



FRUIT HEIGHTS CITY COUNCIL MEETING

January 18, 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

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. Davis County Sheriff Report and Crime Discussion

5. CITY BUSINESS:

- 5.1. Review/Discuss/Approve/Deny; Agreement for Installation and Maintenance of Fiber Optic Cable (City Manager, Brandon Green)
- 5.2. First Review / Fiber Cable Franchise Agreement
- 5.3. Review and Discuss a Municipal Energy Tax

6. REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS MEETING:

January 4, 2022, City Council Meeting

7. CONSENT CALENDAR:

8. INFORMATION ITEMS/UPCOMING EVENTS:

January 18, 2022, City Council Meeting
January 25, 2022, Planning Commission 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.

Topic: City Council Meeting, January 18, 2022

Time: Jan 18, 2022, 07:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/84460579979?pwd=bUpCQ2dYRXZ5dHFUdWFDSjFEek82Zz09>

Meeting ID: 844 6057 9979

Passcode: 545673

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, 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.

CITY COUNCIL MEETING

DATE: 1/18/22

TIME MEETING BEGAN: 7:00

TIME MEETING OVER: 8:29

CITY COUNCIL MEMBERS PRESENT:

- Council Member Diane Anderson
- Council Member Gary Anderson
- Council Member Florence Sadler
- Council Member George Ray - Zoom.
- Council Member Eileen Moss
- Mayor John Pohlman

STAFF PRESENT:

- Brandon Green, City Manager
- Brad Christopherson, City Attorney
- Brandon Jones, City Engineer
- Jeff Oyler, City Planner
- Recording Secretary - ~~Pat~~ Amy Gardiner
- Darren Frandsen, Public Works Superintendent

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**VOTING ON AN ORDINANCE:**

Motion By: \_\_\_\_\_

Second By: \_\_\_\_\_

| VOTING:       | Yes | No  | Absent | Abstain |                                   |
|---------------|-----|-----|--------|---------|-----------------------------------|
| Anderson      | ___ | ___ | ___    | ___     |                                   |
| Anderson      | ___ | ___ | ___    | ___     |                                   |
| Sadler        | ___ | ___ | ___    | ___     |                                   |
| Ray           | ___ | ___ | ___    | ___     |                                   |
| Moss          | ___ | ___ | ___    | ___     |                                   |
| Mayor Pohlman | ___ | ___ | ___    | ___     | (Votes only in the case of a tie) |

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VOTING ON AN ORDINANCE:

Motion By: _____

Second By: _____

VOTING:	Yes	No	Absent	Abstain	
Anderson	___	___	___	___	
Anderson	___	___	___	___	
Sadler	___	___	___	___	
Ray	___	___	___	___	
Moss	___	___	___	___	
Mayor Pohlman	___	___	___	___	(Votes only in the case of a tie)

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF FIBER OPTIC CABLE

This Agreement made and entered into as of the 20th day of January 2022 by and between FRUIT HEIGHTS CITY, which shall be called "Fruit Heights" in this Agreement and KAYSVILLE CITY, which shall be called "Kaysville" in this Agreement. This Agreement is made and entered into by and between the parties hereto based upon the following recitals:

RECITALS

- A. Kaysville, in conjunction with Fruit Heights, applied for and received an America Recovery Plan Act (ARPA) grant. The grant is to extend and ring a portion of Kaysville's Fiber network and to build point to point connectivity to various Fruit Height's municipal buildings and critical infrastructure.
- B. Kaysville desires and has entered into an Agreement with Connex, LLC (the "Contractor") for the installation of certain fiber optic cable ringing parts of Kaysville's fiber and connecting critical infrastructure.
- C. Fruit Heights desires to connect various municipal buildings and critical infrastructure through fiber optic cable.
- D. A portion of the fiber optic cable being installed is in a location that can be shared by Fruit Heights and Kaysville to satisfy needs for various fiber connections. This portion will be deemed the "**Shared Portion**" and illustrated in **Exhibit A**.
- E. Kaysville City and Fruit Heights desire to enter into an Agreement for the joint use and maintenance of the Shared Portion of the fiber optic cable being installed by Kaysville's Contractor upon the following terms and conditions.

