

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

**AGREEMENT** dated this 26th day of April, 2023, by and between Tooele County, a political subdivision of the State of Utah ("County") and All West/Utah, Inc., a for-profit Utah corporation ("Franchisee").

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

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

**WHEREAS**, the County Council is authorized, pursuant to Utah Code Section 17-50-306, to grant franchises along and over public roads and highways and other public properties; and

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

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

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

- A. "Affiliate" means any entity which owns or controls, is owned or controlled by, or is under common ownership with, Franchisee.
- B. "County" means Tooele County, Utah.
- C. "Communications Service" means any communications services, communications capacity, or dark fiber, provided by Franchisee using its Communications System or Communication Facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communications Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable, copper cable, or wireless antennas. Communications Service also includes wireless and non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within County.

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

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

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

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

H. "Gross Receipts from Telecommunications Services" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as: (1) a tax, fee, or charge: (a) imposed by a governmental entity; (b) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and (c) imposed only on a telecommunications provider; (2) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or (3) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

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

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

K. "Service Area" means the unincorporated areas of Tooele County.

**Section 2. Authority Granted.** County hereby grants to Franchisee, subject to the terms and conditions contained in this Agreement, the right, privilege and authority to utilize County's public ways for construction and operation of its Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for its Communications System, and to provide Communications Service.

**Section 3. Construction Permits Required.**

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

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

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

**Section 5. Term of Franchise.** This Franchise is granted for 30 years, after which additional terms may be agreed upon by the parties.

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

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

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

A. During periods of relocation, construction, or maintenance, surface impediments, if any, shall be placed and used in such places and positions within public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining properties. Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations.

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

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

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

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

**Section 11. Relocation.**

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

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

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

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

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

**Section 14. Non-Liability of County for Acts of Franchisee.** County shall not at any time become liable or responsible to any person for any damage or injury, including loss of life, by reason of Franchisee's activities under this Agreement, and Franchisee hereby indemnifies County and holds it harmless against all such liabilities, loss, cost, damage, and expense.

**Section 15. Insurance.** Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the exercise of the rights, privileges, and authority granted hereunder to Franchisee, its agents,

representatives, or employees. Franchisee shall provide to County for its inspection an insurance certificate naming County as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any Communication Facilities. Such insurance certificate shall evidence: (a) comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than \$2,000,000 for bodily injury or death to each person; (b) comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than \$3,000,000 for property damages resulting for each incident; (c) automobile liability insurance for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of not less than \$300,000 for each person and \$500,000 for each incident; and workers' compensation coverage with limits prescribed by statute.

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

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

**Section 17. Franchise Fees.** No later than March 31 of each year during this Agreement, Franchisee shall pay to County 3.5% of Franchisee's Gross Receipts from Telecommunications Services from the Service Area for the preceding calendar year, less any business license fee or business license tax enacted by County. All payments shall be made to:

Tooele County Treasurer  
47 South Main Street  
Tooele, Utah 84074

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

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

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

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

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

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

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

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

(5) If Franchisee files a timely written request for hearing, the hearing shall be held within 30 days. The hearing shall be open to the public. Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating the alleged violation. Within ten days after the conclusion of the hearing, the County Manager shall, on the basis of the record, make a determination as to whether there is cause for termination and whether the franchise will be terminated. The County Manager may, in his/her sole discretion, grant additional time to cure the violation. If the violation has not been cured prior to the expiration of any such additional time, or if the County Manager does not grant additional time, the County Manager shall declare, in writing, that the franchise is terminated and the effective date of termination.

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

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

**Section 21. Survival.** The provisions, conditions and requirements of this Agreement are in addition to all other legal obligations and liabilities. The following Sections survive the

expiration or termination of this Agreement, and any renewals or extensions, and remain effective until such time as Franchisee removes its Communication Facilities from the public ways, transfers ownership of its Communication Facilities to a third party, or abandons its Communications Facilities as provided in this Agreement: Work in Public Ways, Restoration after Construction, Dangerous Conditions, Non-Liability of County for Acts of Franchisee, Insurance, and Abandonment and Removal of Communication Facilities.

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

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

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

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

Tooele County Manager  
47 South Main Street  
Tooele, UT 84074  
andy.welch@tooeleco.org

All West/Utah, Inc. 50 West 100 North  
Kamas, UT 84036  
Matt.Weller@allwest.com

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

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



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

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

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

**Section 29. Anti-Boycott Certification.** Franchisee is not currently engaged in a boycott of the State of Israel and will not engage in a boycott of the State of Israel for the duration of this Agreement. Franchisee is not currently engaged in a boycott action targeting a company that: (a) engages in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture; (b) engages in, facilitates, or supports the manufacture, distribution, sale, or use of firearms; (c) does not meet or commit to meet environmental standards, including standards for eliminating, reducing, offsetting, or disclosing greenhouse gas-emissions, beyond applicable state and federal law requirements; or (d) does not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures. Franchisee shall notify County in writing if Franchisee begins to engage in such a boycott and acknowledges that such notice may be grounds for termination of this Agreement.

[signatures on following page]

TOOELE COUNTY:

James A. Welch  
Jared Hamner  
Chair, Tooele County Council  
*James A. Welch*  
*McInnes-*

ALL WEST/UTAH, INC.:

Matthew Weller  
Matthew Weller  
President

APPROVED AS TO FORM:

Colin Winchester 04/27/2023  
Colin Winchester  
Deputy County Attorney

ATTEST:

Tracy Shaw 5-26-23  
Tracy Shaw  
County Clerk



# Tooele County Council Agenda Item Summary

**Department Making Request:**

Community Development

**Meeting Date:**

May 23, 2023

**Mark Options That Apply:** **Grant**  
*1 time* **Contract**  
*1 yr. or less* **Purchase***Exp date: \_\_\_\_\_* **Grant**  
*With County Match* **Contract**  
*More than 1 yr.* **Other** \_\_\_\_\_*Exp date: May 2053***Budget Impact:** **In Budget** **Over Budget****Amount of Contract, Service, Grant:** \$ N/A**Item Title:** Franchise Agreement with All West/Utah Inc.*Please answer the who? what? when? why?*

This is a NEW franchise agreement with a NEW telecommunications (fiber optic internet) provider. The provider is currently installing lines in Tooele City, and will extend to populated areas of the county in due course. This agreement allows the provider to install its lines under, along, and over, county rights-of-way. In exchange, the provider will annually pay the county 3.5% of its revenues from customers located in the unincorporated county. The agreement is for 30 years and is renewable after that.

**List who needs copies when approved:** Colin, Rachelle, Jed, Nicole