

Resolution No. 22-05

RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AND APPROVING A FRANCHISE AGREEMENT WITH CONNEXT NETWORKS LLC FOR WORK IN CITY'S RIGHTS-OF-WAY, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.

WHEREAS, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

WHEREAS, the City Council finds that in conformance with Utah Code (" UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

WHEREAS, the City Council finds it necessary to address additional communications services needs within the city; and,

WHEREAS, the City Council finds that the city staff has reviewed and studied this matter and recommends that to best address these additional communications service needs within the city, the city council authorize and approve a Franchise Agreement with Connex Networks LLC for work in the City's rights-of-way, including not limited to installation of service lines, and additional communications services; and,

WHEREAS, the City Council finds that Connex Networks LLC has demonstrated the professional ability to provide for these services to meet the additional communications services needs of the city and its residents while preserving the infrastructure of the city; and,

WHEREAS, the City Council finds that City now desires to achieve these ends by authorizing and approving a franchise agreement with Connex Networks LLC for work in the City's rights-of-way; and,

WHEREAS, the City Council finds that the public convenience and necessity requires the actions contemplated,

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:

SECTION II - CONTRACT AUTHORIZED

The **"Franchise Agreement"** Between South Ogden City And Connex Networks LLC, Attached Hereto As **Attachment "A"** and by This Reference Fully Incorporated Herein, Is Approved And Adopted With The Condition That The City Manager, With The Concurrence Of The City Attorney, Is Authorized To More Fully Negotiate And Resolve Any Remaining Details, Or Changes, Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Is Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval. If The City Manager Is Unable To Successfully Resolve Any Remaining Details, Or Changes, This Authorization And Approval Shall Be Void And The City Manager Shall So Notify The Council.

That the foregoing recitals are incorporated herein.

SECTION III - PRIOR ORDINANCES AND RESOLUTIONS

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

SECTION IV - REPEALER OF CONFLICTING ENACTMENTS

All orders, and Resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part repealed.

SECTION V - SAVINGS CLAUSE

If any provision of this Resolution shall be held or deemed or shall be invalid, inoperative or unenforceable such shall render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed the separate independent and severable act of the City Council of South Ogden City.

SECTION VI - DATE OF EFFECT

This Resolution shall be effective on the 15th day of March, 2022, and after publication or posting as required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, STATE OF UTAH, on this 15th day of March, 2022.

SOUTH OGDEN CITY

Russell Porter, Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT "A"

Resolution No. 12-05

Resolution Of South Ogden City Authorizing And Approving A Franchise Agreement With Connex Networks LLC For Work In City's Rights-Of-Way, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

15 Mar 22

FRANCHISE AGREEMENT
SOUTH OGDEN CITY, UTAH

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between SOUTH OGDEN CITY, Utah (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 3950 Adams Ave., South Ogden, Utah, 84403, and Connext Networks LLC (hereinafter "Franchisee"), a Limited Liability Company with its principal offices at 2655 G Avenue, Ogden, Utah, 84401.

WITNESSETH:

WHEREAS, FRANCHISEE desires to provide telecommunications services, as more particularly defined in the "Municipal Telecommunications License Tax Act," (the "Act"), Utah Code Ann. §§10-1-401, et seq., as amended, and establish a telecommunications network, system and/or facilities in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 11 of the Revised Ordinances of South Ogden City (hereinafter the "Telecommunications Ordinance" or "ordinance") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in the exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide 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 FRANCHISEE agree as follows:

AGREEMENT

ARTICLE 1. FRANCHISE AGREEMENT AND 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 Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. FRANCHISEE acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Ordinance. The parties agree that the provisions and requirements of the Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Ordinance. The definitions in the Ordinance shall apply herein unless a different meaning is set forth in the Act or is otherwise indicated. Nothing in this Section shall be deemed to require FRANCHISEE to comply with any provision of the Telecommunications Ordinance which is determined to be unlawful or beyond the CITY's authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Ordinance at any time. Provided, however, CITY shall not enact any amendments to the Ordinance that will adversely impact FRANCHISEE without allowing FRANCHISEE 30 days, or such longer time as is necessary if 30 days is insufficient, in which to comply with the amendment. The CITY shall give FRANCHISEE notice and an opportunity to be heard concerning any proposed amendment. If there is any Inconsistency between FRANCHISEE's rights and obligations under the Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, FRANCHISEE agrees to comply with any such amendments.

