

**FRANCHISE AGREEMENT  
ALL WEST/UTAH, INC.**

This Franchise Agreement (the "AGREEMENT") dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between River Heights City, a municipal corporation of the State of Utah ("City") and All West/Utah, Inc., a Utah corporation ("Franchisee").

**WHEREAS**, Franchisee has requested that City grant it the right to install, operate, and maintain a communications system within City's public ways; and

**WHEREAS**, City finds it desirable for the welfare of City residents that such a non-exclusive franchise be granted to Franchisee; and

**WHEREAS**, the City Council has authority under Article I, Section 23 of the Utah Constitution and consistent with Article 11, Section 9 of the Utah Constitution and the City has enacted Title 7, Chapter 5 of the Ordinances of River Heights City ("Telecommunications Rights-of -Way Ordinance") which governs the applications and review process for communications franchises along and over public roads and highways and other public properties in the City; and

**WHEREAS**, City is willing to grant the rights requested subject to the terms and conditions set forth in this Agreement;

**NOW, THEREFORE, THE PARTIES MUTALLY AGREE AS FOLLOWS:**

**Section 1. Definitions.** The following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. "Affiliate" means any entity which owns or controls, is owned or controlled by, or is under common ownership with, Franchisee.

B. "City" means River Heights City, Utah.

C. "Communications Service" means any communications services, communications capacity, or dark fiber, provided by Franchisee using its Communications System or Communication Facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communications Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable, copper cable, or wireless antennas.

Communications Service also includes wireless and non-switched, dedicated, and private line, high-capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. "Communications System" or "Communication Facilities" means Franchisee's fiber optic and/or copper cable and/or wireless system constructed and operated within City's public ways, and includes all cables, wires, fibers, antennas, conduits, ducts, pedestals, and any associated converter, equipment, enclosures, or other facilities within City's public ways designed and constructed for the purpose of providing Communications Service.

E. "FCC" means the Federal Communications Commission or any successor governmental entity.

F. "Franchise" means the authorization granted by the City through this Agreement that authorizes construction, operation and maintenance of Franchisee's Communications System and associated Communications Facilities for the purpose of offering Communications Service.

G. "Franchisee" means All West/Utah, Inc., and includes its lawful successors, transferees, assignees or affiliates.

H. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

I. "Public Way" means the surface of, and any space above or below, any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area, which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way also means any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use, or dedicated for compatible uses, and includes other easements or rights of way which, within their proper use and meaning, entitle the City and the Franchisee the use thereof for the purposes of installing or transmitting Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.

J. "Service Area" means the present municipal boundaries of the City and includes any additions thereto by annexation or other legal means.

**Section 2. Authority Granted.** The City hereby grants to Franchisee, subject to the terms and conditions contained in this Agreement, the right, privilege and authority to utilize

City's Public Ways for construction and operation of its Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for its Communications System, and to provide Communications Service.

**Section 3. Construction Permits Required.**

A. Prior to site specific location and installation of any portion of its Communications System within a Public Way, Franchisee shall apply for and obtain a construction permit pursuant to City ordinances then existing.

B. Unless otherwise provided in said permit, Franchisee shall give the City at least 48 hours' notice of Franchisee's intent to commence work in the Public Ways. Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. No work shall commence within any Public Way without said permit except as otherwise provided in this Agreement.

**Section 4. Grant Limited to Occupation.** Nothing contained herein shall be construed to grant or convey any right, title, or interest in City's Public Ways to Franchisee, nor shall anything contained herein constitute a warranty of title.

**Section 5. Term of Franchise.** This Franchise is granted for a period ten (10) years and will expire on the 1st of September 2033 unless extended by mutual agreement of the parties.

**Section 6. Non-Exclusive Grant.** This Franchise is non-exclusive. It does not prohibit the City from entering into other similar agreements or granting other franchises in, under, on, across, over, through, along or below City Public Ways. However, the City shall not permit any such future franchisee to physically interfere with Franchisee's then existing Communication Facilities. This Franchise does not prohibit the City from using any of its Public Ways or affect the City's jurisdiction over its Public Ways or any part of them, and the City shall retain the power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication or vacation of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new Public Ways.

**Section 7. Maps and Records.** After construction is complete, Franchisee shall, at no cost, provide the City with accurate copies of as-built plans and maps in a form prescribed by the City.

**Section 8. Work in Public Ways.**

A. During periods of relocation, construction, or maintenance, surface impediments, if any, shall be placed and used in such places and positions within Public Ways

and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining properties. Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations.

B. Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the City's Public Ways in coordinating construction activities and joint trenching projects. By June 1 of each calendar year, or such other date as the City and Franchisee may agree upon from year to year, Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the City's Public Ways. Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the City's Public Ways as determined by the City to schedule and coordinate construction activities.

