

**WILLARD CITY
ORDINANCE NO. 2021-12**

**AN ORDINANCE GRANTING TO CONNEXT COMPANY A FRANCHISE FOR THE
CONSTRUCTION, OPERATION AND MAINTENANCE OF AN INTERNET SERVICE
PROVIDER THROUGH A FIBER OPTIC SYSTEM IN WILLARD CITY,
BOX ELDER COUNTY, STATE OF UTAH.**

Connex Company, a Utah corporation, (Connex) desires to construct, maintain and operate a fiber optic internet service within the City of Willard (City); and

The City Council has determined that it is in the best interest of the citizens of the City to grant a franchise to Connex to use the roads and streets within the City for such purpose;

NOW, THEREFORE, the City Council ordains as follows:

1. **Grant of Franchise.** The City grants to Connex a nonexclusive franchise (Franchise) to construct, maintain and operate in the present and future roads, streets, alleys, highways and other public rights-of-way within City limits, including any property annexed or otherwise acquired by the City after the effective date of this Franchise, (collectively, Streets) a internet service through a fiber optic network to the City and its inhabitants for internet and other purposes. Connex shall have the right to erect, construct, equip and maintain along, over and under the Streets a system of mains, pipes, laterals and related equipment (Facilities) as are reasonably necessary for supplying internet service in accordance with this Franchise. The Franchise agreement is attached hereto and incorporated as Exhibit A.

2. **Consideration.** In consideration of this Franchise, Connex shall pay to City the sum of \$50.00 upon acceptance of this Franchise and shall provide internet service in accordance with the terms of this Franchise.

3. **Term.** This Franchise is granted for an initial term of five (5). At the expiration of the initial term, the Franchise shall continue in effect upon the same terms and conditions for

up to two additional terms (each of which is a renewal period) of eight (8) years each. The City may terminate the Franchise at the end of the initial term, or any renewal period, by giving Connex written notice of the City's intent to so terminate not less than ninety (90) calendar days before the expiration of the initial term or any renewal period.

4. **Acceptance.** Within sixty (60) days after the passage of this ordinance, Connex shall file with the City an unconditional written acceptance of the Franchise declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of the Franchise.

5. **Construction and Maintenance of Facilities.** All Facilities shall be constructed and installed so as to interfere as little as possible with traffic over and public use of the Streets and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Streets. All Facilities shall be constructed in accordance with established internet system construction practices and in a manner which protects the Facilities from all traffic loads. All Facilities that are installed during the term of the Franchise shall be sited without unreasonable additional cost to Connex to be visually unobtrusive and to preserve the natural beauty and neighborhood aesthetics within the City limits.

Connex shall repair or replace, at its own expense, any and all rights of way, pavements, sidewalks, street improvements, excavations, other facilities, landscaping, or other improvements, public or private, that it damages in the Franchise operations.

6. **Compliance with Ordinances--Conflict.** Connex shall comply with all City ordinances, regulations and requirements and shall pay all applicable excavation fees and charges that are or may be prescribed by the City with respect to the construction, maintenance and operation of all Facilities. However, these obligations shall apply only as long as such ordinances,

regulations, requirements or fees are not preempted by or otherwise in conflict with any applicable statutory or constitutional law, rule or regulation, or the tariffs approved by regulatory bodies having jurisdiction over Connex, including this Franchise and any lawful revisions made and accepted by Connex during the term of the Franchise.

The City shall have the right to inspect the construction, operation and maintenance of the Facilities to ensure the proper compliance with applicable City ordinances, regulations and requirements. In the event Connex should fail to comply with the terms of any City ordinance, regulation or requirement, the City shall give Connex written notice of such non-compliance and the time for correction provided by ordinance or a reasonable time for correction if there is no applicable ordinance. After written notice and failure of Connex to make correction, the City may revoke the Franchise. Nothing in this Franchise limits Connex's right to oppose any ordinance, either existing, proposed, or adopted from and after the effective date of this Franchise.

7. **Information Exchange.** Upon request by either the City or Connex, as reasonably necessary, Connex and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City limits, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality upon request to the extent that the City may lawfully do so.