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

1.5 Licenses. 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 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, FRANCHISEE shall pay to the CITY a tax in accordance with the Municipal Telecommunications License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410 as amended from time to time), less any business license fee or business license tax enacted by the CITY. 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 any fees or taxes charged to FRANCHISEE under this Agreement shall be of the same nature and calculation of fees or tax currently charged or charged in the future to other similarly situated entities.

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 FRANCHISEE upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to the CITY's representative designated herein written notice of FRANCHISEE's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of FRANCHISEE Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between FRANCHISEE and the CITY, or by revocation or forfeiture, FRANCHISEE shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of 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.

ARTICLE 4. POLICE POWERS

The CITY expressly reserves, and 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. 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 FRANCHISEE conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, 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 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. 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 Ordinance, and the City's Excavation Permit Policy. For 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 Ordinance, and the CITY's Excavation Permit Policy.

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, upon ninety (90) days prior notice, for any of the following reasons:

(a) 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;

(b) FRANCHISEE, by actor omission, materially violates a material duty herein set forth in any particular provision within FRANCHISEE's control, and with respect to which 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 FRANCHISEE notice of such determination; 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 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, 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 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 FRANCHISEE; or

(c) 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 FRANCHISEE within sixty (60) days.

6.2 Reserved Rights. Nothing contained herein shall be deemed to preclude 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 FRANCHISEE or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or FRANCHISEE, whichever the case

may be, may assert 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. In the event of any controversy, claim or action being filed or instituted between the CITY and FRANCHISEE relating to or arising out of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs through all levels of action incurred by the prevailing party.

6.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and 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).

6.5 Assignment. This Agreement may not be assigned by FRANCHISEE except to a wholly owned subsidiary of FRANCHISEE without the prior written consent of the CITY, which consent shall not be unreasonably withheld.

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 Ordinance, all notices from FRANCHISEE to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at:

South Ogden City
Attn: City Manager
3950 Adams Ave.
South Ogden, Utah 84403

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

7.2 FRANCHISEE Designee and Address. FRANCHISEE's Executive Director or his or her designee(s) shall serve as FRANCHISEE'S representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Ordinance, all notices from the CITY to FRANCHISEE pursuant to or concerning this Agreement, shall be delivered to FRANCHISEE's offices at:

David Brown
Member Manager
2655 G Avenue
Ogden, Utah 84401

or such other officer and address as 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, 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 FRANCHISEE is effectively self-insured if 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 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. 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 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 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 FRANCHISEE to assume the defense of such with counsel of FRANCHISEE'S choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, 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 providers 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 at the same time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

9.2 Underground Installation. Notwithstanding the provisions of Article 1.3 of this Agreement, FRANCHISEE expressly agrees to install and maintain all of its underground facilities in accordance with CITY Ordinances regarding 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.

9.3 Aerial Installation: Notwithstanding the provisions of Article 1.3 of this Agreement,

FRANCHISEE expressly agrees to install and maintain all of its aerial facilities in accordance with CITY Ordinances regarding the installation of aerial utility lines and pole attachment agreement terms, 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 providers in the same location are required to do so.

9.4 Prior Approval. FRANCHISEE shall not perform any work within CITY Rights-of-Way without having first obtained a written permit from the CITY authorizing such work.

ARTICLE 10. GENERAL PROVISIONS

10.1 Binding Agreement. The parties represent that: (a) when executed by their respective representatives, 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 its operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

10.2 Governing Law. This Agreement shall be interpreted pursuant to Utah law and jurisdiction and venue for any legal action pertaining to this Agreement shall be in the District Court of Weber County State of Utah.