AGREEMENT

- 1. With Coordinated ARPA matching grant funds, Kaysville City agrees to install through its Contractor, fiber optic cable connecting various Fruit Heights buildings and critical infrastructure. The Fiber Optic cable system shall be designed in such a way to accommodate the needs of Fruit Heights as illustrated in **Exhibit B**.
- 2. The fiber installation contains two parts as Shown in Exhibit B:
 - a. A "Shared Portion" where that fiber cable containing 144 strands has joint use. Kaysville having 72 strands and Fruit Heights having 72 strands.
 - b. The second part is that fiber owned and maintained solely by Fruit Heights can be legs of fiber extending from the shared portion or other parts of the fiber back bone not in Kaysville.
- 3. Kaysville will not incur any more cost than what was allocated via the grant. Any overages in cost will result in the reduction of Fruit Height's fiber legs in various areas of Exhibit B as determined by the Kaysville Project Manager. Both Kaysville and Fruit Heights will cooperate and talk through any changes to the scope of the project.

4. Fruit Heights agrees:
 - a. to provide:
 - i. Right of Way or Necessary perpetual easements along the designated paths in Exhibit A "Shared Portion" for Kaysville in perpetuity.
 - ii. Blue staking services for the shared portion of the fiber within the Fruit Heights Boundary.
 - iii. Free WIFI to all residents at Nichols Park as per the ARPA Agreement
 - b. Assist in complying with the terms of the ARPA grant agreement where applicable to Fruit Heights.
 - c. Fruit Heights expressly acknowledges that they are aware of and will abide by the terms of the ARPA agreement that Kaysville City has entered into. Fruit Heights will not be responsible to expend resources (outside of this agreement) to comply with the ARPA agreement, but they will operate in good faith with Kaysville City and not prohibit Kaysville from satisfying their requirements under the agreement.
5. The "Shared Portion" of the fiber optic cable is identified and illustrated on **Exhibit A**.
6. Kaysville shall be the owner of record for the shared portion of fiber.
7. Fruit Heights shall be the owner of Record for all other fiber not included in Exhibit A and within Fruit Heights City boundaries.
8. Kaysville shall be responsible for managing the Shared Portion and making decisions with respect to the ongoing maintenance and repair of the Shared Portion.
9. Future Fruit Heights fiber connections outside of this grant project to the Shared Portion will be requested in writing and coordinated with the Kaysville IT Manager or designated Fiber infrastructure manager.
10. Kaysville and Fruit Heights agree that each City shall share one half of the ongoing maintenance and repair costs for the Shared Portion of the fiber optic cable as identified in Exhibit A.
11. Fruit Heights shall be solely responsible for maintenance and repair costs not included in the Shared Portion and within Fruit Heights City Boundary.
12. Fruit Heights agrees to provide all blue stake location services for the fiber infrastructure within the Fruit Heights boundary. Likewise, Kaysville will provide location services for all fiber within Kaysville.
13. The parties hereto agree that there shall be no additional charges for ongoing usage of the fiber optic system that is being installed pursuant to this agreement.
14. This Agreement shall continue in perpetuity or until such time that both parties agree to end the use of the Shared Portion (Exhibit A).
15. This Agreement shall be conditioned upon the legislative body of each of the party's approving this Agreement.
16. The individuals executing this Agreement on behalf of the parties confirm that they are the duly authorized representative of the parties and are lawfully enabled to execute this Agreement on behalf of the party.
17. In the event that any dispute arises between the parties in relation to this Agreement or arising out of this Agreement and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Any party to the dispute may give written notice to the other party of its desire to

commence mediation and the mediation must take place within thirty (30) days after the date that such notice is given. The parties will jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator, either party may apply to a mediation organization or person for appointment of a mediator. The parties further agree to share equally in the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

In witness whereof, the parties hereto have caused this Agreement to be executed in duplicate each of which shall be deemed an original on the dates indicated by the signatures of the respective parties.

