

TELECOMMUNICATIONS FRANCHISE AGREEMENT BETWEEN PAYSON CITY, UTAH AND FIRSTDIGITAL TELCOM

This Telecommunication Franchise Agreement ("Franchise") is between Payson, Utah, hereinafter referred to as "City" and FirstDigital Telcom, hereinafter referred to as "Provider." The City and Provider are referred to together as "the Parties."

RECITALS

Provider desires to establish and provide a telecommunication network in the City's right-of-way ("City ROW").

Provider is subject to the Municipal Telecommunication License Tax Act found in section 10-1-401 et. seq. Utah Code Annotated, 1953, as amended, and Provider is subject to applicable City ordinances.

City, in exercise of its management of City ROW, believes that it is in the best interest of the public to grant Provider a nonexclusive franchise to operate a telecommunication network in the Payson City limits.

City has adopted applicable City ordinances ("Ordinances") and the Provider acknowledges that it has had an opportunity to read and become familiar with those Ordinances. The parties agree that the provisions and requirements of the Ordinances are material terms of this Agreement, and that each party agrees to be contractually bound to comply with the terms contained in those Ordinances and this Agreement. The definitions in the Ordinances shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Provider to comply with any provision of the Ordinances which are determined to be unlawful or beyond the City's authority. If any term or condition of this Agreement shall conflict with any applicable State or federal laws, City ordinances, rules, or regulations, then the provisions of such laws, ordinances, rules, or regulations shall govern and control.

AGREEMENT

SECTION 1. Grant of Franchise. The City hereby grants to Provider, subject to the City's receipt of monetary and services compensation and the provider's compliance with the terms of this Agreement, the nonexclusive right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other rights-of-way in the City ("Rights-of-Way", or in the singular "Right-of-Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of Provider located within the City's corporate limits. The City shall authorize the locations of Provider's facilities in City ROW. Provider will locate their facilities, in the City ROW, as shown in the Development Guidelines and will only cross the City ROW at locations where they must connect from one City ROW to another. Provider 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 ordinances.

SECTION 2. Acceptance by Provider. Within sixty (60) days after the passage of this Franchise by the City, Provider shall file an unqualified written acceptance thereof with the City; otherwise, the Franchise and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is TEN (10) years commencing on the date of Acceptance by Provider as set forth above in Section 2 and shall thereafter automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

SECTION 4. Records Inspection. Provider shall make available to the City at Provider's office, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than once every two (2) years, such relevant information pertinent only to enforcing the terms of this Franchise in such form and at such times as Provider can reasonably make available. Subject to applicable laws, any information that Provider provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Franchise. Except as otherwise provided herein, any such information provided to the City shall be returned to Provider following review, without duplication, unless Provider grants the City written permission to duplicate the information.

SECTION 5. Non-Exclusive Franchise. The Franchise provided hereby shall confer upon Provider 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 Provider the right, privilege, or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude Provider from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize Provider's System within the City for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and rules and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens consistent with applicable federal and state law. City agrees to promptly notify Provider of any such changes potentially applicable to this Franchise.

SECTION 7. Indemnification. Provider 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 to the extent arising from Provider'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 Provider 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 Provider to assume the defense of such with counsel of Provider's choosing, unless the City reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, Provider 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.

SECTION 8. Insurance Requirements.

8.1 Before the Effective Date, the Provider shall file with the City Recorder a certificate of insurance, and thereafter continually maintain in full force and effect at all times for the Term of this Agreement at the expense of the Provider, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by the Provider in the following minimum amounts:

i. \$2,000,000.00 combined single limit, bodily injury and real property damage in any one occurrence.

ii. \$3,000,000.00 aggregate.

8.2 The Provider shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City for all owned, non-owned, hired and leased vehicles operated by the Provider, with limits not less than \$2,000,000.00 each accident, single limit, bodily injury, and property damage combined.

8.3 The Provider shall also maintain, and by its acceptance of any franchise granted herein, specifically agrees that it will continually maintain throughout the Term workers compensation and employers' liability, valid in the State of Utah, in the minimum amount of the statutory limit for workers compensation but no less than \$500,000.00 for employer's liability.

8.4 All liability insurance required pursuant to this Section, except for employers' liability, shall name the City as additional insureds and shall be kept in full force and effect by the Provider during the Term and until after the removal or abandonment with the approval of the City Engineer, all facilities installed by the Provider. Failure to maintain continuously the required insurance shall constitute a material breach of this Agreement. All policies shall be endorsed to give the City 30 days' written notice of the intent to cancel by either the Provider or the insurance company. The Provider may utilize primary and umbrella liability insurance policies to satisfy the requirements of this Section.

SECTION 9. Plan, Design, Construction and Installation of Provider's Facilities.

9.1 All Facilities under authority of this Franchise shall be used, constructed and maintained in accordance with applicable law.

9.2 Provider shall, prior to commencing new construction or major reconstruction work in public right-of-way or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. Provider will provide plans for new facilities to be placed in the public right-of-way pursuant to a permit issued by the City. City shall have the discretion on location of Provider Facilities in the City ROW. Provider will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Provider shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities.

9.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located as much as possible in the City ROW so as to cause minimum interference with the public rights-of-way and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

9.4 If, during the course of work on its Facilities, Provider causes damage to or alters the public right-of-way or other public property, Provider shall replace and restore such public right-of-way or public property at Provider's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration, normal wear and tear excepted.

9.5 Provider shall have the right to excavate the public rights-of-way subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, Provider shall first obtain a permit from the City.

9.6 Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a public right-of-way that may affect Provider's Facilities, the City shall give written notice to Provider, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of Provider's poles, wires, conduits, conductors, pipes, and appurtenances.

