

Midway City Council  
23 May 2018  
Work Meeting

All West Communications /  
Franchise Agreements



# Memo

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**Date:** 18 May 2017  
**To:** Mayor, City Council and Staff  
**Cc:** File  
**From:** Brad Wilson, City Recorder/Financial Officer  
**RE:** Franchise Agreements with All West Communications

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In 2017 All West Communications requested to enter into a cable television franchise agreement with Midway City. The City Council agreed to negotiate the agreement (Minutes attached). That agreement was prepared but never presented to the Council for approval (Attached).

All West has also requested to enter into a franchise agreement for telecommunications (Sample attached).

The Council will discuss moving forward with these agreements at its work meeting on 23 May 2018.

Council Member Christen asked if the applicant would install fencing. Council Member Dodge thought that a fence should be required along the rear lot lines. Mr. Berg thought that a fence in the rear was possible but not between the lots.

Mr. Henke explained that Municipal Code allowed lot sizes to be reduced in exchange for open space.

Katie Studdert asked if the development was commercial. Mr. Jewkes responded that it was residential and not commercial. He read the description for the R-1-9 zone.

**Motion:** Council Member Van Wagoner moved to table consideration of the Alder Meadows Subdivision because he was not ready to make a decision, there were still questions for the applicant, and other issues needed to be addressed.

**Second:** Council Member Christen seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Van Wagoner	Aye
Council Member Dodge	Aye
Council Member Kohler	Aye
Council Member Christen	Aye
Council Member Probst	Aye

**5. All West/Franchise Agreement (Jack Walkenhorst)** – A Request to Enter into a Franchise Agreement with All West Communications for Digital TV, High Speed Internet and Digital Phone Services.

**5a. Presentation** – Received a Presentation on the Request

Jack Walkenhorst gave a presentation regarding the request and reviewed the following areas:

- History of All West Communications
- The evolution of technology
- Importance of community
- Service areas
- Working with the best

Mr. Walkenhorst also made the following comments:

- The company installed good equipment, did it right, and cleaned up after a project.

- The owner of the company was committed to the community.
- Had provided services in the Heber City area since 1999.
- Had sharing agreements with the Wasatch County School District, Wasatch County, and Heber Light and Power Company.
- Asked to enter a franchise agreement with the City.

**Note:** A copy of Mr. Walkenhorst’s presentation is contained in the supplemental file.

Brad Wilson explained that franchise agreements could no longer be exclusive. He said that they now acted primarily as agreements for the use of rights-of-way.

**5b. Action** – Discuss and Possibly Approve Negotiating a Franchise Agreement

Council Member Christen asked Mr. Walkenhorst about the use of the City’s rights-of-way. Mr. Walkenhorst responded that All West Communications would abide by the City’s regulations and obtain the required permits.

Wes Johnson explained the specifications that would be controlled by a franchise agreement.

Council Member Christen said entering such an agreement would give more choices to residents. Council Member Dodge added that competition was good.

Council Member Probst noted that he had worked on projects with All West Communications for 15 years. He said it was a good and professional company.

**Motion:** Council Member Christen moved to approve negotiating a franchise agreement with All West Communications.

**Second:** Council Member Kohler seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Van Wagoner	Aye
Council Member Dodge	Aye
Council Member Kohler	Aye
Council Member Christen	Aye
Council Member Probst	Aye

**CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN CITY OF MIDWAY, UTAH  
AND ALL WEST/UTAH, INC.**

**2017**

This Franchise Agreement (“Franchise”) is between City of Midway, Utah, hereinafter referred to as “the Franchising Authority” and All West/Utah, Inc., hereinafter referred to as “the Grantee.” The Franchising Authority and the Grantee are referred to together as “the Parties.”

The Franchising Authority hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

**SECTION 1**

**Definition of Terms**

**1.1 Terms.** For the purpose of this Franchise, 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” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. “Basic Cable” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

C. “Cable Act” means Title VI of the Communications Act of 1934, as amended.

D. “Cable Services” means (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

E. “Cable System” means the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. “FCC” means Federal Communications Commission or successor governmental entity thereto.

G. “Franchising Authority” means City of Midway, Utah, or the lawful successor, transferee, or assignee thereof.

H. "Grantee" means All West/Utah, Inc., or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenue" means all revenues of Grantee, as determined according to generally accepted accounting principles consistently applied, derived directly by the Grantee, arising from or attributable to operation of the Cable System to provide Cable Service in the Service Area including but not limited to: Revenue from Cable Services provided to Subscribers; ad sales revenues; and leased access revenues.

Gross Revenues do not include franchise fees or any fees or taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include revenues which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated 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 Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. Public Way shall not include bike paths or trails not dedicated for utility services or compatible uses.