FRUIT HEIGHTS

KAYSVILLE CITY



John Pohlman, Mayor



Tami Tran, Mayor

Attest:



City Recorder

City Recorder



STATE OF UTAH

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

FREQUENTLY ASKED QUESTIONS

Municipal Energy Sales and Use Tax

Q: What is municipal energy sales and use tax?

A: A municipality may levy municipal energy sales and use tax up to 6 percent of the delivered value of taxable energy (gas and electricity) sold or used within its borders. This is in addition to any local-option sales and use taxes the municipality imposes.

Q: Who is required to pay municipal energy sales and use tax and how is it to be paid?

A: A user of taxable energy is liable for the municipal energy sales and use tax on all components of the delivered value of the taxable energy. The delivered value is the arm's length sales price of the energy, including any transportation, freight, service or customer demand charges, or other costs incurred in the obtaining the energy.

In most cases the municipal energy sales and use tax is charged by the supplier and the tax is paid directly to the supplier by the user.

If the supplier or the transporter does not collect the municipal energy sales tax, the user must pay the tax directly to the Tax Commission.

Q: Do I need to pay municipal energy sales and use tax if I am exempt from paying sales and use tax?

A: Yes, exemptions from sales and use taxes do not apply to the municipal energy sales and use tax.

Q: How do I become licensed to report municipal energy sales and use tax?

A: To become licensed for municipal energy sales and use tax you must have a sales tax license. To obtain a sales tax license and also register for municipal energy sales tax, complete Form TC-69, Utah State Business and Tax Registration. Check box 19 in section 7e of the TC-69. This form is found on our website at tax.utah.gov/forms-pubs.

If you already have a sales tax license, check the box on the **Checklist & Questionnaire** indicating you need to be licensed for municipal energy sales and use tax and we will get you licensed.

Q: What if I already reported the municipal energy sales and use tax on the TC-62E?

A: Review your invoices to verify all the tax was reported, complete the **Summary**, and explain in Section D why no tax is due.

References may be found in Administrative Rule R865-19S-103 and Publication 54. These references and other supplemental research sources may be found at tax.utah.gov.

Effective 3/22/2021

10-1-304 Municipality and military installation development authority may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Exemptions.

- (1)
 - (a) Except as provided in Subsections (4) and (5), a municipality may levy a municipal energy sales and use tax on the sale or use of taxable energy within the municipality:
 - (i) by ordinance as provided in Section 10-1-305; and
 - (ii) of up to 6% of the delivered value of the taxable energy.
 - (b) Subject to Section 63H-1-203, the military installation development authority created in Section 63H-1-201 may levy a municipal energy sales and use tax under this part within a project area described in a project area plan adopted by the authority under Title 63H, Chapter 1, Military Installation Development Authority Act, as though the authority were a municipality.
- (2) A municipal energy sales and use tax imposed under this part may be in addition to any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use Tax Act.
- (3)
 - (a) For purposes of this Subsection (3):
 - (i) "Annexation" means an annexation to a municipality under Chapter 2, Part 4, Annexation.
 - (ii) "Annexing area" means an area that is annexed into a municipality.
 - (b)
 - (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the municipality.
 - (ii) The notice described in Subsection (3)(b)(i)(B) shall state:
 - (A) that the city or town will enact or repeal a tax or change the rate of a tax under this part;
 - (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);
 - (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and
 - (D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (3)(b)(ii)(A), the new rate of the tax.
 - (c)
 - (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.
 - (ii) The notice described in Subsection (3)(c)(i)(B) shall state:
 - (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;
 - (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);
 - (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and
 - (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).
- (4)
 - (a) Subject to Subsection (4)(b), a sale or use of electricity within a municipality is exempt from the tax authorized by this section if the sale or use is made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new

source of alternative energy, as defined in Section 59-12-102, as designated in the tariff by the Public Service Commission of Utah.

