

CONDUIT OCCUPANCY AGREEMENT

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This Conduit Occupancy Agreement (the "Agreement") is made and entered into on August 15, 2017 (the "Effective Date"), between Orem City Corporation, a municipal corporation organized under the laws of the State of Utah, ("Licensor") and **Central Telecom Services** ("Licensee") (each a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, Licensor is a municipality owning a system of Conduit, Ducts, Manholes and Handholes in its public rights-of-way; and

WHEREAS, Licensor desires to provide Licensee with the non-exclusive use of space in its Conduit and Duct for the provision of communications services provided to residents and businesses located in Orem, Utah; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements made and contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Definitions

- (a) "**Affiliate**" means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with a Party; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.
- (b) "**Audit**" means a periodic examination of Licensor's Conduit and Duct occupied by Licensee and any of Licensee's Attachments or Equipment attached to such Conduit or Duct for the purpose of (i) verifying the presence or location of all Attachments and other Equipment of Licensee, or (ii) determining whether Licensee is in compliance with the requirements and specifications of this Agreement or any other obligation of Licensee under this Agreement.
- (c) "**Conduit**" means a structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed. Unless expressly stated otherwise, Conduit does not include "Electric Conduit," which is Conduit containing Licensor's current bearing Equipment.
- (d) "**Conduit System**" means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term refers to Conduit Systems owned or controlled by Licensor.
- (e) "**Protected Information**" means all written and verbal proprietary or business confidential

communications between the parties and all plans, documents, materials and data provided by each Party to the other in connection with and related to this Agreement and Licensee's Attachments, or such documents as are exempt from GRAMA, all as properly classified in accordance with GRAMA.

- (f) **"Duct"** means a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Agreement, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels.
- (g) **"Equipment"** means all devices, articles or structures necessary to operate the respective operations or businesses of the Parties, as such businesses may exist as of the Effective Date and as such operations or businesses may evolve, develop, or change at any time while this Agreement remains in effect, including, but not limited to, antennae, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort, whether electrical or physical in nature, or otherwise, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds, and other accessories.
- (h) **"Fee Schedule"** means the fees and charges set forth in Licensor's Conduit Occupancy Fee Schedule, attached hereto as Exhibit A.
- (i) **"GRAMA"** means the Utah Government Records Access Management Act, Title 63G, Chapter 2, Utah Code Annotated, 1953, as amended.
- (j) **"Handholes"** means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Equipment in a Conduit. A Handhole is too small to permit personnel to physically enter.
- (k) **"Inner-Duct"** means a pathway created by subdividing a Duct into smaller channels.
- (l) **"Licensor's Facilities"** means Licensor's Equipment, Conduit and Duct.
- (m) **"Make Ready Work"** means the changes to be made to Licensor's Ducts, Conduits, Handholes, which changes may be needed to accommodate Licensee's proposed equipment. Such make-ready work is to be approved by Licensor and performed by Licensee's employees, a certified contractor approved by Licensor but employed by Licensee, or a third party. Make Ready Work that involves Licensor's Facilities shall be done by Licensee, unless otherwise approved by Licensor. This definition includes all engineering, inspection, design, planning, construction, or other work reasonably necessary for the installation of Licensee's installation of equipment into Conduit or Ducts, including without limitation, work related to transfers, rearrangements and replacements of existing Equipment, and the addition of new Equipment, and the rearrangement of third party pole attachments.
- (n) **"Manhole"** means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Equipment in a Conduit.
- (o) **"National Electrical Safety Code" or "NESC"** means the current edition, and any supplements thereto and revisions or replacements thereof, of the publication so named, published by the Institute of Electrical and Electronics Engineers, Inc., for the purpose of safeguarding persons and property

during the installation, operation, or maintenance of electric supply and communication lines and associated equipment.

- (p) **“Non-recurring Charges”** means legally authorized and identifiable amounts payable by Licensee under this Agreement other than rental charges.