C. If either the City or Franchisee shall, at any time after the installation of Communication Facilities, plan to make excavations in the Service Area and as described in this section, the party planning such excavation shall afford the other party, upon receipt of written request to do so, an opportunity to share such excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their intended uses are incompatible.

**Section 9. Restoration after Construction.** Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the Public Ways, restore the affected Public Ways and any property disturbed by the work to at least the same condition the Public Ways or property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. Franchisee shall promptly complete all restoration work and promptly repair any damage caused by such work at its sole cost and expense according to the time and terms specified in the construction permit.

**Section 10. Emergency Work Permit Waiver.** In the event of an emergency in which any of Franchisee's Communication Facilities located in, above, or under any Public Way break or are damaged, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, Franchisee shall immediately take proper emergency measures to repair its Communication Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit. Franchisee shall notify the City immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which City is open for business.

**Section 11. Relocation.**

A. During the period of this Agreement, if City shall lawfully elect to alter or change any Public Way requiring the relocation of Communication Facilities, then Franchisee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense. Alternatively, Franchisee may, in its sole discretion, abandon its Communication Facilities in place. If public funds are available for such relocation, Franchisee shall not be required to pay the costs of such relocation.

B. If, for aesthetic purposes, the City requests relocation of Communication Facilities that were originally approved by the City through the permitting process, the City shall pay all costs associated with relocation. Franchisee may require advance payment for costs and expenses.

C. Franchisee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its Communication Facilities to permit the moving of the building, provided: (a) the expense of such temporary removal shall be paid by the person(s) requesting the same; (b) Franchisee shall have the authority to require payment in advance; and (c) Franchisee must be given not less than five business days' advance notice.

**Section 12. Trimming.** Franchisee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places to prevent the branches of such trees from coming into contact with Communication Facilities. Except when an emergency dictates such work, Franchisee shall provide notice to City and to any property owner before commencing such work.

**Section 13. Dangerous Conditions.** Whenever construction, installation or excavation of Communication Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of any adjoining Public Way, street, public place, utility, or property, the City may require Franchisee to take reasonable action to protect the Public Way, street, public place, utility, or property. Such action may include compliance within a prescribed time. If Franchisee fails or refuses to promptly take the action(s) required by the City or fails to fully comply with such requirements, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are reasonably necessary to protect the Public Way, street, public place, utility, or property or take actions regarded as reasonably necessary safety precautions, and Franchisee shall be liable to the City for the reasonable costs thereof.

**Section 14. Non-Liability of City for Acts of Franchisee; Indemnification.** The City shall not at any time become liable or responsible to any person for any damage or injury, including loss of life, by reason of Franchisee's activities under this Agreement. Franchisee shall indemnify, save, defend (with counsel reasonably acceptable to the City), and hold harmless the City from and against any and all third party claims, judgments, and/or damage that may be incurred by the City as a result of any liabilities, damages, judgments, costs, expenses, penalties,

and/or injuries to persons or property caused by or arising out of, either directly or indirectly, this Agreement.

**Section 15. Insurance.** Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the exercise of the rights, privileges, and authority granted hereunder to Franchisee, its agents, representatives, or employees. Franchisee shall provide to the City for its inspection an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any Communication Facilities. Such insurance certificate shall evidence: (a) comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than \$2,000,000 for bodily injury or death to each person; (b) comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than \$3,000,000 for property damages resulting for each incident; (c) automobile liability insurance for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of not less than \$300,000 for each person and \$500,000 for each incident; and workers' compensation coverage with limits prescribed by statute.

The insurance policies required by this section shall be maintained by Franchisee throughout the term of this Agreement and during such other periods as Franchisee is operating without a franchise or is engaged in the removal of its Communications System. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or against whom a suit is brought. Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in addition to Franchisee's insurance and shall not contribute with it.

**Section 16. Abandonment and Removal of Communication Facilities.** Upon the expiration or termination of this Agreement, Franchisee shall remove all its Communication Facilities from City's Public Ways within 90 days. In the alternative and upon such terms as the City deems appropriate, Franchisee may abandon its Communication Facilities in place.

**Section 17. Franchise Fees.** Franchisee shall pay to the City, ~~5%~~ <sup>3.5%</sup> of Franchisee's gross receipts from telecommunications services, as defined in the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated (the "MTLTA"), rendered in the Service Area for the preceding calendar year, less any business license fee or business license tax enacted by the City. All payments shall be made to:

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

Franchisee shall, upon reasonable written notice, allow City to review Franchisee's books and financial records to ensure compliance with the terms of this Franchise, including, but not limited to right to inspect Franchisee's records used to calculate the determination of franchise fees. Inspection rights shall insure to the City for up to three years from the date franchise fee payments are received.

