

**TOWN OF HUNTSVILLE
ORDINANCE NO. 2023-5-2-A**

CABLE TELEVISION FRANCHISE

AN ORDINANCE OF HUNTSVILLE TOWN, UTAH, GRANTING TO ALL WEST/UTAH, INC., A NON-EXCLUSIVE FRANCHISE TO INSTALL, OPERATE AND MAINTAIN CABLE TELEVISION FRANCHISE WITHIN THE PUBLIC RIGHTS-OF-WAY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Huntsville Town (“Town”) and All West/Utah, Inc. (“All West”), previously entered a Communication Franchise Agreement dated May 2, 2023 and now, All West seeks to add a Cable Television Franchise (“Franchise”) within the Town; and

WHEREAS, the Town Council desires to enter said Franchise; and

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

WHEREAS, the Town is willing to grant the rights requested subject to certain terms and conditions specified in the Franchise;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Huntsville, Utah as follows:

Section 1. Adoption.

The Franchise Agreement set forth in the attached “A” is incorporated herein by this reference and is approved and adopted. The Town Council hereby authorizes and directs the Mayor to execute the Agreement and any documents relating thereto for and on behalf of the Town.

Section 2. Effective Date.

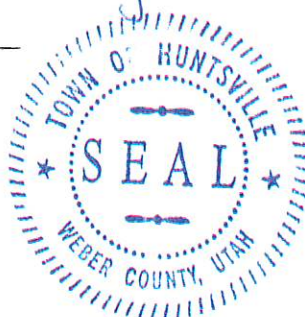
This Ordinance is effective immediately upon adoption and approval.

PASSED AND APPROVED this 2 day of May, 2023

Neil G. Jansen
Mayor

ATTEST:

Beekie Endicott
Town Clerk



FRANCHISE AGREEMENT BETWEEN THE HUNTSVILLE TOWN AND ALL WEST/UTAH, INC. REGARDING OPERATION OF A CABLE TELEVISION SYSTEM WITHIN HUNTSVILLE TOWN

This Franchise Agreement ("Franchise Agreement") made between Huntsville Town (the "Town") and All West/Utah, Inc. ("All West" or "Grantee") is entered this 2 day of May, 2022, by and between the Town, a municipal subdivision of the State of Utah and All West, a Utah corporation and for the purpose of granting to All West the non-exclusive right to operate and maintain a cable television system in, on, over, upon, along, and across the public rights of way of Huntsville Town, and for the purpose of identifying and prescribing certain rights, duties, terms, and conditions with respect thereto.

Section 1. Definitions. When used in this Franchise Agreement, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

- (1) "Basic Cable Service" means any service tier of Cable Service which includes the retransmission of local television broadcast signals by the Grantee.
- (2) "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto.
- (3) "Cable Service" means: (a) the one-way transmission to Subscribers of video programming or other programming service; and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (4) "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community as defined in the Cable Act. A Cable System may be composed of, without limitation, antenna, cables, wires, lines, fibers, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing cable radio, television or other electronic or electrical signals to and from persons, Subscribers and locations in the Franchise Area.
- (5) "Council" means the governing body of the Town.
- (6) "Franchise Area" means that area within the corporate limits of the Town as now or hereafter constituted.
- (7) "Grantee" means All West/Utah, Inc., its successors and assigns ("All West").

(8) "Grantee Property" means all property owned, installed or used by the Grantee in the provision of Cable Service in the Town as described in Section 2.

(9) "Gross Subscriber Revenues" means all remuneration received directly by the Grantee from Subscribers in payment for regularly furnished Cable Service, but shall not include any franchise fee or taxes on services furnished by the Grantee imposed on any Subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the Grantee.

(10) "Person" means any natural person, company or entity of any kind.

(11) "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, boulevard, communications or utility easement, by whatever name called, now or hereafter existing as such within the Franchise Area.

(12) "Subscriber" means any person or entity who lawfully receives any Cable Service.

(13) "Town" means Huntsville Town, Utah.