#### Section 1.02 Other Interpretative Provisions

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Section, Article, clause, Schedule, Exhibit and Appendix references are to this Agreement unless otherwise specified.
- (c) The terms “including” and “include” are not limiting and mean “including without limitation” and “include without limitation.”
- (d) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each means “to but excluding,” and the word “through” means “to and including.”
- (e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified.
- (f) Any reference herein to any person or entity shall be construed to include such person or entity’s successors and permitted assigns.
- (g) Any reference herein to “year,” “month” or “day” shall mean a calendar year, month, or day unless otherwise specified.

## **ARTICLE II. SCOPE OF AGREEMENT**

### Section 2.01 Conduit and Duct

This Agreement shall cover Licensor’s Conduits and Ducts specifically designated in Exhibit “C”, which is attached hereto and incorporated herein by reference. This Agreement does not grant Licensee any use or rights with respect to Licensor’s Electric Conduit regardless of whether or not the Electric Conduit contains telecommunications fiber.

### Section 2.02 Exclusions

This Agreement applies to the use of Licensor’s Conduits, and Ducts only. Licensee’s use of electric transmission facilities, other than Conduits, and Ducts, is expressly excluded from this Agreement, and nothing in this Agreement will be construed to authorize Licensee to use any such facilities.

### Section 2.03 Purpose

Licensee's use of Licensor's Conduits, and Ducts shall be confined to the usage that Licensor has granted Licensee written permission to install or as otherwise provided pursuant to the terms and conditions of this Agreement.

### Section 2.04 Restriction

Licensee shall not create, or permit to exist, any lien or encumbrance on the Conduit System.

## **ARTICLE III. LEASE OF CONDUIT AND DUCTS.**

### Section 3.01 Use of Conduit System

Licensor hereby leases space in Licensor's Conduit System to Licensee. The specific Conduits and Ducts leased by Licensor to Licensee are designated on Exhibit "C". This lease is non-exclusive and is for the sole purpose of allowing Licensee to install, maintain and use the designated Conduit and Ducts for the installation, use and maintenance of Licensee's fiber optics.

### Section 3.02 Condition of Conduit System

Licensee will have had an opportunity to inspect Licensor's Conduit System prior to presenting an Exhibit "C" proposed leased conduit section. Licensee agrees to accept the leased Conduit and Ducts in an "as-is" condition; Licensee will have the right to proof the specific Conduit and Ducts presented with each Exhibit "C" prior to accepting the leased Conduit and Ducts. If there is damaged pathway the Licensee will present costs to fix the pathway as part of the "Make Ready Work." The annual lease rental may be negotiated between Licensee and Licensor for the presented Exhibit "C" section based on the estimated cost to repair the pathway. Licensor makes no representations regarding the suitability, quality or condition of the leased Conduits and Ducts and does not warrant the leased Conduits and Ducts in any fashion.

### Section 3.03 Ownership of Conduit System

The Conduit System, including the leased Conduits and Ducts, shall at all times be and remain the property of Licensor. Any improvements or additions to the Conduit System made by Licensee shall become the property of Licensor immediately upon acceptance. Improvements or additions not accepted by Licensor shall be brought into compliance with Licensor's specifications. Fiber optics installed by Licensee in the Conduit and Duct leased by Licensee pursuant to this Agreement shall at all times be and remain the property of Lessee, unless deemed abandoned by Licensee based on Licensee's failure to remove the fiber optics upon termination of this Agreement.

## **ARTICLE IV. MAINTENANCE OF CONDUITS**

### Section 4.01 Expense of Maintenance

Licensee shall be solely responsible for collection of costs of damages for Conduits broken or damaged by third-parties. The expense of maintaining the Conduit and/or Duct occupied by the Licensee shall be borne exclusively by the Licensee and the Licensee shall maintain the Conduit and/or Duct and any associated junction boxes and/or handholes in a safe and serviceable condition, and shall replace, reinforce, or repair such Conduit and/or Duct and any associated junction boxes and/or handholes as they become defective. The expense of maintaining any Conduit and/or Duct and junction boxes and/or handholes used exclusively by the Licensor shall be borne exclusively by the Licensor. Licensor and

Licensee will work together and coordinate on all maintenance and repair of the leased Conduits, Ducts, junction boxes and/or handholes. Licensee shall be solely responsible for the field locating or “bluestaking” of the Conduit and/or Duct it occupies. Licensee shall be responsible for collection of costs of damages to its own Equipment. Licensee will be responsible to restore landscape and any adjoining property damaged during maintenance. This would include asphalt, concrete, any retaining walls, fencing, etc.

