

SCANNED

ORDINANCE NO. 14 - 8 (insert date)

AN ORDINANCE GRANTING CENTRAL TELECOM SERVICES, LLC, DBA CENTRACOM INTERACTIVE ("CENTRACOM"), A UTAH LIMITED LIABILITY COMPANY, A NONEXCLUSIVE FRANCHISE TO OPERATE AN INTERNET SERVICES NETWORK IN THE CITY OF SARATOGA SPRINGS, UTAH PURSUANT TO A FRANCHISE AGREEMENT SPECIFYING CENTRACOM'S RIGHTS AND DUTIES

WHEREAS, federal and state law allow for the operation of an internet services network in the City of Saratoga Springs, Utah by franchise agreement; and

WHEREAS, the City of Saratoga Springs and CentraCom desire to enter into a nonexclusive franchise agreement granting to CentraCom the right and privilege to operate an internet services network in Saratoga Springs, Utah; and

WHEREAS, the City and CentraCom have negotiated a nonexclusive franchise agreement setting forth CentraCom's rights and duties with respect to its operation of an internet services network in Saratoga Springs, Utah (a copy of which is attached as "Exhibit A"); and

WHEREAS, on the 29 day of April 2014, the City Council held a duly noticed public meeting to ascertain the pertinent facts regarding this matter, which facts are found in the meeting record; and

WHEREAS, after considering the pertinent facts, the Council finds: (i) that it should approve the attached CentraCom Franchise Agreement and thereby grant to CentraCom a franchise to operate an internet services network in Saratoga Springs, Utah; and (ii) such action furthers the health, safety, and welfare of the citizens of Saratoga Springs.

NOW THEREFORE, the City Council of the City of Saratoga Springs, Utah ordains as follows:

The attached Franchise Agreement between the City of Saratoga Springs and CentraCom is hereby approved; the Mayor is authorized to execute the Agreement on behalf of the City of Saratoga Springs; and CentraCom is granted a nonexclusive franchise to operate an internet services network in Saratoga Springs, Utah, pursuant to the Franchise Agreement.

This Ordinance shall take effect upon publication as required by the Utah Code.

ADOPTED AND PASSED by the Governing Body of the City of Saratoga Springs, Utah, this 29 day of April, 2014.

By: [Signature]
Jim Miller, Mayor

Attest: [Signature]
City Recorder

4-29-14
Date

EXHIBIT "A"

CITY OF SARATOGA SPRINGS AND CENTRACOM FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into as of the ____ day of _____, 2014, by and between the City of Saratoga Springs, Utah (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 1307 N. Commerce Drive, Suite 200, Saratoga Springs, Utah, and Central Telecom Services, LLLC, dba CentraCom Interactive ("CentraCom"), a Utah Limited Liability Company, with its principal offices at: 35 South State Street, Fairview, Utah 84629.

WITNESSETH:

WHEREAS, the Company desires to provide internet services within the City and in connection therewith to establish an internet services network in, under, along, over, and across present and future rights-of-way of the City, consisting of internet services lines, conduit, fiber, cables, and all other necessary appurtenances ("System" or Internet Services Network); and

WHEREAS, the City, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the Company a nonexclusive franchise to install, operate, repair, and maintain an Internet Services Network in the City.

WHEREAS, the City and Company have negotiated an arrangement whereby the Company may provide its services within the City pursuant to the terms and conditions outlined in this Agreement, and subject to the further reasonable regulation under its police and other regulatory power;

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 Company agree as follows:

**ARTICLE 1
FRANCHISE AGREEMENT AND ORDINANCE**

1.1 Agreement. Upon approval by the City Council and execution by the parties, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.

1.2 Resolution. The City has adopted Ordinance No. ____ ("Ordinance") granting Company the right to operate an Internet Services Network in the City. Company acknowledges it has read the Ordinance and this Agreement and that it agrees to comply with all terms and provisions in the resolution and this Agreement.