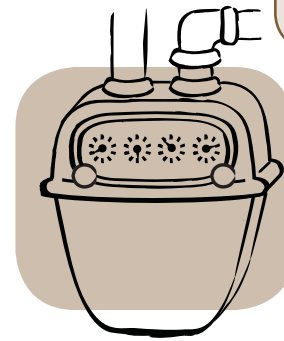
- (b) The exemption under Subsection (4)(a) applies to the portion of the tariff rate a customer pays under the tariff described in Subsection (4)(a) that exceeds the tariff rate under the tariff described in Subsection (4)(a) that the customer would have paid absent the tariff.
- (5)
- (a) A municipality may not levy a municipal energy sales and use tax within any portion of the municipality that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act.
 - (b) Subsection (5)(a) does not apply to the military installation development authority's levy of a municipal energy sales and use tax.

Amended by Chapter 367, 2021 General Session, (Coordination Clause)

Amended by Chapter 414, 2021 General Session

Amended by Chapter 29, 2020 General Session, (Coordination Clause)

Sales Tax Information for Public Utilities



If you need an accommodation under the Americans with Disabilities Act, email taxada@utah.gov, or call 801-297-3811 or TDD 801-297-2020. Please allow three working days for a response.

Introduction

This publication provides tax information relating to public utilities. It includes Utah law and Tax Commission rules, but is not all-inclusive. Future law or rule changes may change this publication.

Find general sales and use tax information in Publication 25.

Delivery Locations

The location where a transaction is completed is the location where a purchaser receives gas or electricity sold by a public utility. This is the customer's residential or business address. The location of the meter is normally the point of sale or use.

The Tax Commission establishes a sales tax account's delivery location outlets according to the information provided by the account holder. These outlets are pre-printed on form TC-62M Schedule A in addition to brick-and-mortar outlets.

Public utilities report sales and use tax on form TC-62M and Schedule A. Each jurisdiction where service is delivered is listed as a delivery location on Schedule A.

Municipal Energy Sales and Use Tax

A municipality may levy municipal energy sales and use tax of up to 6 percent of the delivered value of taxable energy (gas and electricity) sold or used within its borders. This is in addition to any local-option sales and use taxes the municipality imposes.

The easiest way to file all municipal energy sales and use tax returns, reports and payments is online, using Taxpayer Access Point (TAP), our online account management system. TAP:

- is fast
- is accurate
- calculates for you
- is available 24/7

You will need the following information to set up online access to your accounts:

- Federal Employer Identification Number (FEIN) or Social Security Number (SSN),
- Utah 14-digit account number
- Your PIN

The return and payment are both due at the same time as your *Sales and Use Tax Return*.

Exemptions from sales and use taxes do not apply to the municipal energy sales and use tax. However, municipalities must exempt:

- sales and use of motor fuel, special fuel and aviation fuel subject to motor and special fuel tax;
- sales and use of gas and electricity that the municipality is prohibited from taxing under federal law, the U.S. Constitution or the Utah Constitution;
- gas and electricity brought into Utah by a nonresident for the nonresident's personal use;
- sales or use of gas and electricity for any purpose other than use as a fuel or energy;
- sales or use of gas and electricity to a person if the primary use is for compounding or producing gas and electricity or a fuel subject to the motor and special fuel tax;
- sales of gas and electricity for use outside of the municipality imposing the tax;
- sales and use of gas and electricity purchased or stored in Utah for resale; or,
- sales of electricity produced from a new alternative energy source built after Jan. 1, 2016, as designated in the retail tariff by the Public Service Commission of Utah.