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 in include the plural number and vice versa, and the use of any gender shall include the other gender. 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. Both parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing this Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

10.6 Entire Agreement and Amendments. This Agreement and all attachments hereto constitute the entire agreement and understanding between the parties and replaces any previous agreement, understanding or negotiation between the parties with respect to its subject matter, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

SIGNED AND ENTERED INTO On the _____ day of _____, 20__.

"CITY"
SOUTH OGDEN CITY

By _____
Matthew J. Dixon, City Manager

ATTEST

Leesa Kapetanov,
City Recorder

STATE OF UTAH)
 : ss,
COUNTY OF DAVIS)

On the _____ day of _____, 20__, personally appeared before me MATTHEW J. DIXON, and LEESA KAPETANOV, who being by me duly sworn did say, each for himself that he, the said MATTHEW J. DIXON, is the City Manager of South Ogden City, Weber County, State of Utah and that she, the said LEESA KAPETANOV, is the City Recorder of South Ogden City, and that the within and foregoing instrument was signed on behalf of the said South Ogden City by authority of the City Council of South Ogden City and said MATTHEW J. DIXON, and LEESA KAPETANOV, each duly acknowledged to me that the said South Ogden City executed the same and that the seal affixed is the seal of the said South Ogden City.

NOTARY PUBLIC

FRANCHISEE

Connex Networks

Signature

David Brown

Printed Name

Member Manager

Title

STATE OF Utah

:ss

COUNTY OF Weber)

On this 1st day of _____, 2022, David Brown personally appeared before me _____
_____ who being by me duly sworn did say that he/she is the Member Manager of Connex
Networks, a LLC corporation/partnership, and that Connex Networks is the legal property owner
of record of the property subject to this Agreement and that the foregoing Agreement was signed
in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he/she
acknowledged to me that said corporation/partnership executed the same.

NOTARY PUBLIC

Exhibit “A”

South Ogden City Telecommunications Ordinance

CHAPTER 4 TELECOMMUNICATIONS; USE OF RIGHTS-OF-WAY

[7-4-1: Findings And Intent; Authority](#)

[7-4-2: Definitions](#)

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[7-4-14: Severability](#)

7-4-1: Findings And Intent; Authority

A. Rights-Of-Way: The City finds that the rights-of-way within the City:

1. Are critical to the travel and transport of persons and property in the business and social life of the City;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the City and its citizens; and
4. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the rights-of-way.

B. Compensation: The City finds that the City should receive fair and reasonable compensation for use of the rights-of-way.

C. Local Concern: The City finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights-of-way, Municipal franchising and vital business and community service, which are of local concern.

D. Promotion Of Telecommunications Services: The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for Municipal, educational and community services.

E. Franchise Standards: The City finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

1. Fairly and reasonably compensates the City on a competitively neutral and

nondiscriminatory basis as provided herein;

2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
3. Fully protects the public interests and the City from any harm that may flow from such commercial use of rights-of-way;
4. Protects the police powers and rights-of-way management authority of the City, in a manner consistent with Federal and State law;
5. Otherwise protects the public interests in the development and use of the City infrastructure;
6. Protects the public's investment in improvements in the rights-of-way; and
7. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the telecommunications act of 1996 (P.L. No. 104-104) (hereafter, the "act").

F. Power To Manage Rights Of Way: The city adopts this telecommunications chapter pursuant to its power to manage the rights of way, pursuant to common law, the Utah constitution and statutory authority, and receive fair and reasonable compensation for the use of rights of way by providers as expressly set forth by section 253 of the act. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-2: Definitions

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION: The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights of way of all, or a part, of the city. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the city concerning: the construction of a telecommunications system over, under, on or through the rights of way; the telecommunications services proposed to be provided in the city by a provider; and any other matter pertaining to a proposed system or service.

CITY: South Ogden City, Utah.

COMPLETION DATE: The date that a provider begins providing services to customers in the city.

CONSTRUCTION COSTS: All costs of constructing a system, including make-ready costs, other than engineering fees, attorney or accountant fees, or other consulting fees.