#### Section 4.02 Licensee’s Retained Rights

This Agreement shall be subject to and subordinate to the Licensor’s right to maintain, relocate and use the Conduit System, and to use, alter or excavate any portion of the right-of-way or utilities in the right-of-way. Licensee agrees to use commercially reasonable efforts to minimize any adverse on Licensee’s rights under this Agreement. In the event Licensor desires to make changes to the Conduit System affecting Licensee, Licensor shall provide Licensee at least sixty (60) days written notice (unless the desired change results from an emergency or unplanned situation, in which case the best practicable notice will be given) setting forth a description of the changes that could reasonably result in a material diminution or reduction of Lessee’s rights under this Agreement. Upon receipt of such notice, Licensee shall have the right to terminate the affected portions of this Agreement without further liability.

#### Section 4.03 Condition

Licensee shall maintain its fiber optics in a functional and safe condition. All installation and maintenance of Licensee’s fiber optics, and all maintenance of the leased portion of the Conduit System, shall be performed according to industry standards and in a manner that minimizes any interruption or disruption of the affected rights-of-way, utilities, communications, streets, and traffic control devices and systems. Licensee shall restore all rights-of-way, utilities, communications, streets and traffic control devices and systems to their previous condition. All work performed by Licensee shall be in accordance with Licensee’s construction standards and specifications and only after written approval by Licensor of Licensee’s plans.

### **ARTICLE V. ACCESS TO CONDUITS AND DUCTS**

#### Section 5.01 Applications

Applications for the placing of Equipment in Licensor’s Ducts and Conduits are subject to the following:

#### Section 5.02 Access to Conduit and Duct

Licensee’s Equipment placed in Licensor’s Conduit System must meet all of the following physical design specifications:

- (a) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in Licensor’s Conduit or Ducts.
- (b) The integrity of Licensor’s Conduit System and overall safety of Licensor’s personnel and other personnel working in Licensor’s Conduit System requires that “dielectric cable” be placed when Licensee’s cable Equipment utilizes an alternative Duct or route that is shared in the same trench by any current carrying Equipment of a power utility.
- (c) New construction splices in Licensee’s fiber optic cables shall be located in Manholes, pull boxes or Handholes.
- (d) Licensee shall have no right to enter, utilize, or request the use of any of Licensor’s Electric Conduit.

The following specifications apply to connections of Licensee's Conduit to Licensor's Conduit System:

- (e) Licensee will be permitted to connect its Conduit or Duct at a Licensor Manhole or Handhole. No attachment will be made by entering or breaking into Licensor's Conduit between Manholes or Handholes. Licensee will be permitted to connect to the leased Conduit or Duct between Manhole or Handholes as long as the connected Conduit or Duct is only the leased conduit. Licensee may present plans to install new Handholes or Manholes in behalf of Licensor, as part of its Make Ready Work between two different Licensor Handholes and Manholes. The cost for placing a new Licensor Handhole or Manhole will be the expense and burden of the Licensee. The annual lease rental may be negotiated between Licensee and Licensor based on the estimated cost of work. If approved, Licensee will be permitted to connect its Conduit or Duct to the new Licensor's Handhole or Manhole. All necessary work to install Licensee Equipment will be performed by Licensee or its contractor at Licensee's expense. In no event shall Licensee or its contractor "core bore" or make any other modification to Licensor Manhole(s) without the prior written approval of Licensor.
- (f) If Licensee constructs or utilizes a Duct connected to Licensor's Manhole, the Duct and all connections between that Duct and Licensor's Manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into Licensor's Conduit System. If Licensee's Duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into Licensor's Conduit System.

