



FORT COLLINS  
**CONNEXION**

### **Thanks for considering Connexion service.**

Fort Collins Connexion, initiated by a 2017 ballot measure, is the locally managed broadband service our community has wished for. Whether you are a family or a business, we provide the gigabit speeds, services, and support you never thought you'd see from a broadband company.

### **About the Right of Entry Agreement:**

This form is required if your property is unable to be serviced from the Right of Way which is common if buildings are located on private property. This form will enable Connexion to construct and install service for the occupants of your building, neighborhood, or association. Once the form has been completed, or if you have questions, reach out to us at [sales@fcconnexion.com](mailto:sales@fcconnexion.com).

**Ready to submit your Right of Entry Agreement? Email it to [sales@fcconnexion.com](mailto:sales@fcconnexion.com)**

### **What happens next?**

Once you have submitted the Agreement, Connexion staff will review and route the document for full execution. Once that is complete, your property will be included in our construction build out schedule. As the timeline for construction to your property nears, a Connexion staff-member will reach out.

## RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (this "Agreement") is made and entered into as of the LAST DATE SET FORTH ON THE SIGNATURE PAGE (the "Effective Date"), by and between Fort Collins Connexion ("Operator" or "Connexion"), and \_\_\_\_\_ (property owner and/or developer "Owner"). Operator is a telecommunication and broadband service provider (the "Services") to residents and occupants of single-occupancy, multiple dwelling units ("MDU"), commercial property; and Owner owns, manages (with the power to bind the actual owner to this Agreement), and/or controls certain real property located at \_\_\_\_\_ **Fort Collins, Colorado** \_\_\_\_\_ (the "Property"), commonly known as \_\_\_\_\_, consisting of residential and/or commercial units (the "Units"), and Owner wants Operator to utilize horizontal and vertical telecommunication and utility accesses and easement at the Property to install and maintain the components required for delivery of Services, and for Operator to market and sell Services to Property occupants.

**GRANT OF RIGHTS FOR SERVICE AND ACCESS RIGHTS.** The structure(s) on the Property do or will consist of residential and/or commercial units and horizontal and vertical general common elements (collectively, the "Buildings"). Units within the Buildings may be owned by Owner and/or separately occupied by individuals or entities other than Owner as tenants. Notwithstanding any provision of this Agreement to the contrary, all provisions of this Agreement shall relate exclusively to the Buildings/portions thereof over which Owner and/or any owner's representative has control and for which such person(s) has the power to authorize entry.

**NOW THEREFORE**, in consideration of the mutual promises and covenants expressed herein, the Parties agree as follows:

Owner grants to Operator a right and irrevocable license, coupled with an interest, to: (a) offer, sell and distribute Services to residents and occupants of the Property ("Occupants"), (b) access the Property (including the right of ingress and egress), for the purposes of installing, operating, maintaining, removing and/or upgrading all or any horizontal or vertical portion of the Distribution System (as defined in Section 1.1), (c) use Owner's wiring and cable distribution system and all telecommunication and utility accesses and easements throughout the Property, and (d) the right to install a new Distribution System. Access to Units after the sale of Units by Owner shall only be by permission of the individual Occupants.

### **THE SYSTEM REQUIREMENTS.**

- 1.1 **Distribution System.** Operator will install and maintain a wiring and cable delivery system to distribute Services throughout the Property, as reasonably determined by Operator (the "Distribution System"). Prior to installation, Operator will review with Owner, technical specifications of the Distribution System build, if available. The Distribution System will remain the personal property of Operator, and, notwithstanding any method of affixation or applicable law, no portion of the Distribution System will be deemed a fixture of the Property. Owner hereby grants to Operator reasonable access to the Property, as described in Sections 1, 2.2 and 3.1; and to install the Distribution System, with Operator to retain ownership of the same upon installation.
- 1.2 **Property Assistance; Non-Interference; Electricity.** Owner grants Operator the non-exclusive right to interconnect with and use wiring and cable distribution systems owned or controlled by Owner as needed to deliver Services. Owner shall use reasonable efforts to keep the Distribution System secure and prevent unauthorized access to or tampering. Owner further agrees to take commercially reasonable efforts to ensure any equipment used or installed by Owner or any third party at the Property shall not interfere with the Distribution System or Services. Owner shall promptly notify Operator of any damage to or unauthorized tampering with the Distribution System or any Operator equipment. Operator will obtain all permits, licenses and approvals required for the design, installation, modification, maintenance, removal, and other work related to the Distribution System, and to enforce Operator's rights hereunder. Owner shall, in its reasonable discretion, maintain Property components under Owner's control, including horizontal and vertical elements of existing wiring and cable distribution systems, and used by Operator in connection with the Distribution System. If Operator performs any of the foregoing on Owner's behalf, Owner shall promptly reimburse Operator. Owner will pay for the electrical service required for operation of the Distribution System.
- 1.3 **Existing Infrastructure.** To facilitate Operator's use of existing horizontal or vertical infrastructure to deliver Services, Owner agrees to take all reasonable steps, including invoking of the "Inside Wiring Rules" (FCC regulations at 47 C.F.R. §§ 76.800, *et seq.*), to gain control of existing "Home Run Wiring" (as defined by FCC regulations) and to make such components available for Operator's distribution of Services. Existing infrastructure can include conduit either inside or outside the Buildings that exists on either public or private property (including all telecommunication and utility accesses and easements).

