

FRANCHISE AGREEMENT
SPRINGVILLE City – CENTRAL TELECOM SERVICES (DBA CentraCom Interactive)

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between Springville City, Utah (hereinafter “City”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 110 South Main Street, Springville, Utah, 84663, and Central Telecom Services, LLC, DBA CentraCom Interactive, a Utah limited liability company (hereinafter “Provider”) with its principal place of business at 35 South State Street, Fairview, Utah 84629.

WITNESSETH:

WHEREAS, Provider desires to provide telecommunication and data services within City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of City; and

WHEREAS, City has enacted Title 13 of the Springville City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in Springville City; and

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

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

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

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

1.2 Ordinance. City has adopted the Telecommunications Rights-of-Way Ordinance. Provider acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance, as it is or may be amended in accordance with Section 1.3 of this Agreement. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require Provider to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined, by a court of law, to be unlawful or beyond City’s authority.

1.3 Ordinance Amendments. City reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time, as its City Council deems necessary. Provider agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in City contingent upon Provider meeting all City regulations, rules, laws, and policies and Provider obtaining all necessary permits. Provider shall not provide services directly regulated by the Utah Public Service Commission ("PSC") unless authorized by the PSC. The franchise does not grant to Provider the right, privilege or authority to engage in community antenna television, cable television or other video system service business or any other service that is not considered a telecommunications service. Provider shall not operate a cable system as defined in Cable Communications Policy Act of 1984 without first having obtained a separate cable franchise from City. Although, nothing contained herein shall preclude Provider from: (1) permitting those with a cable franchise with City who are lawfully engaged in such business to utilize Provider's System within Springville City for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied. The rights granted by this Agreement may not be subdivided, assigned, or subleased to another person or entity, except a wholly owned subsidiary of Provider, unless agreed to in writing by City.

1.5 Facilities. "Facilities" shall include, but not be limited to, a network of fiber optic cables and all property and equipment, including, without limitation, conduit, carrier pipe, cable fibers, repeaters, power sources, and other attachments and appurtenances necessary for the telecommunications system located within City Rights-of-Way, whether located above or below ground, currently or in the future owned or operated or otherwise controlled by Provider to provide telecommunications services.

1.6 Licenses. Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance. Provider shall deliver a copy of the relevant approvals, licenses or permits to City before construction is commenced.

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 any manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, Provider shall pay to City a tax of 3.5% of gross receipts in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410). Changes in the rate shall follow the requirements of the

Telecommunication License Tax Act. All payments shall be made to the Utah State Tax Commission, and sent as follows:

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

Payments are due to the Utah State Tax Commission within forty-five (45) days after receipt by Provider. Interest will accrue on late payments at the rate charged for delinquent state taxes.

If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law, Provider shall pay to City a tax levy or franchise fee of three and one-half percent (3.5%) of its gross receipts from telecommunications services attributed to or services provided within City for which City may lawfully collect a tax levy or franchise fee. Further, after the initial five year term or pursuant to mutual agreement between the parties, City reserves the right to adjust this franchise fee if the laws governing such fees allow for future fee changes.

2.2 Administrative Fees. Provider shall pay to City any and all applicable administrative fees to reimburse City for all costs and expenses associated with the preparation and approval of this Agreement. The administrative fees shall be paid to City within sixty (60) days of the approval of this Agreement.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to Provider shall be for a period of five (5) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial five (5) year term of this Agreement, this franchise agreement will automatically renew for an additional five (5) year term for an unlimited number of 5 year terms, unless either party decides to terminate this Agreement by providing an one hundred eighty (180) day written notice of termination, which termination may be provided at any time after the initial five year term.

3.2 Rights of Provider Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between Provider and City, or by revocation or forfeiture, Provider shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of Provider, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected. Provider, with the written consent of City, which shall not be unreasonably withheld, conditioned, or delayed, may abandon any underground facilities in place, subject to the reasonable requirements of City. In such an event, the abandoned facilities shall become the property of City.

ARTICLE 4. 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 5. CHANGING CONDITIONS AND SEVERABILITY.

