

The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

16-32-16. General Requirement.

No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other requirements or procedures specified by the City or the Franchise, including requirements regarding co-location and cost sharing. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

16-32-17. Quality.

All work involved in the construction, operation, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

16-32-18. Licenses and Permits.

A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

16-32-19. Relocation of the System.

(1) **New Grades or Lines.** If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance.

(2) **The City Authority to Move System.** The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 16-32-42.

(3) **A Provider Required to Temporarily Move System.** A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is

reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

(4) **Rights-of-Way Change - Obligation to Move System.** When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City. This obligation exists whether or not the Provider has obtained an excavation permit.

16-32-20. Protect Structures.

In connection with the construction, operation, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

16-32-21. No Obstruction.

In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

16-32-22. Safety Precautions.

A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

16-32-23. Repair.

After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, operation, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

16-32-24. System Maintenance.

A Provider shall:

- (1) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- (2) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.

(3) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

16-32-25 Trimming of Trees.

A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

16-32-26. Notification of Sale.

(1) **PCS Approval.** When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction and, if applicable, request a transfer of the Franchise to the successor entity. A request for a transfer shall include a certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement.

(2) **Transfer of Franchise.** Upon receipt of a request to transfer a Franchise, the City designee, as provided in Subsection 16-32-34, may send notice approving the transfer of the Franchise to the successor entity. Such approval shall not be unreasonably withheld. If the City has reason to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Sections 16-32-13 through 16-32-15.

16-32-27. If PSC Approval is No Longer Required.

If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 16-32-26, then the following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7.1: (i) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

16-32-28. Insurance, Indemnity, and Security.

Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

16-32-29. Oversight.

The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

16-32-30. Maintain Records.

A Provider shall at all times maintain:

(1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(2) Throughout the Term, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

16-32-31. Confidentiality.

If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, and to the extent permitted by law, such information shall be treated as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

16-32-32. Provider's Expense.

All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

16-32-33. Right of Inspection.

For the purpose of verifying the correct amount of the Franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

16-32-34. Enforcement and Remedies.

(1) **Enforcement - City Designee.** The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any Franchise Agreement.

(2) **Enforcement Provision.** Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other

provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

16-32-35. Force Majeure.

In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

16-32-36. Extended Operation and Continuity of Services.

(1) **Continuation after Expiration.** Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit or require a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

(2) **Continuation by Incumbent Local Exchange Carrier.** If the Provider is the incumbent local exchange carrier, it may be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

16-32-37. Removal or Abandonment of Franchise Property.

(1) **Abandoned System.** In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 16-32-9 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

(2) **Removal of Abandoned System.** The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

(3) **Transfer of Abandoned System to City.** Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

(4) **Removal of Above-Ground System.** At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

(5) **Leaving Underground System.** Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.

16-32-38. Publicizing Work.

Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

16-32-39. Conflicts.

In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this shall control.

16-32-40. Severability.

If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

16-32-41. New Developments.

It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

16-32-42. Notices.

All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

16-32-43. Exercise of Police Power.

To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

16-32-44. Construction.

This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

16-32-45. Ordinance Applicability.

This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

16-32-46. Other Applicable Ordinances.

A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

16-32-47. City Failure to Enforce.

A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

16-32-48. Construed According to Utah Law.

This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.