

RESOLUTION R2017 - 03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, AUTHORIZING THE MAYOR OF THE CITY OF SOUTH JORDAN TO SIGN A FRANCHISE AGREEMENT WITH CENTRAL TELCOM SERVICES, LLC.

WHEREAS, pursuant to Utah Code § 10-1-401, *et seq.*, the City of South Jordan (“City”) may levy a franchise tax; and

WHEREAS, the City Council of the City of South Jordan (“City Council”) has adopted Chapters 3.20 (Telecommunication Service Providers Tax) and 5.80 (Telecommunication System Franchises) of the South Jordan City Municipal Code (“City Code”); and

WHEREAS, Central Telcom Services, LLC, dba Centracom, a Utah limited liability company (“Centracom”), is a telecommunication services company that provides a variety of telecommunication services to businesses; and

WHEREAS, Centracom and the City desire to enter into a franchise agreement pursuant to state law and the City Code to allow Centracom to construct, operate, and maintain a telecommunications network in the City in consideration for paying the franchise tax.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:

SECTION 1. Agreement Authorization. The City Council hereby authorizes the Mayor of the City of South Jordan to enter into a franchise agreement with Centracom, which is attached as EXHIBIT A.

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

[SIGNATURE PAGE FOLLOWS]

**APPROVED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH,
ON THIS 17TH DAY OF JANUARY, 2017 BY THE FOLLOWING VOTE:**

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	<u>X</u>	_____	_____	_____
Bradley Marlor	<u>X</u>	_____	_____	_____
Donald Shelton	<u>X</u>	_____	_____	_____
Tamara Zander	_____	_____	_____	<u>X</u>
Christopher Rogers	<u>X</u>	_____	_____	_____

Mayor: 
David L. Alvord

Attest: 
City Recorder

Approved as to form:


Office of the City Attorney



EXHIBIT A

Central Telcom Services Franchise Agreement

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is entered into by and between the City of South Jordan, Utah, a municipal corporation and political subdivision of the State of Utah (“CITY”), with its principal offices at 1600 W. Towne Center Dr., South Jordan, Utah 84095, and Central Telcom Services, LLC, dba Centracom, a Utah limited liability company (“PROVIDER”), with its principal offices at P.O. Box 7, 35 South State, Fairview, UT 84629.

WITNESSETH:

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

WHEREAS, CITY has enacted Chapter 5, Title 80 of the South Jordan City Municipal Code (hereinafter the “Telecommunications System Franchises Ordinance”) which governs the application and review process for Telecommunication Franchises in CITY; and

WHEREAS, CITY, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public for PROVIDER to have a nonexclusive franchise to operate a telecommunications network in CITY.

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

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE

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

1.2 Ordinance. CITY has adopted the Telecommunications System Franchises Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunication System Franchises Ordinance. The parties agree that the terms of this Agreement are intended to, and that each party hereby agrees to be contractually bound to, comply with the terms of the Telecommunication System Franchises Ordinance in effect as of the date of the execution of this Agreement. The definitions in the Telecommunication System Franchises Ordinance shall apply herein unless a different meaning is specifically indicated herein. Nothing in this Section shall be deemed to require PROVIDER to comply with any provision of the Telecommunication System Franchises Ordinance which is determined to be unlawful or beyond CITY’s authority.

1.3 Ordinance Amendments. CITY reserves the right to amend the Telecommunication System Franchises Ordinance at any time. CITY shall give PROVIDER thirty (30) days advance notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between PROVIDER’s rights and obligations under the Telecommunication System Franchises Ordinance as amended and this Agreement, the

provisions of this Agreement shall govern during its term. Otherwise, PROVIDER agrees to comply with any such amendments.