1.4 Grant of Franchise. The Internet Services Franchise provided hereby shall confer upon the Company the nonexclusive right, privilege, and franchise to install, operate,

repair, maintain, remove, and replace its Internet Services Network on, over, and under the present and future public rights of way in the city in order to provide Internet Services. The franchise does not grant to the Company the right, privilege, or authority to provide antenna or cable television business or telecommunications services, including Voice Over Internet Protocol Service (“VoIP”), and providing of any of these services is strictly prohibited.

1.5 Licenses. The Company acknowledges that it has obtained the necessary approvals, licenses, or permits required by federal and state law to provide Internet Services consistent with the provisions of this Agreement.

1.6 Financial Capability. Company warrants that it has the financial capability to construct, maintain, and operate an Internet Services Network and to otherwise comply with the provisions of this Agreement.

1.7 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.

1.8 Pole Attachments. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by separate agreement.

ARTICLE 2 CONDUIT IN LIEU OF FRANCHISE FEE

2.1 Conduit in Lieu of Franchise Fee. City agrees to not charge Company a franchise fee for allowing Company to use the City's rights-of-way for an Internet Services Network. In lieu of a franchise fee, the Company agrees to install parallel conduits for the exclusive use and benefit of the City (“City Conduit”) when Company installs facilities within the City’s rights-of-way. The City Conduit must be of the same size, quality, and length as the conduit installed by Company for its own purposes pursuant to this Agreement. Upon installation, ownership of the City Conduit shall automatically transfer to the City. The parties agree to amend this Agreement should changes to federal or state law permit City to charge franchise fees and/or taxes on the Company for providing the internet services.

ARTICLE 3 TERM AND RENEWAL

3.1 Term and Renewal. Subject to paragraph 2.1, the franchise granted to Company shall be for a period of five (5) years commencing on the effective date of this Ordinance. At the end of the initial five (5) year term of this Agreement, the franchise granted herein shall automatically renew for an additional five year term unless either party provides ninety (90) days’ notice of its intent to terminate this Agreement. At the five year renewal term, the parties shall enter into a new franchise agreement if both parties wish to continue the franchise.

Notwithstanding the foregoing renewal provisions, the Parties agree to amend this Agreement at any time it becomes necessary to modify the same in order to comply with any new federal or state laws or regulations governing the provision of internet services. The parties also agree to amend this Agreement should changes to federal or state law permit City to charge franchise fees and/or taxes on the Company for providing the internet services.

3.2 Rights of Company Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Company and the City, or by revocation or forfeiture, the Company shall have the right to remove from the rights-of-way any and all of its Internet Services Network, but in such event, it shall be the duty of the Company, immediately upon such removal, to restore the Rights-of Way from which such Internet Services Network is removed to as good a condition as the same was before the removal was effected.

ARTICLE 4 USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

4.1 Franchise Rights to Use the Public Right-of-Way.

(a) The Company shall have the right to use the public rights-of-way within the City to construct and maintain its Internet Services Network subject to the conditions set forth in this Agreement; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, within any right-of-way, City park, City property, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose.

(b) In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and rights-of-way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or right-of-way beyond the extent that the City may have acquired, and such easements and rights-of-way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and right-of-way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or right-of-way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or right-of-way.

(c) Prior to the installation of any of Company's facilities in public utility easements, Company shall provide advance notification to any property owners on whose property the easement is located. Such advance notification shall be at least two days prior to installation of such facilities. Notification shall be made by written notice. Such notification shall set forth the date during which Company will be installing facilities in the public utility easement and shall

provide a telephone number where property owners may call Company pertaining to any questions or complaints concerning use of the public utility easement by Company. Upon commencement of installation of facilities in a public utility easement, Company shall proceed diligently to complete that installation. Conduits/facilities shall be buried at a minimum depth of 42 inches and “bury tape” identifying the utility shall be installed within 1 foot of finished grade, when possible. No trenches or otherwise uncovered areas shall be left open longer than necessary to complete the installation. All disturbed landscaping shall be replaced or repaired to the landowner’s satisfaction within ten (10) business days of receipt of notice from landowner. Damage to City pipelines resulting from installation or maintenance of the facilities shall be reported immediately to the City Engineer and repaired immediately by qualified personnel. All work performed in City rights-of-way, roads, trails, parks, property, and improvements shall be done in compliance to the City’s most recent standards and specifications.