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

M. "Standard Installation" is defined as up to one hundred twenty-five (125) feet from the nearest fiber access point to the Subscriber's optical network termination.

N. "Subscriber" means a Person or user of the Cable System who lawfully receives Cable Service on the Cable System with the Grantee's express permission.

## SECTION 2

### Grant of Franchise

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

**2.2 Competitive Equity.**

(A) Overview

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchising Authority; and changes in the scope and application of the traditional regulatory framework governing the provision of video series are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to the residents; promote local communications infrastructure investments and economic opportunities in the Franchising Authority; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

(B) New Video Service Provider

Notwithstanding any other provision in this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchising Authority, or (ii) otherwise begins to provide video services to subscribers in the Franchising Authority (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchising Authority under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

(C) No Written Agreement between Franchising Authority and Third Party VSP

If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary)

that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSP's, taking into account the terms and conditions under which other VSP's are allowed to provide video services to subscribers within the boundaries of the Franchising Authority.

(D) Effect of this Section on the Overall Agreement

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

(E) VSP Defined

The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

**2.3 Term.** The Franchise granted hereunder shall be for an initial term of Ten (10) years commencing on the Effective Date of the Franchise as set forth in subsection 8.7, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

### **SECTION 3**

#### **Standards of Service**

**3.1 Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause as little interference as possible with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**3.2 Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance and regulations, to the extent the provisions of the ordinance or regulations, do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

**3.3 Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a

condition comparable to the condition of the Public Way existing immediately prior to such disturbance and in a manner reasonably approved by the Director of Public Works.

**3.4 Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than five (5) business days in the event of a temporary relocation and no less than ten (10) business days for a permanent relocation, the Grantee shall, at its own expense except as provided by law or entitlement, and as soon as reasonably possible, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. Upon receiving such advance written notice, Grantee shall within ten (10) business days provide to the Franchising Authority a written expected timetable for completing the work if the timetable is requested by the Franchising Authority in its written notice to Grantee.

**3.5 Relocation for a Third Party.** The Grantee shall as soon as possible, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation. Upon receiving such advance written notice, Grantee shall within ten (10) business days provide to the Franchising Authority a written expected timetable for completing the requested work if it is requested by the Franchising Authority in its written notice to Grantee.

**3.6 Trimming of Trees and Shrubbery.** The Grantee shall have the authority by using a trained arborist to trim trees or other natural growth overhanging any of its Cable System within Public Ways in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the permission of the Landowner or without the permission of the Franchising Authority upon showing of public need.

**3.7 Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

**3.8 Aerial and Underground Construction.** Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the Franchising Authority that pertain to such construction shall be complied with.

A. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electronic services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall consult with the City Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the location, construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground

B. For the purposes of this Franchise, with the exception of service drops, facilities to be placed “underground” shall be at least thirty (30”) inches below the surface grade if the Cable System is buried underground in any of the Franchising Authority’s Rights of Way which consists of any area between the outer border of either sidewalk on either side of any public roadway. In the event that Grantee buries any portion of their Cable System within any Public Utility Easement (“PUE”), then that depth shall be at least eighteen (18”) inches below the surface grade.

C. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment.

**3.9 Required Extensions of the Cable System.** Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 15 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee’s trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**3.10 New Construction.** In cases of new subdivision construction, Franchising Authority shall instruct a Developer to give Grantee reasonable notice of such construction or development and the particular date of which open trenching will be available for the Grantee’s installation of conduit. Costs of trenching shall be borne by the developer unless agreed to otherwise between Grantee and developer.

**3.11 Technical Standards.** The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

### **3.12 Service to Public Buildings.**

The Grantee shall, upon request, provide without charge, one outlet of Basic Service to those Franchising Authority offices, fire station(s), police stations(s), public school building(s) and other Franchising Authority buildings that are passed by its Cable System. The outlets of Basic and Expanded Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds one hundred twenty-five (125) cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) cable feet. If additional outlets of Basic and Expanded Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

### **3.13 Emergency Use.**

In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and statewide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

**3.14 Customer Service Standards.** The Franchising Authority hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

## **SECTION 4**

### **Regulation by the Franchising Authority**

#### **4.1 Franchise Fee.**

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenue, as defined in subsection 1.1 of this Franchise Agreement. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee is payable annually which shall be due on or before the 60th day after the end of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. Revenue will be reported by service category.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder or for any overpayment shall be three (3) years from the date on which payment by the Grantee is due, or from the date payment is made in the case of an overpayment.

#### **4.2 Rates and Charges.**

A. The Franchising Authority may adopt the requisite ordinances to regulate rates for the provision of Basic Cable TV Service and equipment as defined, provided and permitted by the 1984 Communications Act, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), or any successive legislation, together with implementing regulations promulgated by the FCC.