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

1.5 Licenses. PROVIDER acknowledges that it has obtained the necessary approvals, licenses, or permits required by federal and state law to fulfill its obligations consistent with the provisions of this Agreement and with the Telecommunication System Franchises 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. FRANCHISE TAX

2.1 Municipal Telecommunications License Tax. For the Franchise granted herein, PROVIDER shall pay to CITY a municipal telecommunications license tax pursuant to the Municipal Telecommunications License Tax Act adopted by the State. UCA § 10-1-401 *et seq.* and CITY'S Telecommunications Service Providers Tax Ordinance. SJCC § 3.20 *et seq.*

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

ARTICLE 3. TERM AND RENEWAL

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

3.2 Rights of PROVIDER upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between PROVIDER and

CITY, or by revocation or forfeiture, PROVIDER shall have the right to remove from CITY's rights-of-way any and all of its system, but in such event, it shall be the duty of PROVIDER, immediately upon such occurrence, to restore the rights-of-way from which such system is removed to as good a condition as the same was before the removal was effected. In the alternative, PROVIDER may abandon some or all of the PROVIDER's system in place.

ARTICLE 4. PUBLIC USE RIGHTS

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

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

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

ARTICLE 5. RELOCATION

5.1 Upon its receipt of reasonable advance written notice, PROVIDER shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the PROVIDER when lawfully required by the CITY by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the PROVIDER'S services. For purposes of this subsection, "reasonable advance written notice" shall be, weather permitting, not less than ten (10) business days. In any event the PROVIDER may ask for a meeting with the CITY to discuss the relocation and alignment for the relocated facilities and/or property. In the event of an emergency, CITY may notify PROVIDER, who shall immediately respond to the emergency. Should PROVIDER be unable to respond in a timely manner, CITY shall take such action as is necessary to meet the emergency.

5.2 If CITY requests relocation efforts from PROVIDER for reasons not included in Section 5.1 above then CITY agrees to pay all costs associated with relocation.

5.3 If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, then CITY may make application for such funds on behalf of PROVIDER. The requirements of this Section shall not

be construed to be in derogation of any right or cause of action for reimbursement PROVIDER may have against a developer or other private interest which causes the need to move its lines or facilities.

5.4 PROVIDER shall, on the request of any person holding a lawful permit issued by CITY, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of PROVIDER, provided: (A) the expense of such is paid by said person benefiting from the relocation, including, if required by PROVIDER making such payment in advance; and (B) PROVIDER is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

ARTICLE 6. POLICE POWERS

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

ARTICLE 7. CHANGING CONDITIONS, SEVERABILITY, AND ASSIGNMENT

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

7.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications System Franchise 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. 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 CITY is its ability to collect a municipal telecommunications license tax during the term of this Agreement and its ability to manage its affairs in a manner similar to that provided in this Agreement, the Telecommunications System Franchise Ordinance, and CITY'S Excavation

Permit Ordinance. For PROVIDER, “material consideration” is its ability to use the City rights-of-way for telecommunication purposes in a manner similar to that provided in this Agreement, and CITY’S Ordinance regulating CITY’s rights-of-way.

7.3 Assignment. If PROVIDER is the subject of a sale, merger, transfer or assignment, or is disposed of in whole or in part by ordinary sales, consolidation, or otherwise such that its successor entity is obligated to inform or seek the approval of the Public Service Commission of Utah, PROVIDER or its successor shall notify CITY of the nature of the transaction. The notification shall include the successor entity’s certification that it unequivocally agrees to all of the terms of this Agreement. Upon receipt of a notification in accordance with this section CITY shall send notice affirming the transfer/assignment of the Agreement to the successor entity. If CITY has good cause to believe that the successor entity may not comply with this Agreement, it may require an application for the transfer/assignment.

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

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

8.1.1 PROVIDER fails to make timely payments of the franchise tax required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by CITY of such failure;

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

8.1.3 PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities installed along the public rights-of-way within CITY should be sold under an instrument to secure a debt and is not redeemed by PROVIDER within sixty (60) days.

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

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

8.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of CITY and PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 9. PARTIES' DESIGNEES

9.1 CITY Designee and Address. City Manager or his or her designee(s) shall serve as CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or elsewhere required by statute or ordinance, all notices from PROVIDER or CITY pursuant to or concerning this Agreement, shall be delivered to CITY's representative at South Jordan City Hall, 1600 W. Towne Center Dr., South Jordan, Utah 84095, or such other officer and address as CITY may designate by written notice to PROVIDER.

