



# FRUIT HEIGHTS CITY COUNCIL MEETING

February 15, 2022, Fruit Heights City Council Chambers  
910 S Mountain Road Fruit Heights City, UT 84037

## 7:00 P.M. CITY COUNCIL MEETING

### 1. WELCOME: MAYOR JOHN POHLMAN

- 1.1. Pledge of Allegiance and Opening Ceremony (By Invitation)
- 1.2. Roll Call
- 1.3. City Council Training

### 2. DECLARATION OF CONFLICT(S) OF INTEREST

3. **PUBLIC COMMENTS** – The public may address the mayor regarding issues that are not on the agenda. We ask that you please limit your comments to 3 minutes.

**No action may be taken on any item not on the agenda**

### 4. SPECIAL PRESENTATION(S):

- 4.1. Youth City Council Report

### 5. CITY BUSINESS:

- 5.1. Review/Discuss/Approve/Deny Fiber Cable Franchise Agreement
- 5.2. Approve/Deny Davis County Storm Water Coalition Agreement.

### 6. REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS MEETING:

January 4, 2022, City Council Meeting

### 7. CONSENT CALENDAR:

- 8.1 January Check Register
- 8.2 January Budget Report

### 8. INFORMATION ITEMS/UPCOMING EVENTS:

February 15, 2022, City Council Meeting  
February 22, 2022, Planning Commission Meeting  
March 1, 2022, City Council Meeting

9. **CITY COUNCIL REPORTS** – This time is set aside to provide updates on City Oversight Assignments and projects

Mayor's Report  
City Council Reports  
City Engineer  
City Planner  
Public Works  
City Manager

**10. ELECTRONIC MEETING:** By motion of the Fruit Heights City Council, Elected Officials and City Staff can participate in regularly scheduled meetings via electronic media when approved by the mayor.

**Fruit Heights City is now streaming City Council Meetings on its YouTube Channel. Please use the link below to join us!**

<https://www.youtube.com/channel/UCaIqHYd0U5RCpaDo8rquABw>

**11. CLOSED MEETING:** By motion of the Fruit Heights City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed meeting for any of the purposes identified in that chapter.

**12. ADJOURNMENT:**

#### **CERTIFICATE OF POSTING**

**I HEREBY CERTIFY** that a copy of this agenda was posted on the City's website, [www.fruitheightscity.com](http://www.fruitheightscity.com), as well as posted on the Utah State public notice website <http://www.utah.gov/pmn/index.html>, and was emailed to at least one newspaper of general circulation within the jurisdiction of the public body.

R. Brandon Green

R. Brandon Green - City Recorder

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should contact the City Manager, Brandon Green at (801)546-0861, at least 24 hours prior to the meeting.

# FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between Fruit Heights City, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with a principal office at 910 S. Mountain Rd. Fruit Heights City, UT 84037 and Connex Networks LLC (hereinafter “FRANCHISEE”), a Limited Liability Company with its principal offices at 2655 G Avenue, Ogden, Utah 84401.

## WITNESSETH:

WHEREAS, the FRANCHISEE desires to provide telecommunications services (hereinafter “System”) within the CITY and in connection therewith to establish a telecommunications network within the present and future rights-of-way of the CITY; and,

WHEREAS, the CITY has enacted Title 7 Chapter 3 of the Fruit Heights City Code (hereinafter “ROW Ordinance”) which governs the application and review process for telecommunication franchises in the CITY; and,

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

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

### **ARTICLE 1. FRANCHISE AGREEMENT AND ROW ORDINANCE.**

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

**1.2 Ordinance.** The CITY has adopted the Telecommunications Rights of Way (ROW) Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. The FRANCHISEE acknowledges that it has had an opportunity to read and become familiar with the ROW Ordinance. The parties agree that the provisions and requirements of the ROW Ordinance are material terms of this Agreement, and that each party hereby agrees to comply with the terms of the ROW Ordinance. The definitions in the ROW Ordinance shall apply herein unless a different meaning is indicated.

**1.3 Ordinance Amendments.** The CITY reserves the right to amend the ROW Ordinance at any time. The CITY shall give the FRANCHISEE notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the FRANCHISEE’s rights and obligations under the ROW Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the FRANCHISEE agrees to comply with any such amendments.

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

**1.5 Licenses.** The FRANCHISEE acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the ROW Ordinance.

**1.6 Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

## **ARTICLE 2. FRANCHISE FEE.**

**2.1 Franchise Fee.** For the Franchise granted herein, the FRANCHISEE shall pay to the CITY a tax in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410). All payments shall be made to the Utah State Tax Commission, and sent as follows:

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

**2.2 Equal Treatment.** CITY agrees, within the guidelines of then-existing Utah law, to impose and collect from any third party competitor of FRANCHISEE a fee similar to that stated in this Agreement or will otherwise contract in such a way so as not to provide any unfair benefit to such future competitor.