Property Owner Initial Here:

1.4 Excavation Locates. Owner acknowledges installation of the Distribution System may require excavation and such work presents unique challenges in that underground obstructions may not be visible prior to Operator commencing digging. In accordance with applicable law, Operator will have public utilities marked prior to commencing digging. Owner shall be responsible for locating all private utilities lines, including underground wiring and irrigation systems. Operator shall not be responsible for any damage to unmarked private utilities. If private utilities are not marked or are inaccurately marked and damage occurs, if the damage is recognized at the time work is underway, Operator will flag it and leave it exposed if practical and safe to do so, so repairs can be made in an efficient manner. Damage will be reported to Owner, who shall be responsible for making repairs and bear all associated costs. By signature below, Owner hereby agrees to Release and Indemnify Operator from any responsibility for damage to underground utilities, facilities and structures, and all costs for marking private utilities, damage to private utilities, and hidden or non-disclosed obstacles or hazards.

#### **CONNEXION SERVICE.**

1.5 General Rights. (i) Operator may solicit and take orders for Services from Occupants, (ii) subject to any bulk agreement, Operator maintains the right to change programming and pricing at any time, (iii) each party will copy the other on all notices under the Agreement (email: [connexion@fcgov.com](mailto:connexion@fcgov.com)), and (iv) Operator may, upon reasonable advance notice and in compliance with the Property's security requirements, inspect the Distribution System, and Owner hereby grants Operator an ongoing right to access the Property for this purpose. Owner understands Occupants must meet requirements established by Operator to receive Services, including credit and term requirements. The rights and obligations in the "CONNEXION SERVICE" sections are intended to survive termination of this Agreement.

1.6 Contingent Rights. Independent of Owner's (or any agent, successor or assign of Owner) performance hereunder, Operator may access the Property as necessary to provide Services through the Distribution System. Upon termination or expiration of this Agreement, Operator may also access the Property on a non-exclusive basis to provide Services to Occupants, and Owner will cooperate therewith to ensure Operator and subscribing Occupants may fulfill their respective service and subscription commitments without interruption.

#### **TERM; TERMINATION.**

1.7 Term. This Agreement shall commence on the Effective Date and remain in effect for the initial term of 10 years. Thereafter, the Agreement shall renew for successive one-year terms annually on the anniversary thereof, unless terminated earlier pursuant to this Agreement or until either Party provides written notice of termination at least 90 days prior to the anniversary date.

1.8 Default and Termination. Either Party may terminate this Agreement (i) upon 30 days written notice to the other Party describing in reasonable detail a material breach of this Agreement by the receiving Party, which the breaching Party has failed to cure within such 30 day time period after prior written notice of such breach; or (ii) in the event the Property is totally or substantially destroyed by fire or other casualty rendering the Property unusable for residential or commercial occupancy.

1.9 Termination or Expiration; Distribution System. Operator may, until 120 days after the termination or expiration of this Agreement, remove all or any component of the Distribution System.

#### **MISCELLANEOUS.**

1.10 Representations/Warranties. Owner represents and warrants: (i) it has taken all requisite action to approve the execution, delivery and performance of this Agreement (Owner will provide Operator with reasonable evidence upon request), (ii) the execution, delivery and performance of this Agreement shall not result in the breach of any agreements Owner has with third parties, (iii) it has the legal right and authority to grant Operator the right to interconnect with and use existing wiring and cable distribution systems on the Property and authorize affixation of any external Distribution System components needed to deliver Services, and (iv) it is not and will not become a party to any agreement for the bulk or exclusive provision of video programming to be delivered through any aspect of existing wiring and cable distribution systems on the Property.

1.11 INDEMNIFICATION. Owner ("Indemnifying Party") agrees to indemnify, defend and hold harmless Operator and respective directors, officers, and employees (each an "Indemnified Party") from and against any costs, damages and fees reasonably incurred by such Indemnified Party, including but not limited to reasonable attorneys' fees that are attributable to any claim arising out of any: (a) breach by the Indemnifying Party of any representation, warranty or covenant contained in this Agreement; (b) damages to the Property or any personal property or personal injury caused by the Indemnifying Party; or (c) actions of the Indemnifying Party.