9.2 PROVIDER Designee and Address. PROVIDER's designee(s) shall serve as PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or subsequently changed by written notice to CITY, all notices from CITY to PROVIDER, pursuant to or concerning this Agreement, shall be delivered to P.O. Box 7, 35 South State, Fairview, UT 84629, or such other officer and address as PROVIDER may designate by written notice to CITY.

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

ARTICLE 10. INSURANCE AND INDEMNIFICATION

10.1 Insurance. Prior to commencing operations in CITY pursuant to this Agreement, PROVIDER shall furnish to CITY evidence that it has adequate general liability and property damage insurance. The parties agree that the form, amount and scope of coverage of the insurance policy set forth in Exhibit "B" hereto shall be accepted by CITY as fulfilling the obligations of this Article.

10.2 Indemnification. PROVIDER agrees to indemnify, defend and hold CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from PROVIDER's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees,

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

ARTICLE 11. INSTALLATION

11.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within CITY's rights-of-way, PROVIDER shall coordinate with CITY and other providers or users of CITY's rights-of-way, when such cuts and excavations will be made. When possible, installation, repairs or maintenance of lines and facilities within CITY's rights-of-way shall be made in the same trench and at the time other installations, repairs, or maintenance of facilities are conducted within CITY's rights-of-way. CITY will give PROVIDER a schedule of street repairs in advance of CITY work which scheduled may be subject to change based upon funding. In addition, CITY will hold regular meetings with PROVIDER to provide updates to road projects and opportunities to share costs on burying lines.

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

ARTICLE 12. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

SIGNED AND ENTERED INTO THIS 17 day of January, 2016

“CITY”

CITY OF SOUTH JORDAN, a Utah Municipal Corporation

By: [Signature]
David L. Alvord
Mayor

ATTEST: [Signature]
City Recorder

Approved as to Form:

[Signature]
Attorney for City

State of Utah)

SS:

County of Salt Lake)

The foregoing instrument was acknowledged before me this 17 day of January, 2017,
by David L. Alvord, the Mayor of the City of South Jordan, a Utah municipal corporation, on
behalf of said municipal corporation by authority of its City Council.



[Signature]
Notary Public
My commission expires: 1/26/18
Residing at: Salt Lake County

“PROVIDER”

CENTRAL TELCOM SERVICES, LLC, DBA CENTRACOM, a Utah LLC

By: [Signature]

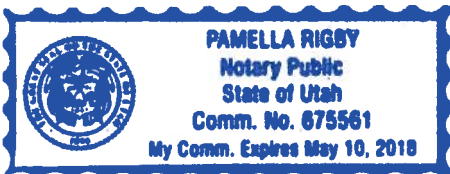
Eddie L. Cox, MANAGER
(Print name and title above)

State of Utah)

SS:

County of Sangre)

The foregoing instrument was acknowledged before me this 27th day of Feb, 2016,
by Eddie L. Cox, the President of Central Telcom Services,
LLC, dba Centracom, a Utah limited liability company, on behalf of the company.



[Signature]
Notary Public
Notary registration number: 675561
My commission expires: 5/10/2018

EXHIBIT "A"

Chapter 5.80

TELECOMMUNICATIONS SYSTEM FRANCHISES

5.80.010: DECLARATION OF FINDING AND INTENT:

A. Findings Regarding Rights Of Way: The city finds that the rights of way within the city:

1. Are critical to the travel and transport of persons and property in the business and social life of the city;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. 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
4. 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.

B. 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, therefor, the taxpayers of the city should receive fair and reasonable compensation for use of the rights of way.