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

5.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction,, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. 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 the Municipal Telecommunications License Tax or Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and City’s ordinances, regulations, and standards and specifications for excavation permits. For Provider, “material consideration” is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and City’s ordinances, regulations, and standards and specifications for excavation permits.

ARTICLE 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

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

(a) Provider fails to make timely payments of the Municipal Telecommunications License Tax or franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by City of such failure;

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

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

6.2 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.

6.3 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.

6.4 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 7. PARTIES' DESIGNEES.

7.1 City designee and Address. City Administrator or his or her designee(s) shall serve as City's representative regarding administration of this Agreement. Unless otherwise

specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from Provider to City pursuant to or concerning this Agreement, shall be delivered to City's representative at 110 South Main Street, Springville, Utah 84663, or such other officer and address as City may designate by written notice to Provider.

7.2 Provider Designee and Address. Provider's Chief Executive Officer or his or her designee(s) shall serve as Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from City to Provider pursuant to or concerning this Agreement, shall be delivered to Provider's headquarter offices at 35 South State Street, Fairview, Utah 84629, and such other office as Provider may designate by written notice to City.

7.3 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 8. INSURANCE AND INDEMNIFICATION

8.1 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. Any and all insurance, whether purchased by Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to City. At a minimum, Provider's insurance shall one 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 City as additional insured, and in their capacity as such, City's officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) per aggregate. 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 Provider in full force and effect during the entire term of this Agreement. 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 Provider 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

8.2 Indemnification. Provider agrees to indemnify, defend and hold harmless City, and City's officials, employees, and agents 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 facilities within City's Rights-of-Way or Provider's acts or omissions related to Provider's facilities or to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by City in defense of such claims. City will give written notice to Provider of any claim, demand, lien, liability, or damage, with respect to which City seeks indemnification and, unless in City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, City shall permit Provider to assume the defense of such with counsel of Provider's choosing, unless City reasonably objects to such counsel. Notwithstanding any

provision of this Section to the contrary, Provider shall not be obligated to indemnify, defend or hold City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of City.

ARTICLE 9. INSTALLATION

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

9.2 Underground Installation. Unless otherwise authorized by the City or provided herein, all of Provider's facilities within City shall be constructed underground. Provider expressly agrees to install and maintain all of its facilities in accordance with City Ordinances, regulations, and standards and specifications, and with industry standards regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. As long as Provider's facilities are attached to City poles pursuant to an agreement, nothing herein shall require Provider to convert the allowed existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so or Provider is required to do so pursuant to an agreement. Provider agrees to obtain the proper excavation permit from City and pay applicable fee prior to excavating. The scope of this agreement does not allow for Provider to attach to and use City utility or power poles. If Provider should desire to do so, a separate pole attachment agreement must be approved by City.

9.3 Provider Duty to Relocate; Subordination to City Use. Whenever City shall, in the interest of public convenience, necessity, health, safety and general welfare require the inspection, maintenance, repair, relocation or reinstallation of any Provider Facility within a Public Way, the Provider shall, upon not less than 90 days prior notice, promptly commence and diligently complete such work to remove and relocate or reinstall such Provider Facility as may be necessary to meet the requirements of the City. Any such relocation, removal or reinstallation by Provider shall be at no cost to the City. The Provider may ask for a meeting with the City to discuss the relocation, and alignment for the relocated Provider Facilities. If a City project is funded by federal or State monies that specifically includes an amount allocated to defray the expenses of relocation of Provider Facilities, the City shall reimburse the Provider up to the extent of such specified amount, for any actual relocation costs mandated by the project to the extent that the City actually receives such federal or State funds earmarked for that purpose. The requirements of this Section 9.3 shall not be construed to be in derogation of any right or cause of action for reimbursement the Provider may have against a developer or other private interest which causes the need to move its lines or Facilities. Such right or cause of action, however, shall not be used as an excuse to delay or avoid its obligations under this section.