Property Owner Initial Here:

- 1.12 Disclaimer; Limitation of Liability. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SYSTEMS OR THE PROVISION OF SERVICE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, REGARDLESS OF THE FORESEEABILITY THEREOF, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- 1.13 Notices. All notices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received: (a) upon actual receipt when personally delivered; (b) 3 business days after deposit in the U.S. Mail, postage prepaid, registered or certified mail, return receipt requested; (c) 1 business day after delivery to any nationally-recognized overnight delivery service on a business day for prepaid delivery on the next business day; or (d) on the business day sent, if sent by facsimile prior to 5:00 p.m. in the time zone in which the receiving party is located, and such generates a written confirmation of sending, addressed to the address provided above.
- 1.14 Applicable Law; Entire Agreement; Modification. The interpretation and legal effect of this Agreement shall be construed in accordance with the laws of the State of Colorado. This Agreement constitutes the entire agreement between the Parties, and supersedes all previous agreements, understandings, commitments or representations concerning the subject matter. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by the Party against whom the amendment, modification or waiver is sought to be enforced.
- 1.15 Dispute Resolution; Appeal. All claims arising from the interpretation, performance, or breach of this Agreement shall be resolved under the procedures in the Fort Collins Municipal Code, Chapter 26 for telecommunication service disputes. At no time shall any claim arising hereunder be ripe for consideration by a court of law until all applicable administrative remedies have been exhausted.
- 1.16 Severability. Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between this Agreement and any law, such law shall prevail; provided, however, in the event of any such conflict, the provisions of this Agreement so affected shall be limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provision of this Agreement shall be affected and all such other provisions continue in full force and effect.
- 1.17 Force Majeure. Neither Party shall be liable to the other Party or others for any failure to perform its obligations under this Agreement where such failure was caused by an act of God, accident, fire, lockout, riot or civil commotion, act of government or other cause of similar or different nature beyond the affected Party's reasonable control.
- 1.18 Successors and Assigns. This Agreement is binding upon and inures to the benefit of Operator and Owner, and any Owner's representative with respect to the Owner and successors and assigns of Operator. Operator may assign its interest in, rights and obligations under this Agreement. The rights and interests Owner grants to Operator in this Agreement run with title to and shall be binding upon the Property.
- 1.19 Public Notices. Owner agrees that Operator may cause this Agreement or instrument related to this Agreement to be filed or recorded among the public records in all necessary places in order that third parties shall be on notice that Operator owns the Distribution System, and that Owner has granted Operator the rights in this Agreement. Each Party hereto agrees to execute such documents, and take such further action, as the other Party hereto shall reasonably request in order to carry out this Agreement.
- 1.20 Interpretation; Further Actions; Survival; No Agents or Joint Venture; Counterparts. This Agreement has been fully reviewed and negotiated by the Parties hereto and their respective counsel. In interpreting this Agreement, the judicial doctrine according to which documents are to be construed against the drafter or provider of such document does not apply to this Agreement. All covenants and conditions herein which, by their terms or nature, extend beyond the termination or expiration of this Agreement, shall survive such termination or expiration until fully performed including, indemnification and confidentiality obligations. The relationship of Owner and Operator is that of independent contractor, and no Party shall act as or be deemed an agent of the other Party hereto, or take any action or do anything that would create an obligation or liability of the other Party hereto or cause any third party to believe such Party is an agent of the other Party hereto or that such Party is authorized to act on behalf of the other Party hereto. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

Property Owner Initial Here:

IN WITNESS WHEREOF, the Parties have executed and delivered this Right of Entry Agreement as of the below date(s)

<b>FORT COLLINS CONNEXION</b>  By: _____ (signature) Print Name: <u>Chad Crager</u> Title: <u>Executive Broadband Director</u>  DATE: _____  Telephone: <u>970-221-6798</u>  Email: _____	<b>OWNER NAME:</b> _____  By: _____ (signature) Print Name: _____ Title: _____ DATE: _____ Telephone: _____ Email: _____ <b>THE PERSON SIGNING FOR OWNER MUST INITIAL ONE OF THE FOLLOWING:</b>  <input type="checkbox"/> I AM THE ACTUAL OWNER OR AN OFFICER OF OWNER  <input type="checkbox"/> I AM DULY AUTHORIZED BY THE OWNER TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE OWNER AND BIND THE PROPERTY IN THE NAME OF THE OWNER.*
<small>* IF THIS AGREEMENT IS BEING EXECUTED BY AN AGENT FOR THE ACTUAL OWNER OF THE PROPERTY, SUCH AGENT AGREES THAT IT WILL BE BOUND BY OWNER'S OBLIGATIONS HEREIN TO THE FULLEST EXTENT OF THIS AGREEMENT IN THE EVENT THE ACTUAL OWNER FAILS TO PERFORM IN ACCORDANCE WITH THE OBLIGATIONS OF OWNER AND SUCH AGENT AGREES TO INDEMNIFY OPERATOR FOR ANY CLAIM ARISING OUT OF AN ACTION AGAINST OPERATOR BY THE ACTUAL OWNER AND FOR ANY LOSS SUFFERED BY OPERATOR AS A RESULT OF THE ACTUAL OWNER FAILING TO PERFORM IN ACCORDANCE WITH THE OBLIGATIONS OF OWNER HEREIN.</small>	