8. **Relocation.** Upon written notice to Connex, the City may require the relocation and removal or reinstallation (collectively, Relocation) of any Facilities located in, on, along, over, across, through, or under any of the Streets. After receipt of such written notice, Connex shall diligently begin such Relocation of its Facilities as may be reasonably necessary to meet the City's

requirements. The Relocation of Facilities by Connexx shall be at no cost to the City if (i) such request is for the protection of the public health, safety and welfare pursuant to lawful authority delegated to the City; (ii) the Facilities have been installed pursuant to this or any other Connexx franchise and not pursuant to a property or other similar right, including, but not limited to, a right-of-way, grant, permit, or license from a state, federal, municipal or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City pursuant to such written notice shall be at the City's expense. Following Relocation of any Facilities, Connexx may maintain and operate such Facilities in a new location within City limits without additional payment. If a City project is funded by federal or state monies that include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall compensate Connexx up to the extent of such amount for any Relocation costs mandated by the project to the extent that the City actually receives or is otherwise authorized to direct or approve payment of such federal or state funds.

Notwithstanding the preceding paragraph, Connexx shall not be responsible for any costs associated with an authorized City project that are not attributable to Connexx's Facilities in the Streets. Further, all such costs shall be allocated among all utilities or other persons whose facilities or property are subject to Relocation due to an authorized City project.

9. **Terms of Service.** Connexx shall furnish internet service without preference or discrimination among customers of the same service class at reasonable rates, in accordance with all applicable tariffs approved by and on file with regulatory bodies having jurisdiction over Connexx, including revisions to such tariffs made during the term of the Franchise, and in conformity with all applicable constitutional and statutory requirements. Connexx may make and enforce reasonable rules and regulations in the conduct of its business, may require its customers

to execute a internet service agreement as a condition to receiving service, and shall have the right to contract with its customers regarding the installation and operation of its Facilities. To secure safe and reliable service to the customers, and in the public interest, Connex shall have the right to prescribe the sizes and kinds of pipes and related Facilities to be used and shall have the right to refuse service to any customer who refuses to comply with Connex's rules and regulations.

10. **Indemnification.** Connex shall indemnify, defend and hold the City, its officers and employees, harmless from and against any and all claims, demands, liens, liabilities, damages, actions and proceedings arising from the exercise by Connex of its rights under this Franchise, including its operations within City limits, and Connex shall pay the reasonable cost of defense plus the City's reasonable attorneys' fees. Notwithstanding any provision to the contrary, Connex shall not be obligated to indemnify, defend or hold the City harmless to the extent that any underlying claim, demand, lien, liability, damage, action and proceeding arises out of or in connection with any negligent act or omission of the City or any of its agents, officers or employees.

11. **Assignment.** Connex may assign or transfer its rights and obligations under the Franchise to any parent, affiliate, or subsidiary of Connex, to any entity having fifty percent (50%) or more direct or indirect common ownership with Connex, or to any successor-in-interest or transferee of Connex having all necessary approvals, including those from the Utah Public Service Commission or its successor, to provide utility service within the City limits. Otherwise, Connex shall not transfer, assign or delegate any of its rights or obligations under the Franchise to another entity without the City's prior written approval, which approval shall not be unreasonably withheld or delayed. Inclusion of the Franchise as an asset of Connex subject to the liens and mortgages of Connex shall not constitute a transfer or assignment requiring the City's prior written consent.

12. **Effect of Invalidity.** If any portion of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of any remaining portions of this Franchise.

13. **Amendment.** This ordinance shall not be altered or amended without the prior written consent of Connex.

14. **Effective Date.** This ordinance shall become effective upon the date of acceptance by Connex as established above.

APPROVED and ADOPTED this 14TH day of October 2021.

Willard City

ATTEST:

Michelle K. Scott
City Recorder

By: Kenneth Braegger
Mayor Kenneth Braegger

ROLL CALL

Council member Fred Ward
Council member Josh Braegger
Council member John Seamons
Council member Brad Robb
Council member Kaleb Kunzler

Yes	No
<u>X</u>	___
<u>X</u>	___
<u>X</u>	___
<u>absent</u>	___
<u>absent</u>	___



Connex COMPANY

By: _____
Its _____

CERTIFICATION OF PASSAGE AND PUBLICATION OR POSTING

According to the provision of U.C.A. §10-3-713, 1953 as amended, I, the City Recorder of the City of Willard, Utah, hereby certify that Ordinance No. 2021-12 was duly passed and published on the Utah Public Notice Website the 1st day of November, 2021, and posted on the Willard City Website.

Michelle K. Smith DATE: 11/1/2021
City Recorder