B.. Nothing in this Franchise shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

C. The Grantee shall notify the Franchising Authority of any changes in rates or services within the Service Area no later than thirty (30) days prior to the implementation of such change(s).

#### **4.3 Renewal of Franchise.**

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. In addition to the procedures set forth in said Section 626 the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

**4.4 Conditions of Sale.** If a renewal of the Grantee's Franchise is denied or the Grantee's Franchise is lawfully terminated pursuant to Section 7 of this Franchise, and the Franchising

Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 626 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during such a period of time; however, under no event shall such authorization exceed a period of time greater than twelve (12) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

**4.5 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred or assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior notice to the Franchising Authority.. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

## **SECTION 5**

### **Oversight and Regulation by Franchising Authority**

**5.1 Testing for Compliance.** The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than five (5) business days, and providing a representative of the Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. The Franchising Authority agrees that such testing shall be undertaken no more than once a year without reasonable cause, including but not limited to customer complaints. The results thereof shall be made available to the Grantee.

**5.2 Books and Records.** The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during Normal Business Hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 551 of the Cable Act.

**5.3 Franchise Fees Subject to Audit.**

**5.3.1.** Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

**5.3.2.** Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

**5.3.3.** Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for

that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

## **SECTION 6**

### **Insurance and Indemnification**

**6.1 Insurance Requirements.** The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive Commercial General Liability Insurance in the amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured to the Franchising Authority. Additionally, the Grantee shall maintain in full force and effect, Automobile Liability insurance with limits of no less than \$500,000 combined single limit per accident for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon notification from the Franchising Authority, the Grantee shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

**6.2 Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorney's fees, incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

## **SECTION 7**

### **Enforcement and Termination of Franchise**

**7.1 Grounds for Termination.** The Franchising Authority may terminate or revoke this Franchise and all rights and privileges herein provided for any of the following reasons:

A. The Grantee fails to make timely payments of the Franchise Fee as required under section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the Franchising Authority of such failure; or

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

**7.2 Remedies at Law.** In the event the Grantee or the Franchising Authority fails to fulfill any of their respective obligations under this Franchise, the Franchising Authority or the Grantee, 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 Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

**7.3 Third Party Beneficiaries.** The benefits and protection provided by this Franchise shall inure solely to the benefit of the Franchising Authority and the Grantee. This Franchise 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 the Parties hereto).

**7.4 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the Franchising Authority.

**7.5 Bonds and Surety**

A. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Cable Services. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

B. Notwithstanding the above provisions, the Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within Public Ways.

**7.6 Termination by Grantee.** Notwithstanding any other provision of this Franchise to the contrary, Grantee may terminate this Franchise with or without cause six months after giving the Franchising Authority and Grantee's customers notice of Grantee's intent to terminate.

## **SECTION 8**

### **Miscellaneous Provisions**

**8.1 Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**8.2 Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority on the subject of Cable Service. Amendments to this Franchise for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

**8.3 Notice.** Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, or b) upon receipt when sent certified or registered mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

Midway City  
75 North 100 West  
PO Box 277  
Midway UT 84049

The notices or responses to the Grantee shall be addressed as follows:

All West/Utah, Inc.  
50 North 100 West  
Kamas, UT 84036

with a copy to:

Kira M. Slawson  
Blackburn & Stoll, LC  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

**8.4 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**8.5 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

**8.6 Applicable Law.** The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

**8.7 Effective Date.** The Effective Date of this Franchise is the \_\_\_\_\_ day of \_\_\_\_\_, 2017, pursuant to the provisions of applicable law. This Franchise shall expire on the \_\_\_\_\_ day of \_\_\_\_\_, 2027, unless extended by the mutual agreement of the Parties.

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 2017

CITY OF MIDWAY

\_\_\_\_\_  
Colleen Bonner, Mayor

ATTEST

\_\_\_\_\_  
Brad Wilson  
City Recorder

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2017, subject to applicable federal, state and local law.

All West/Utah, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF \_\_\_\_\_, UTAH GRANTING TO ALL  
WEST COMMUNICATIONS, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE  
FOR COMMUNICATIONS SERVICES  
ORDINANCE NO. \_\_\_\_\_**

An ordinance of the City of \_\_\_\_\_ granting to All West Communications, Inc. (“All West”) and its affiliates a non-exclusive franchise to install, operate and maintain a communications system in, on, over, upon, along, and across the public rights of way of the City of \_\_\_\_\_, prescribing certain rights, duties, terms, and conditions with respect thereto and establishing an effective date.

WHEREAS, All West, has requested that the City grant it the right to install, operate, and maintain a communications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

The City Council of the City of \_\_\_\_\_, Utah do ordain as follows:

**Section 1. Definitions.** For the purposes of this franchise, 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 the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. “City” means the City of \_\_\_\_\_, Utah.