Section 2. Grant of Authority. There is hereby granted by the Town to the Grantee the right and privilege to engage in the business of operating and providing a Cable System in the Town, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Street or Streets laid out or dedicated and all extensions thereof and additions thereto in the Franchise Area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System (collectively "Grantee Property"); and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other Grantee franchised or permitted to do business in the Town.

Section 3. Non-Exclusive Grant. The right to use and occupy said Streets for the purposes herein set forth, shall not be exclusive to the Grantee. The Town agrees that any grant of additional franchises or other authorizations by the Town to any other entity to provide video or other services similar to those provided by Grantee pursuant to this Franchise Agreement and over which the Town has regulatory authority shall require that service be provided for the same territorial area of the Town as required by this Franchise Agreement and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth herein.

Section 4. Term of Franchise. The franchise and rights herein granted shall commence on the date of the final passage hereof and shall continue in force and effect for fifteen (15) years after said effective date, subject to such modifications as to which the Town and the Grantee may hereafter agree. Thereafter, the franchise and rights granted herein shall automatically renew for

successive fifteen (15) year periods unless the Town revokes such franchise and rights by ordinance on or before the expiration of the initial term or any renewal period hereof.

Section 5. Conditions of Street Occupancy. (1) All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the Franchise Area shall be so located as to cause minimum interference with the proper use of Streets and with the rights and reasonable convenience of property owners who adjoin any of said Streets. The Cable System shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

(2) In case of disturbance of any Street or paved area, the Grantee shall, at its expense and in accordance with generally accepted construction practices, replace and restore such Street or paved area in as good condition as theretofore.

(3) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same Street or other public place, or remove from the Street or other public place, any Grantee Property when lawfully required by the Town by reason of traffic conditions, public safety, Street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, or water pipes, or any other type of structures or improvements by the Town; but, the Grantee shall in all cases have the right of abandonment of Grantee Property, subject to Town ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

(4) The Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings, provided: (a) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) The Grantee is given not less than three (3) business days advance notice to arrange for such temporary wire changes.

(5) The Grantee shall have the authority to trim trees overhanging any Streets in the Franchise Area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the Town, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

(6) Subject to any applicable state or federal regulations or tariffs, the Town shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Street, provided: (a) such use by the Town does not interfere with the use by the Grantee; (b) such use by the Town does not commercially compete with the Grantee; and (c) the Town holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

Section 6. Safety Requirements. (1) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(2) All structures and all lines, equipment and connections in, over, under and upon all Streets of the Franchise Area shall be kept and maintained in a safe and suitable condition and in good order and repair.

Section 7. System Construction and Extension. The Grantee is hereby authorized to extend the system within the Franchise Area to the extent that such extension is or may become technically and economically feasible. Nothing in this agreement requires Grantee to build to all areas of the Franchise Area. Grantee retains discretion to determine the scope, location, and timing of the design and construction of its network.

Section 8. Operational Standards; Force Majeure. (1) The Grantee shall operate and maintain its Cable System in full compliance with the standards set forth by the Federal Communications Commission.

(2) The Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate Cable Service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship.

Section 9. Office; Complaints. The Grantee shall maintain a business office or agent which Subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the Grantee.

Section 10. Franchise Payments. (1) The Grantee shall pay the Town a sum equal to three percent (3%) of the Gross Subscribers Revenues per annum derived by the Grantee from all Subscribers located within the Town.

(2) Within 60 days after the first day of July of each year, during the term of this Franchise Agreement, the Grantee shall file with the Town a report of such revenues as described within this section for the next preceding twelve (12) month period, which report shall include a computation of the franchise payment due. The Town shall determine the accuracy of the franchise payment computation, and if it finds any errors, shall report the same to Grantee for correction. The records of the Grantee reflecting the information relevant in determining revenues described in this section shall be available for inspection by the Town Council or its duly authorized representative at all reasonable hours and upon reasonable notice of not less than 15 days.

(3) The payments described in this section shall be in lieu of any and all other franchise, occupation, privilege, pole, wire, instrument, excise or other taxes except general ad valorem property taxes, sales taxes, Town license tax and other special improvement taxes lawfully levied by the Town or any other subdivision of the State of Utah pursuant to law.