4.2 Company Duty to Relocate; Subordination to City Use. Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, rights-of-way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not more than sixty (60) calendar days, weather permitting, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 4.4 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company’s efforts to obtain reimbursement. In the event the City has required the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company’s use of the right-of-way shall in all matters be subordinate to the City’s use of the right-of-way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvements.

4.3 Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the City Manager or his designee) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done

without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of public services provided by the use of or through the Company's property (including internet services provided by the Company to the Company's customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state, or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

4.4 Location to Minimize Interference. All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, rights-of-way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, rights-of-way, or public property.

4.5 Repair of Damage. If during the course of work on its facilities, the Company causes damage to or alters any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, right-of-way, sidewalk, utility, public improvement or other public property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld, conditioned, or delayed. The Company shall abide by all reasonable regulations and requirements of the City for such work.

4.6 Guarantee of Work. For work on any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, the Company shall be required, pursuant to City ordinances, policies, and regulations, to obtain an excavation/encroachment permit and post a bond in a form approved by the City to guarantee that the such is restored to its condition prior to Company's work. In addition, Company may be required to post a bond to guarantee that, for a period of one year following completion of the work performed, that said streets, alleys, rights-of-way, or public property continue to meet City standards.

4.7 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law including, but not limited to signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

4.8 Supervision by the City.

- a. The Company shall construct, operate, and maintain the Internet Services Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.
- b. The Company's Internet Services Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

4.9 Company's Duty to Remove Its Network.

- a. Unless the Company elects to abandon the Internet Services Network in accordance with Section 11.5 herein, the Company shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the Internet Services Network when one or more of the following conditions occur:
 - (1) The Company ceases to operate the Internet Services Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster;
 - (2) The Company fails to construct said Internet Services Network as herein provided and does not respond to written notice from the City within thirty days after receiving such notice following any such failure.
 - (3) The Franchise is terminated or revoked pursuant to notice as provided herein.
 - (4) The Franchise expires pursuant to this Agreement.
- b. The removal of any or all of the Internet Services Network by the Company that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.
- c. The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 4.9 (a) above and shall have ninety (90) calendar days from the date upon which said notice is received, weather permitting, to remove or abandon such facilities.

4.10 Notice of Closure of Streets. Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 4.7, above.

4.11 Agreement to Abide by Construction and Technical Requirements. In addition to the provisions of this Article 4, Company expressly agrees to comply with all other provisions of City ordinances, regulations, and standards governing the construction of the System in any public street, alley, right-of-way, sidewalk, utility, public improvement, or other public property.

ARTICLE 5 POLICE POWERS

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

ARTICLE 6 SEVERABILITY

6. Severability. If any section, sentence, paragraph, term or provision of this Agreement or Chapter 6.03 of the City Code 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. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is the Company's provision of City Conduit during the term of this Agreement and the City's ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement and the City's ordinances, regulations, and standards. For the Company, "material consideration" is its ability to use the Rights-of-Way for internet services purposes in a manner similar to that provided in this Agreement and the City's ordinances, regulations, and standards.

ARTICLE 7
EARLY TERMINATION, REVOCATION OF FRANCHISE
AND OTHER REMEDIES

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

(a) The Company fails to provide the City Conduit as required under Article 2 of this Agreement and does not correct such failure within thirty (30) calendar days after written notice by the City of such failure;

(b) The Company, by act or omission, materially violates a material duty herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Manager, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Company notice of such determination, the Company, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Company; or

(c) The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within sixty (60) days.