C. “Communication(s) Service” shall mean any communications services, communications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication 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 or copper cable. Communication Service shall also include non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic and/or copper cable system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this ordinance or subsequently adopted ordinance, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means All West Communications, Inc., a Utah corporation, or the lawful successor, transferee, assignee, or affiliate thereof.

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

I. “Public Way” shall mean 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 shall also mean 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 dedicated for compatible uses, and shall include 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 the Franchisee’s 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 shall include any additions thereto by annexation or other legal means.

**Section 2. Authority Granted.** The City hereby grants to the Franchisee its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee's 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 the Franchisee's 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, the Franchisee shall apply for and obtain a construction permit pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the City at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The 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. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

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

**Section 5. Term of Franchise.** The first term of this franchise shall be for a period of thirty (30) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

**Section 6. Non-Exclusive Grant.** This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the

City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

**Section 7. Maps and Records.** After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer.

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

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said 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 property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By March 1<sup>st</sup> of each calendar year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an 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 respective uses of the trench are incompatible.

**Section 9. Restoration after Construction.** The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways restore the surface of said public ways and any other City-owned property that

may be disturbed by the work to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City.

**Section 10. Emergency Work Permit Waiver.** In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its 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 as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

**Section 11. Dangerous Conditions.** Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof.

**Section 12. Non-Liability of City for Acts of Franchisee.** The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise.

**Section 13. Insurance.** The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its

agents, representatives, or employees. The 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 facilities pursuant to this franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance written on an occurrence basis, including contractual liability coverage with limits inclusive of umbrella or excess liability coverage of not less than: (1) \$2,000,000 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the 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 suit is brought except with respect to the limits of the insurer's liability. The 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 excess of the Franchisee's insurance and shall not contribute with it.

**Section 14. Abandonment and Removal of the Franchisee's Communication Facilities.** Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

**Section 15. Modification.** The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Franchisee consistent with this section herein.

**Section 16. Forfeiture and Revocation.**

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged 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 the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible

due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

**Section 17. City Ordinances and Regulations.** Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

**Section 18. Survival.** All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 11 Dangerous Conditions; 12 Non-Liability of City for Acts of Franchisee; 13 Insurance; 14 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

**Section 19. Severability.** If any section, sentence, clause or phrase of this franchise shall be 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 section, sentence, clause or phrase of this franchise.

**Section 20. Assignment.** This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to

another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

**Section 21. Notice.** Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:

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Franchisee:

All West Communications, Inc.  
50 West 100 North  
Kamas, Utah 84036  
Attn: CEO

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

**Section 22. Entire Franchise.** This franchise 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 upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

**Section 23. Attorney's Fees.** If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

**Section 24. Governing Law/Venue.** This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake City.

**Section 25. Acceptance.** Within sixty (60) days after the passage and approval of this ordinance, this franchise shall be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise

within said period of time shall be deemed a rejection thereof and the rights and privileges herein granted shall after the expiration of the sixty (60) day period, absolutely cease unless the time period is extended by ordinance duly passed for that purpose.

**Section 26. Effective Date.** This ordinance, being an exercise of power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF \_\_\_\_\_

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
(SEAL)

Other business pertinent to the above appears in the minutes of the meeting. Upon motion duly made and carried, the meeting was adjourned.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
(SEAL)

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF SUMMIT    )

I, \_\_\_\_\_, hereby certify that I am the duly appointed, qualified and acting  
City Clerk of the City of \_\_\_\_\_, \_\_\_\_\_ County, State of Utah;

I further certify that the above and foregoing constitutes a true and correct copy of the  
minutes of a meeting of the City Council of said City, including an Ordinance adopted at said  
meeting held on September 24, 2012, as said minutes and Ordinance are officially of record in  
my possession;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City,  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Clerk

(SEAL)

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF SUMMIT    )

CERTIFICATE OF COMPLIANCE WITH  
OPEN MEETING LAW

I, \_\_\_\_\_, the duly qualified and acting City Clerk of the City of \_\_\_\_\_,  
\_\_\_\_\_ County, State of Utah, do hereby certify that on the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, pursuant to Section 52-4-6, Utah Code Annotated, I personally posted  
(at least 24 hours prior to the meeting time) at the City Hall, written Notice of the Meeting of the  
City Council held on \_\_\_\_\_, 20\_\_\_\_ at said regular meeting place. I further certify  
that there was delivered to the \_\_\_\_\_ (newspaper)/posted in \_\_\_\_\_ places, at least  
24 hours prior to said meeting, a copy of said Notice of Meeting. A correct copy of said Notice  
is attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of  
the City this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Clerk

(SEAL)