#### Section 5.03 Opening of Manholes

The following requirements apply to the opening of Licensor's Manholes and the authority of Licensor personnel present when work on Licensee's behalf is being performed within or in the vicinity of Licensor's Conduit System.

- (a) Licensor's Manholes shall be opened only as permitted by Licensor's authorized employees or agents, including authorized third party contractors.
- (b) Except in the event of an emergency, Licensee shall notify Licensor forty-eight (48) hours in advance of any routine work operation requiring entry into any of Licensor's Manholes.
- (c) Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes for Conduit work operations therein.

#### Section 5.04 Audits of Existing Equipment in Licensor's Duct and Conduit

Licensor may conduct an Audit of Equipment placed in its Duct and Conduit once every five (5) years. Licensor shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Licensor, Licensee and all other owners of Equipment in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. The independent contractor appointed to conduct the Audit must not be reasonably believed by Licensor, Licensee, or any other owner of Equipment to have a conflict of interest with respect to the accurate completion of that Audit. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Licensor shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Licensor if Licensee desires to participate in the Audit with Licensor not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be apportioned among those owners of Equipment who own Equipment placed in

the Conduit and Duct included in the audit in proportion to the feet of Conduit and Duct in which they have placed Equipment. The data from Audit shall be made available to Licensee and all other relevant owners of Equipment and used to update the Parties' records, provided that any information confidential to Licensor or Licensee will not be distributed to other owners. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of the Audit report or such objections are waived.

#### Section 5.05 Inspections

In addition to Audits as described in 0 above, Licensor shall have the right to inspect Licensee's Equipment placed in Licensor's Conduit or Duct at any time.

#### Section 5.06 Removal

Licensee has the right to remove Equipment located within Licensor's Conduit by written notice to Licensor. Rental fees shall cease with respect to such Conduit as of the date of removal. In the event that (i) Licensee ceases to use certain Attachments placed in Licensor's Conduit, (ii) Licensee does not reasonably anticipate using such Attachments in the future, and (iii) Licensor needs to use the space occupied by Licensee within Licensor's Conduit, Licensee will remove the relevant Attachments from Licensor's Conduit. In the event that Licensee does not remove the relevant Attachments within thirty (30) days of written notice from Licensor that Licensee is obliged to remove the Attachments pursuant to this Section 5.06, Licensor may remove the relevant Attachments from Conduit in a reasonable manner consistent with industry practices, and Licensee will reimburse Licensor, or Licensor's contractor, for all reasonable and documented costs actually incurred.

### **ARTICLE VI. RENTAL PAYMENTS**

#### Section 6.01 Rental Amount—Conduit and Duct

For authorized Attachments placed in Licensor's Conduit or Duct covered under this Agreement, Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount per linear foot as shown on Exhibit A, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's Attachments situated upon Licensor's Conduit and Duct and Licensor's current records.

#### Section 6.02 Unauthorized Attachments

Licensee shall not make Attachments in Licensor's Conduits without obtaining Licensor's written permission as provided for in this Agreement. In the event Licensee becomes aware of any unauthorized Attachment, Licensee shall make an application to Licensor for such Attachment. Licensee shall pay a late fee for such application in an amount equal to five (5) times the rental fee set forth on Exhibit A. Conduit rental fees shall accrue as of the date of installation, whether Licensee's application is approved or rejected. If Licensor rejects the Licensee's application, Licensee shall remove the unauthorized Attachment within ninety (90) days of Licensor's rejection of the application. If Licensee does not remove the unauthorized Attachment within such ninety (90) days, then Licensor may remove the unauthorized Attachment at Licensee's expense.

#### Section 6.03 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually or semi-annually. Invoices for all Non-Recurring Charges, Make Ready Work fees, and other obligations or amounts due under this Agreement other than rental charges will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement. Invoices for Non-

Recurring Charges will provide specific identifying information pertaining to each charge. Invoices for rental charges will provide summary information only. Licensee may obtain additional information pertaining to charges upon written request to Licensor.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within thirty (30) days from the invoice date. Interest at the rate set forth in Section 8.03 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within ninety (90) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 8.03 on any unpaid disputed amounts, dating from the bill due date.