CONTROL OR CONTROLLING INTEREST: Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or

indirectly, by any person or group of persons acting in concert, of more than twenty five percent (25%) of any provider (which person or group of persons is hereinafter referred to as "controlling person"). Control or controlling interest, as used herein, may be held simultaneously by more than one person or group of persons.

FCC: The federal communications commission or any successor thereto.

FRANCHISE: The rights and obligations extended by the city to a provider to own, lease, construct, maintain, use or operate a system in the rights of way within the boundaries of the city. Any such authorization, in whatever form granted, shall not mean or include:

- A. Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city;
- B. Any other permit, agreement or authorization required in connection with operations on rights of way or public property, including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights of way.

FRANCHISE AGREEMENT: A contract entered into in accordance with the provisions of this chapter between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

GROSS REVENUE: Includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Annotated title 11, chapter 26, as amended.

INFRASTRUCTURE PROVIDER: A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights of way.

OPEN VIDEO SERVICE: Any video programming services provided to any person through the use of rights of way by a provider that is certified by the FCC to operate an open video system pursuant to section 651 et seq., of the telecommunications act (to be codified at 47 USC title VI, part V), regardless of the system used.

OPEN VIDEO SYSTEM: The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the city.

OPERATOR: Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

ORDINANCE OR TELECOMMUNICATIONS ORDINANCE: This telecommunications chapter concerning the granting of franchises in and by the city for the construction, ownership, operation, use or maintenance of a telecommunications system.

PSC: The public service commission or any successor thereto.

PERSON: Includes any individual, corporation, partnership, association, joint stock company, trust or any other legal entity, but not the city.

PERSONAL WIRELESS SERVICES FACILITIES: Has the same meaning as provided in section 704 of the act (47 USC 332(c)(7)(c)), which includes what is commonly known as cellular and PSC services that do not install any system or portion of a system in the rights of way.

PROVIDER: An operator, infrastructure provider, resaler or system lessee.

RESELLER: Refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

RIGHTS OF WAY: The surface of and the space above and below any public street, sidewalk, alley or other public way of any type whatsoever, now or hereafter existing as such within the city.

SIGNAL: Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information, in either analog or digital format.

SYSTEM LESSEE: Refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS: The transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video and voice), without change in the form or content of the information sent and received.

TELECOMMUNICATIONS SERVICE OR SERVICES: Any telecommunications services provided by a provider within the city that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the city, except that these terms do not include "cable service," as defined in the cable communications policy act of 1984, as amended by the cable television consumer protection and competition act of 1992 (47 USC 521 et seq.) and the telecommunications act of 1996. Telecommunications service or services also includes an open video service.

TELECOMMUNICATIONS SYSTEM OR SYSTEM: All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased or used by a provider, located in the rights of way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.

WIRE: Fiber optic telecommunications cable, wire, coaxial cable or other transmission medium that may be used in lieu thereof for similar purposes. (Ord. 989, 11-17-1998, eff. 11-17-1998; amd. 2001 Code)

7-4-3: Administration; General Provisions

- A. **Conflicts:** In the event of a conflict between any provision of this chapter and a franchise entered pursuant to it, the provisions of this chapter in effect at the time the franchise is entered into shall control.
- B. **New Developments:** It shall be the policy of the city to liberally amend this chapter, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently or economically serve itself or the public. (Ord. 989, 11-17-1998,

eff. 11-17-1998)

- C. Notices: All notices from a provider to the city required under this chapter or pursuant to a franchise granted pursuant to this chapter shall be directed to the officer as designated by the city manager. A provider shall provide in any application for a franchise the identity, address and phone number of the person designated to receive notices from the city. A provider shall immediately notify the city of any change in its name, address or telephone number. (Ord. 989, 11-17-1998, eff. 11-17-1998; amd. 2001 Code)
- D. Exercise Of Police Power: To the full extent permitted by applicable law either now or in the future, the city reserves the right to adopt or issue such rules, regulations, orders or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.
- E. Construction:
 - 1. Federal And State Statutes: This chapter shall be construed in a manner consistent with all applicable federal and state statutes.
 - 2. Applicability: This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof.
 - 3. Other Applicable Ordinances: A provider's rights are subject to the police powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the city pursuant to its police powers. In particular, all providers shall comply with the city zoning and other land use requirements.
 - 4. City Failure To Enforce: A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any franchise granted pursuant to this chapter by reason of any failure of the city to enforce prompt compliance.
 - 5. Construed According To Utah Law: This chapter and any franchise granted pursuant to this chapter shall be construed and enforced in accordance with the substantive laws of the state. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-4: Applicability; Exceptions