C. 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.

D. 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.

E. 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:

1. Fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein;
2. Encourages competition by establishing terms and conditions under which providers may use valuable public property to serve the public;
3. Fully protects the public interests and the city from any harm that may flow from such commercial use of rights of way;
4. Protects the police powers and rights of way management authority of the city in a manner consistent with federal and state law;
5. Otherwise protects the public interests in the development and use of the city infrastructure;
6. Protects the public's investment in improvements in the rights of way; and
7. 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 telecommunications services within the meaning of the telecommunications act of 1996 ("act") (PL no. 96-104).

F. **Power To Manage Rights Of Way:** The city adopts the telecommunications ordinance codified in this chapter pursuant to its power to manage the rights of way, pursuant to common law, the Utah constitution and statutory authority, and to receive fair and reasonable compensation for the use of rights of way by providers as expressly set forth by section 253 of the act. (Ord. 97-15; amd. Ord. 2000-22)

5.80.020: SCOPE OF CHAPTER:

This chapter 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 chapter shall apply to all future providers and to all providers in the city prior to the effective date of the ordinance codified in this chapter, whether operating with or without a franchise as set forth in section 5.80.540 of this chapter. (Ord. 97-15)

5.80.030: EXCLUDED ACTIVITY:

A. Cable TV: This chapter shall not apply to cable television operators otherwise regulated by other state, federal or municipal franchises or ordinances.

B. Wireless Services: This chapter shall not apply to personal wireless service facilities.

C. 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 chapter through the exercise of the city police power and not preempted by other law shall be applicable. (Ord. 97-15)

5.80.040: DEFINITIONS:

For purposes of this chapter, 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 words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION: 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.

CITY: South Jordan City, Utah.

COMPLETION DATE: The date that a provider begins providing services to customers in the city.

CONSTRUCTION COSTS: All costs of constructing a system, including make ready costs, other than engineering fees, attorney or accountant fees, or other consulting fees.

CONTROL OR CONTROLLING INTEREST: 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.

FCC: The federal communications commission, or any successor thereto.

FRANCHISE: 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: a) 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; b) 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.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this chapter between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

GROSS REVENUE: Includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Annotated title 11, chapter 26, as amended. In the case of any provider not covered within the ambit of Utah Code Annotated title 11, chapter 26, the definition of "gross revenue" shall be that set forth in the franchise agreement.

INFRASTRUCTURE PROVIDER: 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.

OPEN VIDEO SERVICE: 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 (47 USC title VI, part V), regardless of the system used.

OPEN VIDEO SYSTEM: The system of cables, wires, lines, towers, wave guides, fiber optic, 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.

OPERATOR: 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.

ORDINANCE OR TELECOMMUNICATIONS ORDINANCE: The telecommunications ordinance codified in this chapter concerning the granting of franchises in and by the city for the construction, ownership, operation, use or maintenance of a telecommunications system.

PSC: The public service commission, or any successor thereto.

PERSON: Means and includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the city.

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning as provided in

section 704 of the telecommunications act (47 USC 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.

PROVIDER: An operator, infrastructure provider, reseller or system lessee.

RESELLER: 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.

RIGHTS OF WAY: 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.

SIGNAL: Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

SYSTEM LESSEE: Refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS: 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.

TELECOMMUNICATIONS SERVICE OR SERVICES: Any telecommunications or communications 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 USC 521 et seq.), and the telecommunications act. "Telecommunications service" or "services" also includes an open video system.

TELECOMMUNICATIONS SYSTEM OR SYSTEMS: 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.

WIRE: Fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes. (Ord. 97-15; amd. Ord. 2000-2; 2003 Code)

5.80.050: NONEXCLUSIVE FRANCHISE:

The city is empowered and authorized to issue nonexclusive franchises governing the

installation, construction, operation, use and maintenance of systems in the city rights of way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider. (Ord. 97-15)

5.80.060: EVERY PROVIDER MUST OBTAIN:

Except to the extent exempted by federal or state law, every provider must obtain a franchise from the city 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. (Ord. 97-15)

5.80.070: 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 nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased, except as may be expressly provided in a franchise agreement. 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. (Ord. 97-15; amd. Ord. 2000-22)