## **ARTICLE 3. TERM AND RENEWAL.**

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

3.2 **Rights Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between the FRANCHISEE and the CITY, or by revocation or forfeiture, and barring any sale by the FRANCHISEE to a third party (which requires assumption of this Agreement by such third party as well as CITY approval, which approval shall not be unreasonably withheld) the FRANCHISEE shall abandon its System within the CITY and at the CITY's request, unless some other arrangement is made with the CITY, remove from the Rights-of-Way any and all of FRANCHISEE's System which exists above ground. In such event, it shall be the duty of the FRANCHISEE, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected. Notwithstanding anything to the contrary set forth in this Agreement, FRANCHISEE may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way.

#### **ARTICLE 4. POLICE POWERS.**

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

#### **ARTICLE 5. CHANGING CONDITIONS AND SEVERABILITY.**

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

5.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the ROW Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided, that if the invalidated portion is considered a material consideration for entering into this Agreement,

the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, “material consideration” for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the ROW Ordinance, and the City’s Excavation Permit Ordinance. For the FRANCHISEE, “material consideration” is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the ROW Ordinance, and the CITY’s Excavation Permit Ordinance.

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

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

(a) The FRANCHISEE fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure; or,

(b) The FRANCHISEE, by act or omission, violates a material duty herein set forth in any particular within the FRANCHISEE’s control, and with respect to which full redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the FRANCHISEE notice of such determination, the FRANCHISEE, 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 ninety (90) day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the FRANCHISEE 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 ninety (90) day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the FRANCHISEE; or,

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

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

6.3 **Remedies at Law.** In the event the FRANCHISEE or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the FRANCHISEE, whichever

the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

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

## **ARTICLE 7. PARTIES' DESIGNEES.**

7.1 **CITY designee and Address.** The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the ROW Ordinance, all notices from the FRANCHISEE to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at:

Fruit Heights City  
Attn: City Manager  
910 S. Mountain Road  
Fruit Heights City, UT 84037

or such other officer and address as the CITY may designate by written notice to the FRANCHISEE.

7.2 **FRANCHISEE Designee and Address.** The FRANCHISEE's designated agent, officer or representative or designee(s) shall serve as the FRANCHISEE's representative regarding administration of this Agreement. Unless otherwise specified herein or in the ROW Ordinance, all notices from the CITY to the FRANCHISEE pursuant to or concerning this Agreement, shall be delivered to FRANCHISEE's headquarter offices at

Connex Networks, LLC  
Attn: \_\_\_\_\_  
2655 G Avenue  
Ogden, Utah 84401

or such other office as the FRANCHISEE may designate by written notice to the CITY.

7.3 **Failure of Designee.** The failure or omission of the CITY's or FRANCHISEE's representative to act shall not constitute any waiver or estoppels by the CITY or FRANCHISEE.

## **ARTICLE 8. INSURANCE AND INDEMNIFICATION**

8.1 **Insurance.** Prior to commencing operations in the CITY pursuant to this Agreement, the FRANCHISEE shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the FRANCHISEE is effectively self-insured if the FRANCHISEE has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the FRANCHISEE from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

8.2 **Indemnification.** The FRANCHISEE agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the FRANCHISEE's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to the FRANCHISEE of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the FRANCHISEE to assume the defense of such with counsel of the FRANCHISEE's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the FRANCHISEE shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

## ARTICLE 9. INSTALLATION

9.1 **Coordinated Installation.** In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, FRANCHISEE shall coordinate with the CITY and other FRANCHISEEs or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way. The CITY is under no obligation to postpone these other installations, repairs or maintenance of facilities if the FRANCHISEE is not able to meet the CITY's schedule.

9.2 **Underground Installation.** Notwithstanding the provisions of Article 1.3 and 1.4 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its facilities in accordance with CITY Ordinances including the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require FRANCHISEE to convert existing overhead facilities to underground facilities until and unless other similarly situated FRANCHISEEs in the same location are required to do so.



**ARTICLE 10. GENERAL PROVISIONS**

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

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

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

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

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

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

10.7 **Additional Agreements.** All parties are not precluded from entering into other legal agreements pertaining to the telecommunications systems noted within this agreement.

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

SIGNED AND ENTERED INTO on this \_\_\_\_ day of \_\_\_\_\_, 2022.

“FRUIT HEIGHTS CITY”

By: \_\_\_\_\_  
John Pohlman, Mayor

ATTEST:

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Brandon Green, City Recorder

APPROVED AS TO FORM:

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Bradley Christopherson

“FRANCHISEE”

Connex Networks LLC, a Utah Limited Liability Company

By: \_\_\_\_\_  
David Brown, Chief Executive Officer