(d) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

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

7.3 Remedies at Law. In the event the Company or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Company, whichever the

case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. 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 8 NOTICES

8.1 City Designee and Address. The City Manager or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at 1307 N. Commerce Drive, Suite 200, Saratoga Springs, Utah 84045, or such other officer and address as the City may designate by written notice to the Company.

8.2 Company Designee and Address. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Agreement, shall be delivered to (a) Company, LLC, Attention: General Manager; or (b) such other offices as the Company may designate by written notice to the City.

8.3 Failure of Designee. The failure or omission of the City's or Company 's representative to act shall not constitute any waiver or estoppel by the City or Company.

ARTICLE 9 INSURANCE AND INDEMNIFICATION

9.1 No Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any consequential, special, incidental, punitive, indirect or similar damages.

9.2 Company Indemnification of City.

(a) The Company shall indemnify, and at the City's option defend, and hold the City, its officers, agents and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims,

demands, liens, and all liability or damage of whatsoever kind on account of or arising from the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of internet services lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement.

(b) The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. If, in the City's sole judgment, a conflict of interest exists between the City and the Company with respect to any claim, demand, or lien, Company shall permit the City to assume the defense of such claim, demand, or lien, or, at the election of City, Company shall provide for City's defense with counsel satisfactory to the City. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

(c) Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

9.4 Insurance. Company shall file a certificate of insurance with the City Risk Manager, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one (1) of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, their officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars (\$2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.

9.5 No Creation of a Private Cause of Action. The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City.

ARTICLE 10 REMEDIES

10.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to ensure that the terms of this Agreement are performed.

10.2 Remedies at Law. In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

10.4 Force Majeure. The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE 11 TRANSFER OF FRANCHISE

11.1 Written Approval Required. The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned, or delayed; provided however, that the Company may fully assign the Franchise to its corporate parent, a corporate affiliate or a subsidiary, and also that inclusion of the Franchise as property subject to the liens of the Company's mortgages or other security interests shall not constitute a transfer or assignment. Any attempted assignment or transfer without such prior written consent shall constitute a default of the Franchise. In the event of such a default, City shall proceed according to the procedure set forth in this ordinance, and any applicable state or federal law.

11.2 Procedure for Obtaining Approval for Transfer. At least ninety (90) calendar days before a proposed assignment or transfer of Company's franchise is scheduled to become effective, Company shall petition in writing for the City Manager's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Manager may consider the following:

- (a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);

- (b) qualifications of proposed assignee or transferee;
- (c) legal integrity of proposed assignee or transferee;
- (d) financial ability and stability of the proposed assignee or transferee;
- (e) the corporate connection, if any, between the Company, and proposed assignee or transferee;
- (f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of Internet Services Network.

11.3 Certification of Assignee. Before an assignment or transfer is approved by the City Manager, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise agreement and Franchise Ordinance.

11.4 Effect of Approval. In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise agreement until the assignment actually takes place, or unless specifically relieved by federal, or state law, or unless specifically relieved by the City Manager at the time an assignment or transfer is approved. Such a release also does not relieve the Company from liability incurred prior to said assignment or transfer.

11.5 Abandonment of Facilities by Company. The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, the abandoned Internet Services Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

ARTICLE 12 ACCEPTANCE BY THE COMPANY OF FRANCHISE

12.1 Company Duty to Approve Franchise Agreement. If the Company has not duly executed this Agreement prior to the City Council's adoption of the corresponding Ordinance, within thirty calendar days after the effective date of the City Council's adoption of the Ordinance, the Company shall execute this Agreement; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

ARTICLE 13 GENERAL PROVISIONS

13.1 Binding Agreement. The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) 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.

13.2 Governing Law. This Agreement shall be interpreted pursuant to Utah law.

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

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

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

13.6 Entire Agreement and Amendments. This Agreement and all attachments hereto constitute and represent the entire agreement and understanding between the parties hereto and replaces any previous agreement, understanding or negotiation between the parties with respect to the subject matter hereof, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

13.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

[Signature page follows]