5.80.080: CURRENT PROVIDERS:

Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of the ordinance codified in this chapter shall request issuance of a franchise from the city within ninety (90) days of the effective date of the ordinance codified in this chapter. 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 5.80.460 of this chapter. (Ord. 97-15)

5.80.090: NATURE OF FRANCHISE:

The franchise granted by the city under the provisions of this chapter 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. (Ord. 97-15)

5.80.100: 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. (Ord. 97-15)

5.80.110: TERM:

No franchise issued pursuant to this chapter 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. (Ord. 97-15)

5.80.120: COMPENSATION:

As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:

- A. **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, five hundred dollars (\$500.00) as a nonrefundable application fee. The application fee shall also be paid when an amendment to an application is filed with the city.
- B. **Franchise Fees:** The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license tax or fee enacted by the city.

C. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in the city excavation permit chapter¹. (Ord. 97-15)

5.80.130: 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. (Ord. 97-15)

5.80.140: 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. (Ord. 97-15)

5.80.150: 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 chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. Any costs associated with any work to be done to provide space on city owned poles shall be borne by the provider. (Ord. 97-15; amd. Ord. 2000-22)

5.80.160: TAXES AND ASSESSMENTS:

To the extent taxes or other assessments are 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 chapter. (Ord. 97-15)

5.80.170: 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. (Ord. 97-15)

5.80.180: 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. (Ord. 97-15)

5.80.190: 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 chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees are not waived and remain applicable. (Ord. 97-15)

5.80.200: 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 chapter 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. (Ord. 97-15)

5.80.210: COSTS OF PUBLICATION:

A provider shall assume any publication costs associated with its franchise that may be required by law. (Ord. 97-15)

5.80.220: 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 chapter, or to obtain the city approval of a transfer of a franchise, as provided in section 5.80.350 of this chapter, granted pursuant to this chapter, an application must be filed with city on a form provided by the city. (Ord. 97-15)

5.80.230: APPLICATION CRITERIA:

In making a determination as to an application filed pursuant to this chapter, the city may, but shall not be limited to, request or consider the following:

- A. 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; and
- B. Certification of the provider's financial ability to compensate the city for the provider's intrusion, maintenance and use of the rights of way during the franchise term proposed by the provider; and
- C. Provider's agreements to comply with the requirements of this chapter; and
- D. Prior to making any attachments to poles, the willingness to enter into a pole attachment agreement with the city. (Ord. 97-15; amd. Ord. 2000-22)

5.80.240: 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. (Ord. 97-15)

5.80.250: GENERAL REQUIREMENTS:

No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this chapter 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 colocation and cost sharing. A provider shall obtain a city excavation permit pursuant to chapter 12.08 of this code before commencing any work in the rights of way. (Ord. 97-15)

5.80.260: 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. (Ord. 97-15)

5.80.270: 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. (Ord. 97-15)

5.80.280: RELOCATION OF THE SYSTEM:

A. **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 chapter 12.08 of this code.

B. **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 5.80.510 of this chapter.

- C. **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.

- D. **Rights Of Way Change; Obligation To Move System:** When the city is changing any 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, to the extent provided in chapter 12.08 of this code. This obligation exists whether or not the provider has obtained an excavation permit. (Ord. 97-15)

5.80.290: 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 and all designated landmarks, as well as all other structures within any designated landmark district. 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. (Ord. 97-15)

5.80.300: 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 guideway systems, railways, passenger travel, or other traffic to, from or within the city without the prior consent of the appropriate authorities. (Ord. 97-15)

5.80.310: 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 electrical safety code. (Ord. 97-15)

5.80.320: REPAIR:

After written reasonable notice to the provider, unless, in the sole determination of the city, an imminent 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. (Ord. 97-15 § 1)

5.80.330: SYSTEM MAINTENANCE:

A provider shall:

- A. Install and maintain all parts of its system in a nondangerous condition throughout the entire period of its franchise;
- B. 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 other applicable federal, state and local laws or regulations; and
- C. 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. (Ord. 97-15 § 1)