**Section 18. Modification.** This Agreement may only be modified by written agreement signed by both parties.

**Section 19. Forfeiture and Revocation of Franchise.**

A. This franchise may be terminated by City for Franchisee's failure to comply with this Agreement or applicable laws.

B. If the City has reason to believe that Franchisee is in violation of this Agreement or applicable laws:

(1) The City shall deliver to Franchisee written notice of violation detailing the violation, the steps required to cure the violation, and the time within which the violation must be cured.

(2) Within 30 days, Franchisee shall deliver a written response to the City demonstrating that no violation occurred or that the violation has been corrected, or deliver a proposal to correct the violation problem within a period of time agreeable to the City. Franchisee may later request an extension of the time to cure a violation if construction is suspended or delayed by the City, or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of Franchisee delay progress, provided that Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If Franchisee's response is not satisfactory to the City, the City may declare Franchisee to be in default via written notice to Franchisee.

(4) Within ten business days after such notice, Franchisee may deliver to the City a request for a hearing before the Mayor. If no such request is received, the City may declare the franchise terminated for cause.

(5) If Franchisee files a timely written request for hearing, the hearing shall be held within 30 days. The hearing shall be open to the public. Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating the alleged violation. Within ten days after the conclusion of the hearing, the Mayor shall, on the basis of the record, make a determination as to whether there is cause for termination and whether the franchise will be terminated. The Mayor may, in his/her sole discretion, grant additional time to

cure the violation. If the violation has not been cured prior to the expiration of any such additional time, or if the Mayor does not grant additional time, the Mayor shall declare, in writing, that the franchise is terminated and the effective date of termination.

(6) Within 30 days of the Mayor's written determination, Franchisee may seek judicial review. Termination shall be stayed pending final resolution of such judicial review.

C. Franchisee shall not be deemed to be in default, failure, or violation of this Franchise where performance was rendered impossible due to an act of God, natural disaster, fire or other casualty, theft, pandemic, war, or other events beyond the Franchisee's control.

**Section 20. City Ordinances and Regulations.** Nothing in this Agreement restricts the City's authority to adopt and enforce ordinances regulating the performance of this Agreement. The City shall continue to have the authority to control the locations, elevation, manner or construction and maintenance of Communications Facilities, and Franchisee shall promptly comply with all such regulations unless compliance would cause Franchisee to violate other legal requirements.

**Section 21. Survival.** The provisions, conditions and requirements of this Agreement are in addition to all other legal obligations and liabilities. The following Sections survive the expiration or termination of this Agreement, and any renewals or extensions, and remain effective until such time as Franchisee removes its Communication Facilities from the Public Ways, transfers ownership of its Communication Facilities to a third party, or abandons its Communications Facilities as provided in this Agreement: Work in Public Ways, Restoration after Construction, Dangerous Conditions, Non-Liability of City for Acts of Franchisee, Insurance, and Abandonment and Removal of Communication Facilities.

**Section 22. Severability.** If any provision of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

**Section 23. Assignments and Subleases.** This Agreement is binding upon Franchisee's heirs, successors, executors, administrators, legal representatives, sublessees, and assigns. This Agreement may not be assigned or transferred without the City's prior written consent, except that it may be assigned in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing.

Franchisee may, without the City's consent: (1) lease its Communication Facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in its Communication Facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its Communication Facilities to another, provided that Franchisee at all times retains exclusive control over such Communication Facilities and remains responsible for locating, servicing, repairing, relocating, or removing its Communication Facilities pursuant to this Agreement.



**Section 24. Notice.** Any notice or information required to be given to the parties under this Agreement shall be sent via email with a hard copy delivered via U.S. mail, or via overnight delivery, to the following addresses unless otherwise specified:

City:  
River Heights City  
520 South 500 East  
River Heights, Utah 84321 With copies to counsel  
Jonathan E. Jenkins, Esq  
DAINES & JENKINS, LLP  
108 N. Main Street  
Logan, Utah 84321

Franchisee:  
All West/Utah, Inc.  
50 West 100 North  
Kamas, UT 84036  
[Matt.weller@allwest.com](mailto:Matt.weller@allwest.com)

Notice shall be deemed given upon acknowledged receipt of email, or three days after deposit in the U.S. mail in the case of first-class mail, or upon delivery in the case of overnight delivery.

**Section 25. Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties.

**Section 26. Costs of Default.** If any legal action, other than the judicial review of a termination determination, is instituted in connection with any controversy arising under this Agreement, the prevailing party shall be entitled to recover its costs and expenses including reasonable attorneys' fees.

**Section 27. Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Venue and jurisdiction over any dispute related to this franchise shall be in the First Judicial District Court for Cache County, or with respect to any federal question, in the United States District Court for the District of Utah in Salt Lake County.

**Section 28. Force Majeure.** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, war or pandemic beyond that party's reasonable control.

CITY:

All West/Utah, Inc.:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name: Matthew Weller  
Title: President

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Name:  
Title: City Attorney

\_\_\_\_\_  
Name:  
City Clerk