9.4 Emergency Relocate. Notwithstanding the foregoing requirement, the Provider shall relocate its facilities upon 45 days prior written notice from the City when requested by the

City due to an emergency, or as the parties may otherwise agree. Except as otherwise provided herein, City, without prior written approval of Provider, shall not intentionally alter, remove, relocate, or otherwise interfere with Provider's facilities. However, if it becomes necessary, in the reasonable judgment of City personnel, to cut, move, remove, or damage any of the cables, appliances, fixtures or other property of Provider because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of Provider, and the repairs rendered necessary shall be made by Provider, without charge to City. Should City take actions pursuant to this section, Provider shall indemnify, defend, and hold City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to Provider's property and/or (b) interruptions of public services provided by the use of or through Provider's property (including internet services provided by the Provider to Provider's customers), whether such claims, demands, liens, or liability arise from or are brought by Provider, its insurers, Provider's customers, or third parties.

9.5 Location to Minimize Interference. All underground lines, pipes, conduits, equipment, property, structures, and assets of Provider 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.

9.6 Repair of Damage. If during the course of work on its facilities, Provider causes damage to or alters any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, Provider (at its own cost and expense) shall promptly and completely restore such street, alley, right-of-way, sidewalk, utility, public improvement or other public property to its previous condition. The City shall have the right to inspect all repair work. All repair work done by the Provider shall be performed in a timely and expeditious way in conformity with the applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of City. Except in case of emergency, Provider, 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 City. Provider shall abide by all reasonable regulations and requirements of the City for such work.

9.7 Guarantee of Work. For work on any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, Provider shall be required, pursuant to City ordinances, and regulations, to obtain an excavation/encroachment permit and post a bond in a form approved by City to guarantee that the such is restored to its condition prior to Provider's work. In addition, Provider 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.

9.8 Safety Standards. Provider'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.

9.9 Supervision by City.

(a) Provider shall construct, operate, and maintain Provider's services within the City in strict compliance with all laws, ordinances, rules, and regulations of City and any other agency having jurisdiction over the operations of Provider.

(b) Provider's services and all parts thereof within the City shall be subject to the right of periodic inspection by City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to Provider.

9.10 Provider's Duty to Remove Its Network.

(a) Unless abandoned in place as permitted herein, Provider shall promptly remove, at its own cost and expense, from any public property within City, all or any part of Provider's facilities when one or more of the following conditions occur:

- (1) Provider ceases to operate Provider's services for a continuous period of twelve (12) months, and does not respond to written notice from City within thirty (30) 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) Provider fails to construct Provider's services as herein provided and does not respond to written notice from City within sixty (60) days after receiving such notice following any such failure.
- (3) This Agreement is terminated or revoked pursuant to notice as provided herein.
- (4) This Agreement expires.

(b) The removal of any or all of Provider's facilities that requires trenching or other opening of the City's streets shall be done only after Provider obtains prior written notice and approval from the City.

(c) Provider shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 9.10 (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.

9.11 Notice of Closure of Streets. Except in cases of emergency, Provider shall notify 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. 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.

9.12 Agreement to Abide by Construction and Technical Requirements. In addition to the provisions of this Article 9, Provider expressly agrees to comply with all other provisions of City ordinances, regulations, and standards governing the construction of the Provider's facilities in any public street, alley, right-of-way, sidewalk, utility, public improvement, or other public property.

ARTICLE 10. GENERAL PROVISIONS

10.1 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.

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

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

10.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Whenever the context of any provision shall require it, the singular number shall be held in 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.

10.5 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.

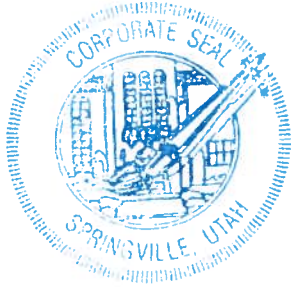
10.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

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

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SIGNED AND ENTERED INTO this 18 day of July, 2016

SPRINGVILLE City



ATTEST:

By: T. C. Fitzgerald for
Wilford W. Clyde, Mayor

Kim Rayburn
Kim Rayburn, City Recorder

CENTRAL TELECOM SERVICES (DBA
CentraCom Interactive)

By: C. G.