A municipality that generates electricity for customers within its borders may exempt customers who, as of July 1, 1997, were receiving electrical energy from a supplier other than the municipality and whose needs the municipality cannot meet.

The Tax Commission receives and distributes tax revenues for the participating localities, unless the municipality is the energy supplier, or the energy supplier collects at least \$1 million in municipal energy sales and use taxes annually from its Utah customers. In those cases, the energy supplier pays the municipal energy sales and use taxes it collects directly to the municipality and electronically files an annual information return (TC-62ER, *Municipal Energy Sales and Use Tax Report*) with the Tax Commission.

The delivered value is the arm's length sales price of the energy, including any transportation, freight, service or customer demand charges, or other costs incurred in obtaining the energy. The point of delivery of gas and electricity is normally the location of the meter.

A user of natural gas or electricity who has paid municipal energy sales and use tax to a supplier on a portion of the delivered value of the energy (evidenced by a separate charge on the invoice from the supplier) may credit the taxes paid to the supplier against the tax it pays the Tax Commission. The tax is distributed to the municipality that levied the tax.

Taxpayers who pay the municipal energy sales and use tax on a monthly basis qualify for a 1 percent seller discount.

Energy Suppliers

An energy supplier includes an entity that bills a consumer for costs to transport taxable energy to that consumer. An entity that has Utah nexus and bills an end user for taxable energy transportation costs must include on the billing the municipal energy sales and use tax calculated on the transportation costs.

Some gas consumers buy energy from third-party suppliers, but another entity transports the gas. In such cases, if the transporter does NOT charge municipal energy sales and use tax on the transportation, then the consumer must become licensed for municipal energy sales and use tax and report the amount directly to the Tax Commission (form TC-62E).

Anyone who delivers taxable energy to the point of sale or use, but provides only the transportation component of the taxable energy, must report delivery volumes each quarter. Use Schedule TC-62ET to report delivery volumes for each user to whom you provide only the transportation component of the taxable energy's delivered volume.

Multi-Channel Audio and Video Service

Amounts paid or charged for multi-channel video or audio services provided by a multi-channel video or audio service provider within Utah are taxable at the statewide rate of 6.25 percent. The provider or seller of multi-channel video and audio services must calculate, collect, report and pay the tax to the Tax Commission. Use form TC-62W, *Miscellaneous Sales Taxes, Fees and Charges Return*. Calculate the tax on the base price plus any franchise fee combined into the total service charge.

The return and payment are both due at the same time as your *Sales and Use Tax Return*. You may pay online at tap.utah.gov.

A multi-channel video or audio service provider is defined as any person or group of persons that:

- provides multi-channel video or audio service and directly or indirectly owns a significant interest in the multi-channel video or audio service; or
- otherwise controls or is responsible, through any arrangement, for the management and operation of the multi-channel video or audio service.

A multi-channel video or audio service provider includes the following, except those specifically exempted by state or federal law:

- a cable operator,
- a SMATV operator,
- a CATV provider,
- a direct-to-home satellite service provider,
- a multi-point distribution provider,
- a DBS provider, and
- a MMDS provider.

A multi-channel video or audio service provider may claim a nonrefundable tax credit against the multi-channel video or audio tax imposed on the provider. The credit is in an amount equal to 50 percent of the total amount of county or municipality franchise fees paid by the provider to all counties and municipalities that impose the franchise fee. The credit must be claimed each filing period on the return filed for that period and may not be carried forward or back. The tax credit does not reduce the cost of the service when calculating tax due.

The provider must pass through to its customers the amount of nonrefundable credit claims for a filing period and it must be done in the same period for which the credit is claimed by the provider. The tax rate may not be reduced to compensate for the claimed credit.

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need more information, call 801-297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster@utah.gov.

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:

Brandon Green, City Recorder

APPROVED AS TO FORM:

Bradley Christopherson

“FRANCHISEE”

Connex Networks LLC, a Utah Limited Liability Company

By: _____
David Brown, Chief Executive Officer