- A. Providers: This chapter shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights of way, including providers of both the system and service, those providers of the system only and those providers who do not build the system but who only provide services. This chapter shall apply to all future providers and to all providers in the city prior to the effective date hereof, whether operating with or without a franchise as set forth in subsection 7-4-3E2 of this chapter.
- B. Excluded Activities:
 - 1. Cable Television Operators: This chapter shall not apply to cable television operators otherwise regulated by ordinances 650, 656 and 675, and their progeny (the cable television ordinance).
 - 2. Wireless Service Facilities: This chapter shall not apply to personal wireless service

facilities.

- C. Excluded Providers; Provisions Applicable: Providers excused by other law that prohibits the city from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the city's police power and not preempted by other law shall be applicable. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-5: Franchise Required

- A. Nonexclusive Franchise; Authority: The city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the city's rights of way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider.
- B. Provider Required To Obtain: Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights of way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the city is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.
- C. Nature Of Grant: A franchise shall not convey title, equitable or legal, in the rights of way. A franchise is only the right to occupy rights of way on a nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the city's property. This subsection shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.
- D. Current Providers; Time Limit To Request: Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date hereof shall request issuance of a franchise from the city within ninety (90) days of the effective date hereof. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of subsection 7-4-12D of this chapter.
- E. Nature Of Franchise: The franchise granted by the city under the provisions of this chapter shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights of way in order to provide services.
- F. Regulatory Approval Needed: Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the city, upon the written request of the city,

evidence of all such approvals, permits, authorizations or licenses.

- G. Term: No franchise issued pursuant to this chapter shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-6: Application For Franchise

- A. Required; Form: To obtain a franchise to construct, own, maintain or provide services through any system within the city, to obtain a renewal of a franchise granted pursuant to this chapter or to obtain the city approval of a transfer of a franchise, as provided in subsection 7-4-11A2 of this chapter, granted pursuant to this chapter, an application must be filed with city on the form attached to the ordinance codified herein as exhibit A, which is hereby incorporated by reference. The application form may be changed by the mayor or city manager so long as such changes request information that is consistent with this chapter. Such application form, as amended, is incorporated by reference.
- B. Criteria: In making a determination as to an application filed pursuant to this chapter, the city may, but shall not be limited to, request the following from the provider:
1. A copy of the order from the PSC granting a certificate of convenience and necessity.
 2. Certification of the provider's financial ability to compensate the city for provider's intrusion, maintenance and use of the rights of way during the franchise term proposed by the provider.
 3. Provider's agreement to comply with the requirements of section 7-4-9 of this chapter.
- C. Determination By City: The city, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights of way, without competitive bidding. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-7: Compensation, Fees And Payments

- A. Compensation; Provider Obligations: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:
1. Application Fee: In order to offset the cost to the city to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, five hundred dollars (\$500.00) as a nonrefundable application fee.
 2. Franchise Fee: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the city.
 3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in chapter 3 of this title.
- B. Due Monthly: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month.
- C. Statement Of Calculation; Certification: Unless a franchise agreement provides otherwise,

each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

- D. **Future Costs:** A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the city incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American arbitration association. Additionally, any costs associated with any work to be done by the power and public works department to provide space on city-owned poles, if any, shall be borne by the provider.
- E. **Taxes, Assessments:** To the extent taxes or other assessments are imposed by taxing authorities, other than the city, on the use of the city property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter.
- F. **Interest On Late Payments:** In the event that any payment is not actually received by the city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.
- G. **Acceptance Of Fee; Not Construed Satisfaction:** No acceptance by the city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city may have for additional sums payable.
- H. **Additional Taxes Or Fees Still Applicable:** The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city-owned poles are not waived and remain applicable.
- I. **Operation After Term; Continuing Obligation And Holdover:** In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the city as a result of such continued operation after the term, including, but not limited to, damages and restitution.
- J. **Publication Costs:** A provider shall assume any publication costs associated with its franchise that may be required by law. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-8: Insurance, Record Requirements