(4) The business of cable television is hereby classified as a "retail business" for licensing purposes and the Grantee shall pay the annual license fee for such business at the rate in effect each year for such businesses, but it will not be singled out for tax treatment different from other members of that general class of business. The Grantee is authorized to charge and collect this franchise fee from the Subscribers in addition to the charges for Cable Services heretofore or hereafter approved by the Town in the same manner as such billing and collection is authorized under the utility franchises issued by the Town.

Section 11. Indemnification of Town. (1) The Grantee shall at all times protect and hold the Town harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said Cable System and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the Town gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, comprehensive general liability insurance with limits inclusive of umbrella or excess liability coverage of not less than (a) \$2,000,000 for bodily injury or death to each person; and (b) \$3,000,000 for property damages resulting from any one accident.

(2) The Town may require that any and all investigation of claims made by any person against the Town arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the Town shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

Section 12. Procedures. (1) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the Town in regard to the operations of the Grantee's Cable System, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the Town.

(2) The notice required by this section shall clearly state the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the Town. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public

participation will be allowed and the procedures by which such participation may be obtained. The company shall be a necessary party to any hearing conducted in regard to its operations.

Section 13. Procedure Upon Termination. Upon expiration of the Franchise Agreement, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the Streets or other property of the Town, for the purposes of removing therefrom any or all of its Grantee Property or otherwise. In so removing said Grantee Property, the Grantee shall refill, at its expense, any excavation that it shall make and shall leave said Streets in as good condition as that prevailing prior to the Grantee's removal of Grantee Property.

Section 14. Approval of Transfer. The Grantee shall not sell or transfer its plant or Cable System to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this Franchise Agreement to another, without prior written notification to the Town. No sale or transfer of the Grantee's assets used in the performance of this Franchise Agreement shall be effective until the vendee, assignee or lessee has filed in the office of the Town clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise Agreement and agreeing to perform all the conditions thereof. Neither this section nor other sections of this Franchise Agreement shall preclude the mortgaging, hypothecating, or assigning of rights in the Cable System, or the pledge of stock by the Grantee for the purpose of financing.

Section 15. Miscellaneous Provisions. (1) When not otherwise prescribed herein, all matters herein required to be filed with the Town shall be filed with the Town Clerk.

(2) The Grantee shall assume the cost of publication of this Franchise Agreement when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the Town Clerk.

(3) In the case of any emergency or disaster, the Grantee shall, upon request of the Town make available its facilities to the Town for emergency use during the emergency or disaster period.

Section 16. Compliance with Applicable Laws and Ordinances. The Grantee shall at all times during the life of this Franchise Agreement be subject to all lawful exercise of the police power by the Town. The Town reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the state or other local or federal laws or regulations.

Section 17. Violations; Penalties. (1) From and after the effective date of this title, it shall be unlawful for any person to construct, install or maintain within any public Street in the Town, or within any other public property of the Town, or within any privately-owned area within the Town which has not yet become a public Street but is designated or delineated as a proposed public Street on any tentative subdivision map approved by the Town, any equipment or facilities for distributing any television signals or radio signals through a Cable System, unless a

franchise authorizing such use of such Street or property or area has first been obtained, and unless such franchise is in full force and effect.

(2) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised Cable System within this Town for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.

(3) It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

(4) Any person violating or failing to comply with any of the provisions of this section shall be guilty of a class C misdemeanor.

Section 18. Line Severing. If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The Town will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee Property.

Section 19. Separability. If any part of this Franchise Agreement is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this Franchise Agreement shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee.

Section 20. Approval by Town Council and Effective Date. This Franchise Agreement shall be effective upon execution by the Grantee and the Town's Mayor and the prior approval of this Franchise Agreement by resolution of the Town Council adopted at a public meeting duly noticed under Utah law.

[SIGNATURE PAGE TO FOLLOW]

AGREED TO this 2 day of May, 2023.

HUNTSVILLE TOWN



By: Riley James
Its: Mayor

ATTEST:

Beski Endicott
Town Clerk

ALL WEST/UTAH, INC.

By: _____
Its: _____