9.7 Provider shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

SECTION 10. Relocation of Facilities.

10.1 Relocation for the City. Provider shall, upon receipt of advance written notice of not fewer than sixty (60) days, protect, support, temporarily disconnect, relocate, or remove any Provider property located in a public right-of-way when required to do so by the City for reasons of public health, safety, and welfare. Provider shall be responsible for any costs associated with these obligations to the same extent as other users of the respective public right-of-way.

10.2 Relocation for a Third Party. Provider shall, at the request of any person holding a lawful permit issued by the City and/or in support of a Non-Essential Project by City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any Provider property, provided that the cost of such action is borne by the person requesting it and Provider is given reasonable advance written notice and sufficient time to take

the appropriate action. In such situation, Provider may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than thirty (30) days for a temporary relocation, and no fewer than sixty (60) days for a permanent relocation.

10.3 Alternatives to Relocation. Provider may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of transmitting facilities in adjacent public rights-of-way. The City shall promptly evaluate such alternatives and advise Provider in writing if one or more of the alternatives are suitable. If requested by the City, Provider shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Provider full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, Provider shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, Provider shall in all cases have the right to abandon the Facilities.

SECTION 11. Vegetation Management. Provider shall have the authority to trim trees and other growth in the Rights-of-Way to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 12. Payment by Provider. For and in consideration of the Franchise, Provider shall pay to the City the Municipal Telecommunications License Tax in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. §§10-1-401 to 10-1-410). All such 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

If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law and except as otherwise agreed by the parties, the Provider shall pay to the City a tax levy or franchise fee of three and one-half percent (3.5%) of its gross receipts derived from local telephone or other telecommunications services provided to Provider's subscribers within the City ("Default Franchise Fee"), but does not include revenue from any taxes or fees imposed directly upon the customer by any governmental entity which is, or may be collected by the Provider, or any services, including but not limited to internet access service, as prohibited by law. "Gross receipts" for purposes of this subsection, also does not include sales, if any, at wholesale by Provider to another franchisee of the City who is separately responsible for paying a franchise fee on its gross receipts derived from the use of Provider's Facilities. The City and Provider agree to meet, confer, and negotiate about any amendments to this Agreement as shall be necessary to accommodate the change or elimination of the Municipal Telecommunications Act or the taxes or fees provided for under the Act.

SECTION 13. Revocation of Franchise for Noncompliance.

13.1 In the event that the City believes that Provider has not materially complied with the terms of the Franchise, the City shall discuss the matter with Provider. If these discussions do not lead to resolution of the problem, the City shall notify Provider in writing of the exact nature of the alleged noncompliance.

13.2 Provider shall have thirty (30) days from receipt of the written notice described in subsection 13.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

13.3 In the event that Provider does not comply with subsection 13.2, above, unless the parties agree to an extension of the time provided in subsection 13.2, above, the City shall schedule a hearing to address the asserted noncompliance issue. The City shall give Provider at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

13.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 13.3, determines that Provider is noncompliant with this Franchise, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Franchisee, seek to revoke the Franchise in accordance with subsection 13.5.

13.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Provider including a statement of all reasons for such revocation. Provider shall have sixty (60) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a hearing. The City shall cause to be served upon Provider, at least thirty (30) days prior to such hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Provider an opportunity to state its position on the matter, after which the City shall determine whether the Franchise shall be revoked. Provider may appeal the City's determination to an appropriate court. Such appeal must be taken in accordance with the Utah Rules of Civil Procedure. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Franchise in lieu of revocation.

13.6 Notwithstanding the foregoing provisions in this Section 13, Provider does not waive any of its rights under applicable law.

SECTION 14. No Waiver of Rights. Neither the City nor Provider shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Franchise that is inconsistent with State or Federal law, as may be amended.

SECTION 15. Transfer of Franchise. Provider's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and prior approval by the City, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Provider, or for any rights, title, or interest of Provider in the Franchise or Facilities in order to secure indebtedness, or to an entity that acquires substantially all the assets or equity of Provider by sale, merger, consolidation or reorganization, approval by the City shall not be required.

SECTION 16. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and Provider.

SECTION 17. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received upon actual receipt or refusal of delivery if sent by (a) personal delivery, (b) United States Mail, postage prepaid, certified, return receipt requested, or (c) nationally recognized overnight courier, and addressed to the Parties as set forth below:

The City:
Payson City
ATTN: City Recorder
439 West Utah Ave.
Payson, Utah 84651

To Provider:
Provider: FirstDigital Telecommunicaitons, LLC
357 South 670 West, Suite 300
Lindon, Utah 84020
ATTN: Legal Department

SECTION 18. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having appropriate jurisdiction thereof, or unconstitutional, illegal or invalid by any court having appropriate jurisdiction thereof, 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 hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 19. Termination. This Agreement may be terminated at any time by mutual consent between the parties. The City may terminate this Agreement upon 90 days prior written notice to the Provider for any of the following reasons:

a. *Failure to Make Payments.* The Provider fails to make timely payments of any fees in this Agreement and does not correct such failure within 30 calendar days after written notice by the City of such failure. Any payment made pursuant to such request shall not be deemed to constitute a waiver of the City's right to challenge the calculation of the franchise fee.

b. *Breach.* The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider shall, within 60 calendar days of such notice, commence efforts to remedy the conditions identified in the notice and shall have 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, the Provider 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 the Provider.

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

CONSIDERED and APPROVED this _____ day of _____, 2021.

PAYSON CITY, UT

By: _____
William R. Wright, Mayor

Attest:

Kim Holindrake, City Recorder

ACCEPTED BY PROVIDER:

BY: Roger Worth

Roger Worth

TITLE: CFO

DATE: May 23, 2025