- A. **Insurance Required:** Prior to the execution of a franchise, a provider will deposit with the city an irrevocable, unconditional letter of credit or surety bond as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the city as set forth in the franchise.
- B. **Oversight:** The city shall have the right to oversee, regulate and inspect periodically the

construction, maintenance and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the city at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations. The provider shall, in a timely manner, notify the city prior to the construction, maintenance and upgrade of the system to allow the city to exercise the oversight rights conferred herein.

C. Records Maintenance: A provider shall at all times maintain:

1. On file with the city, a full and complete set of plans, records and as-built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the city's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights of way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks, which shall include annotations of all rights of ways where work will be undertaken. As used herein, as-built maps include file construction prints. Maps shall be drawn to scale. As-built maps, including the compatible electronic format, as provided above, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs. As-built maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.
2. Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership and operations of a provider with respect to the system in a manner that allows the city at all times to determine whether a provider is in compliance with the franchise. Should the city reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the state and generally accepted accounting principles shall be deemed to be acceptable under this section.

D. Confidentiality: If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah government records access and management act (GRAMA), making it available only to those who must have access to perform their duties on behalf of the city; provided, that a provider notifies the city of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.

E. Provider's Expense: All reports and records required under this chapter shall be furnished at the sole expense of a provider, except as otherwise provided in this chapter or a franchise.

F. Right Of Inspection: For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the city at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided, that the city shall not audit the books and records of the provider more often than annually. The provider agrees

to reimburse the city the reasonable costs of an audit if the audit discloses that the provider has paid ninety five percent (95%) or less of the compensation due the city for the period of such audit. In the event the accounting rendered to the city by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the city may accept any amount offered by the provider, but the acceptance thereof by the city shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-9: Construction, Technical Requirements

- A. Compliance Required; Excavation Permit: No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the city or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to chapter 3 of this title, before commencing any work in the rights of way.
- B. Quality And Performance Of Work: All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner, using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.
- C. Licenses And Permits: A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including, but not limited to, any necessary approvals from persons and/or the city to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.
- D. Relocation Of System:
 - 1. New Grades Or Lines; Excavation Requirements: If the grades or lines of any rights of way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of chapter 3 of this title.
 - 2. Emergency; City Authority To Move System: The city may, at any time, in case of fire, disaster or other emergency, as determined by the city in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights of way of the city, in which event the city shall not be liable therefor to a provider. The city shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in subsection 7-4-3C of this chapter.

3. Temporary Move For Third Party: A provider shall, upon prior reasonable written notice by the city or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the city for any such movement of its systems.
 4. Change In Rights Of Way; Obligation To Move System: When the city is changing a right of way and makes a written request, a provider is required to move or remove its system from the right of way, without cost to the city, to the extent provided in the excavation ordinance, as provided in chapter 3 of this title. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights of way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.
- E. Protection Of Structures, Landmarks: In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the city and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the city to alter any water main, power facility, sewerage or drainage system, or any other city structure on, over or under the rights of way of the city required because of the presence of the system. Any such alteration shall be made by the city or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the city to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the city, any municipal structure or any other rights of way of the city involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.
- F. Obstructions Prohibited: In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights of way of fixed guideway systems, railways, passenger travel or other traffic to, from or within the city without the prior consent of the appropriate authorities.
- G. Safety Precautions: A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements, including, but not limited to, the national electrical safety code.
- H. Repair Of Rights Of Way: After written reasonable notice to the provider, unless, in the sole determination of the city, an eminent danger exists, any rights of way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the city shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights of ways intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the city the entire amount thereof.
- I. Maintenance Of System: A provider shall:

1. Install and maintain all parts of its system in a nondangerous condition throughout the entire period of its franchise.
2. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the national electrical safety code and all applicable other federal, state and local laws or regulations.
3. At all reasonable times, permit examination by any duly authorized representative of the city of the system and its effect on the rights of way.