5.80.340: 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. (Ord. 97-15 § 1)

5.80.350: NOTIFICATION OF SALE:

- A. PSC 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.
- B. Transfer Of Franchise: Upon receipt of a request to transfer a franchise, the city designee, as provided in section 5.80.430 of this chapter, 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 chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with section 5.80.220 of this chapter. (Ord. 97-15 § 1)

5.80.360: IF PSC APPROVAL 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 5.80.350 of this chapter, then the following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with section 5.80.350 of this chapter: a) the sale, assignment or other transfer of all or a majority of a provider's assets to another person; b) 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; c) 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 d) the entry by a provider into an agreement with respect to the management or operation of such provider or its system. (Ord. 97-15 § 1)

5.80.370: 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. (Ord. 97-15)

5.80.380: 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. (Ord. 97-15)

5.80.390: MAINTAIN RECORDS:

A provider shall at all times maintain:

- A. 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 thirty (30) days of completion of work or within thirty (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.

- B. 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, and generally accepted accounting principles shall be deemed to be acceptable under this section. (Ord. 97-15)

5.80.400: 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, 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. (Ord. 97-15)

5.80.410: PROVIDER'S EXPENSE:

All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise. (Ord. 97-15)

5.80.420: 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. (Ord. 97-15)

5.80.430: ENFORCEMENT AND REMEDIES:

- A. Enforcement; City Designee: The city is responsible for enforcing and administering this chapter, and the city or its designee, as appointed by the city council, is authorized to give any notice required by law or under any franchise agreement.

- B. Enforcement Provision: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation. (Ord. 97-15)

5.80.440: FORCE MAJEURE:

In the event a provider's performance of any of the terms, conditions or obligations required by this chapter 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. (Ord. 97-15)

5.80.450: EXTENDED OPERATION AND CONTINUITY OF SERVICES:

- A. Continuation After Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, 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 chapter and the franchise granted pursuant to this chapter.

- B. Continuation By Incumbent Local Exchange Carrier: If the provider is the incumbent local exchange carrier, it shall 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. (Ord. 97-15)

5.80.460: REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY:

- A. **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 chapter or franchise; or 3) the provisions of section 5.80.090 of this chapter 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.
- B. **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 chapter, 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 chapter 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.
- C. **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.
- D. **Removal Of Aboveground 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 chapter, 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 aboveground 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.
- E. **Leaving Underground System:** Notwithstanding anything to the contrary set forth in this chapter, 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. (Ord. 97-15)

5.80.470: 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. (Ord. 97-15)

5.80.480: CONFLICTS:

In the event of a conflict between any provision of this chapter and a franchise entered pursuant to it, the provisions of this chapter shall control. (Ord. 97-15)

5.80.490: SEVERABILITY:

If any provision of this chapter 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 chapter provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this chapter, 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, and written notice of the change before requiring compliance with such provision. (Ord. 97-15)

5.80.500: NEW DEVELOPMENTS:

It shall be the policy of the city to liberally amend this chapter, 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. (Ord. 97-15)

5.80.510: NOTICES:

All notices from a provider to the city required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the city council. 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. (Ord. 97-15)

5.80.520: 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. (Ord. 97-15)

5.80.530: CONSTRUCTION:

This chapter shall be construed in a manner consistent with all applicable federal and state statutes. (Ord. 97-15)

5.80.540: CHAPTER APPLICABILITY:

This chapter shall apply to all franchises granted or renewed after the effective date of the ordinance codified in this chapter. This chapter shall further apply, to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of the ordinance codified in this chapter and to a provider providing services, without a franchise, prior to the effective date of the ordinance codified in this chapter. (Ord. 97-15)

5.80.550: 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. (Ord. 97-15)

5.80.560: CITY FAILURE TO ENFORCE:

A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the city to enforce prompt compliance. (Ord. 97-15)

5.80.570: CONSTRUED ACCORDING TO UTAH LAW:

This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state. (Ord. 97-15)