All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's Billing Address:

City of Orem  
56 N State St  
Orem, UT 84663

Licensee's billing address:

CentraCom  
PO Box 7  
Fairview, UT 84629

**With copies to (which shall not constitute notice):**

56 N State St  
Orem, UT 84663

fax no.: (435) 427-0808  
Email: pamrigby@centracom.com

**With a copy to (which copy will not constitute notice):**

## **ARTICLE VII. BREACH AND REMEDIES**

### Section 7.01 Remedies for Default

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this section the remedies available to each Party shall include, without limitation: (i) refusal to grant any additional permission for Attachments to the other Party until the default is cured; (ii) termination of this Agreement; and (iii) injunctive relief. In the event that Licensor remedies any breach by Licensee of this Agreement, Licensee shall (a) pay in advance, within thirty (30) days of notice of the breach by Licensor including a cost estimate, Licensor's costs for the remedy specified in the breach notice and (b) pay within thirty (30) days of receipt of an invoice following completion of the work any reasonable and documented costs in addition to the amount already paid. Licensor will reimburse Licensee in the event that reasonable and documented costs are less than the amount paid by Licensee.



## ARTICLE VIII. GENERAL PROVISIONS

### Section 8.01 Governing Law

This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

### Section 8.02 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect.

### Section 8.03 Interest

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within thirty (30) days of the invoice date. An interest charge at the rate of one and a half percent (1.5%) per month shall be assessed against all late payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

### Section 8.04 Relationship to Third-parties

Nothing herein contained shall be construed as affecting, diminishing or interfering with any rights or privileges previously conferred by Licensor, by contract or otherwise, to others not parties to this Agreement to use the Conduit System. Nothing in this Agreement is intended to confer rights on any third party, as a third-party beneficiary or otherwise.

### Section 8.05 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Licensor may sell, transfer, or assign its ownership interest in the Conduit or Duct provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may sell, transfer, or assign its ownership in its Equipment provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement.

### Section 8.06 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

### Section 8.07 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement. Exhibits A - C are attached hereto and made a part hereof.

### Section 8.08 Severability

In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

#### Section 8.09 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements and representations, whether oral or written, between the Parties relating to the subject of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

#### Section 8.10 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

#### Section 8.11 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

#### Section 8.12 Joint Drafting

The Parties acknowledge that this Agreement (including the Exhibits, Appendices and Annexes hereto) has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

#### Section 8.13 Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such Party at law or in equity. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that a Party shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

#### Section 8.14 Further Assurances

In addition to any other obligations set forth in this Agreement, each Party agrees to take such actions (including the execution, acknowledgment and delivery of documents) reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

#### Section 8.15 Counterparts; Signatures

This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. To the extent either Party to this Agreement uses an electronic signature, the Parties agree that such signature is binding and this Agreement constitutes a writing.

## ARTICLE IX. CONTRACT TERM

### Section 9.01 Effective Date

This Agreement shall take effect on the Effective Date.

### Section 9.02 Term and Termination

This Agreement shall remain in full force and effect for a period of fifty (50) years from the Effective Date and may then be renewed for successive ten (10) year periods upon the written consent of the Licensor, unless Licensee is no longer operating its network within Orem. Unless Licensee transfers its Attachments to a third party with which Licensor has a separate attachment agreement, upon termination, (i) existing Attachments will continue to be subject to the terms of this Agreement until such Attachments are removed, (ii) Licensee shall use commercially reasonable efforts to commence removal of its attachments, and (iii) unless Licensor grants an extension of time, all attachments must be removed at Licensee's cost within ninety (90) days after the effective date of termination.