J. Trimming Trees; Authority: A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights of way so as to prevent the branches of such trees from coming in contact with its system. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-10: Private Property; Obligation To Notify.

Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-11: Transfer Of Franchise And License

A. Notification Of Sale:

1. PSC Approval: When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposal, in whole or in part, either by force or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the city of the nature of the transaction. The notification shall include either:
 - a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
 - b. The successor entity's application, in compliance with section 7-4-6 of this chapter.
2. Transfer Of Franchise: Upon receipt of a notification and certification in accordance with subsection A1a of this section, the city designee, as provided in subsection 7-4-12A1 of this chapter, shall send notice affirming the transfer of the franchise to the successor entity. If the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer. The application shall comply with section 7-4-6 of this chapter.
3. PSC Approval No Longer Required: If the PSC no longer exists or if its regulations or state law no longer require approval of transactions described in subsection A of this section, and the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall comply with section 7-4-6 of this chapter.

B. Events Of Sale: The following events shall be deemed to be a sale, assignment or other

transfer of the franchise requiring compliance with subsection A of this section:

1. The sale, assignment or other transfer of all or a majority of a provider's assets to another person;
2. The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider;
3. The issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or
4. The entry by a provider into an agreement with respect to the management or operation of such provider or its system. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-12: Enforcement; Rights Of City.

A. Enforcement; Remedies:

1. City Designee: The city is responsible for enforcing and administering this chapter and the city or its designee, as appointed by the city manager, is authorized to give any notice required by law or under any franchise agreement.
2. Enforcement Provisions: Any franchise granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, procedures for accessing the bond/security fund and rights of termination or revocation.

B. Force Majeure: In the event a provider's performance of any of the terms, conditions or obligations required by this chapter or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this subsection, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies and natural disasters such as floods, earthquakes, landslides and fires.

C. Extended Operation; Continuity Of Services:

1. Continuation After Expiration: Upon either expiration or revocation of a franchise granted pursuant to this chapter, the city shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this chapter and the franchise granted pursuant to this chapter.
2. Incumbent Local Exchange Carrier; Negotiate Renewal: If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

D. Removal Or Abandonment Of Franchise Property:

1. **Abandoned System:** In the event that: a) the use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of provider; b) any system has been installed in the rights-of-way without complying with the requirements of this chapter or franchise; or c) the provisions of subsection 7-4-5E of this chapter are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.
2. **Removal Of Abandoned System:** The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this chapter, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and any Security Fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.
3. **Transfer Of Abandoned System To City:** Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.
4. **Removal Of Aboveground System:** At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this chapter, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all aboveground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.
5. **Leaving Underground System:** Notwithstanding anything to the contrary set forth in this chapter, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person. (Ord. 989, 11-17-1998, eff. 11-17-1998)

7-4-13: Small Wireless Facilities Deployment

Notwithstanding anything in this chapter to the contrary, the requirements of Utah Code section 54-21-101 et seq., shall control the regulation of small wireless facilities deployment in the event there is a conflict between the City's regulations and requirements and the requirements of Utah Code section 54-21-101 et seq. (Ord. 18-15, 11-20-2018, eff. 11-20-2018)

7-4-14: Severability

If any provision of this chapter is held by any Federal, State or local court of competent jurisdiction to be invalid as conflicting with any Federal or State Statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law, the provision in question shall return to full force and effect and shall again be binding on the City and the provider; provided, that the City shall give the provider thirty (30) days', or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision. (Ord. 18-15, 11-20-2018, eff. 11-20-2018)