## ARTICLE X. INDEMNIFICATION; LIMITATION OF LIABILITY

### Section 10.01 Indemnification by Licensee

Licensee shall defend, solely at Licensee's expense, Licensor and its officers, directors, managers, council members, personnel, permitted successors and permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") arising out of, relating to, or otherwise in respect of any of the following:

- (a) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (i) proximately caused by the negligence or willful acts or omissions of Licensee, its personnel and its contractors; or (ii) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (b) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor directions or requirements;
- (c) Claims arising from any failure by Licensee or its contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensee;
- (d) Claims that any Licensee personnel is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor; and
- (e) Licensee's fraud, violation of law, wrongful misconduct or misrepresentations.

### Section 10.02 Procedure

Licensor shall give written notice to Licensee promptly after Licensor learns of the existence of Claim for which Licensor seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of Licensor, except and only to the extent the Licensee is prejudiced by such failure. The Licensee shall have the right to employ counsel reasonably acceptable to the Licensor to defend against any such Claim. If such counsel will represent both Licensee and Licensor, there may be no

conflict with such counsel's representation of both. The Licensee must acknowledge in writing its obligation to indemnify the Licensor for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the Licensor other than for money damages. The Licensor will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the Licensee any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim. If the Licensee fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the Licensor (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Licensor shall be free to dispose of the matter, at the expense of the Licensee (but only if indemnification is adjudged to be proper), in any way in which the Licensor deems to be in its best interest.

## **ARTICLE XI. INSURANCE**

### Section 11.01 Workers Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Poles or in Licensor's Conduit System.

### Section 11.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Poles or in Licensor's Conduit System, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third-parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

*Business Automobile Liability insurance* with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

*Umbrella liability* with a minimum limit of \$5,000,000 with up to a \$50,000 deductible.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its officers, employees, agents and volunteers as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Licensor. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

**ARTICLE XII. FORCE MAJEURE**

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

**ARTICLE XIII. NOTICE**

Except as otherwise provided herein, any notice required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by United States mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

To Licensor:  
Attn: City Engineer  
56 N. State St.  
Orem, UT 84057

To Licensee:  
CentraCom  
PO Box 7  
35 S State  
Fairview, UT 84629

**With copies to (which shall not constitute notice):**

Attn: City Attorney  
56 N. State St.  
Orem, UT 84057

fax no.:(435) 427-0808  
Email: pamrigby@centracom.com

**With a copy to (which copy will not constitute notice):**

[address of Licensee Legal Staff]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

Orem City Corporation

[ Company Name ] CENTRAL TELCOM SERVICES

By: Thomas P. Dawson  
Orem, City Manager

By: Emily G. GENERAL MANAGER

ATTEST:  
Norma R. Heaver  
\_\_\_\_\_, City Recorder

ATTEST:  
Lesa A. Cox  
\_\_\_\_\_  
[Company] Secretary



**EXHIBIT A**  
**FEE SCHEDULE**

1) Conduit and Duct.

- a. The annual rental rate charged by Licensor per linear foot of attachment in its Conduit and Duct at the effective date is \$0.30, which is the amount that Licensee will pay per linear foot of Attachment in Conduit and Duct from the Effective Date (the "Conduit and Duct Rental Fee").
- b. Licensor may decrease the Conduit and Duct Rental Fee at any time and in any amount.
- c. Licensor may increase, only after five years from the date the agreement is signed, the Conduit and Duct Rental Fee after providing written notice to Licensee. Licensor may increase the rental fee on an annual basis, provided that the percentage increase does not exceed the percentage increase in the CPI Index (as defined below) since the signing of the Agreement. CPI Index shall mean the Consumer Price Index presently designated as the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers, U.S. City Average, as reported in October prior to the implementation of the Conduit and Duct Rental Fee increase.

Fee schedule upon completion of project:

Total footage: 18,808' at .30 per ft per year    Total \$5,642.40

**EXHIBIT B**  
**FORM OF ATTACHMENT APPLICATION**



CentraCom, MCI 7845, Exhibit A: Orem City conduit along 1600 N from 1-15 to Canyon Park (400 East).  
 Proposed placing of fiber optic cable in the green conduit. Total conduit footage is 18808'.



Legend:

Proposed conduit to place fiber  
 Orem City Handhole



CentraCom Handholes (proposed)  
 Existing fiber optic cable

