

Resolution No. 19-25

RESOLUTION OF SOUTH OGDEN CITY AUTHORIZING AND APPROVING A FRANCHISE AGREEMENT WITH UTOPIA 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 as 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 UTOPIA for Work in City's Rights-of-Way, including not limited to installation of service lines, and additional communications services; and,

WHEREAS, the City Council finds that UTOPIA 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 UTOPIA for work in 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 UTOPIA, 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 7th day of May, 2019, 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 7th day of May, 2019.

SOUTH OGDEN CITY

Russell Porter
Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT “A”

Resolution No. 19-25

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

07 May 19

[Attachment will be provided by the City Manager]

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN _____ AND UTOPIA**

THIS AGREEMENT, made and entered into this ____ day of ____, 2019, by and between _____, a municipality and political subdivision of the State of Utah, hereinafter called “City,” and UTOPIA, an interlocal entity of the State of Utah created pursuant to the Interlocal Cooperation Act, Utah Code Section 11-13-101 et seq., hereinafter called “UTOPIA.” City and UTOPIA are collectively referred to herein as the “Parties.”


WITNESSETH:

WHEREAS, UTOPIA desires to obtain from City, a license to lay, maintain, operate, repair, inspect, protect, install, remove, and replace fiber optic cable, and other transmission and distribution structures and facilities (the “Facilities”), within the public highways, streets, roads, and rights-of-way which are within the jurisdiction and responsibility of City, together with the right of ingress and egress for UTOPIA, its officers, employees, agents, and contractors to enter upon said public rights-of-way with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, remove and replace said Facilities; and

WHEREAS, City is willing to grant said license under the terms and conditions set forth in this Agreement; and

WHEREAS, the Parties are authorized to enter into an Interlocal Cooperation Agreement pursuant to the Interlocal Cooperation Act, Utah Code Section 11-13-101 et seq. and wish to enter into an Interlocal Cooperation Agreement reflecting the arrangement described above.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:


1. **Grant of License.**  The City hereby grants, conveys and sets over unto UTOPIA, a non-exclusive license to lay, maintain, operate, repair, inspect, protect, install, remove and replace the Facilities over and through the public highways, streets, roads, and public rights-of-way (collectively, the “Streets”), which are within the jurisdiction and responsibility of City, together with the right of ingress and egress for UTOPIA, its officers, employees, agents, contractors and assigns to enter upon said Streets with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, remove and replace the Facilities. This non-exclusive license will expire upon termination of this agreement (the “Agreement.”)

2. **Term.** The Parties agree that either Party may terminate this Agreement upon 90 days prior written notice, or at any other time mutually agreed to by the Parties. Unless terminated pursuant to the provisions of this paragraph, the initial term of this Agreement will expire fifteen years from its effective date, and will automatically renew for an additional one year term on each Anniversary. In no event will this Agreement run for more than fifty years.

3. Construction and Location. UTOPIA may install Facilities at those locations within the Streets as shall be determined in accordance with plans, specifications and maps prepared, or caused to be prepared, by UTOPIA. Prior to performing any work in the Streets for initial Facilities installation or otherwise, UTOPIA shall apply for an encroachment/excavation permit, or other applicable City permit. City shall review and may improve the submitted plan prior to permit issuance. Upon compliance with this Agreement and all applicable permit requirements, including but not limited to a traffic management plan, surface and landscaping restoration plan, and work schedule, City shall issue a permit to UTOPIA's contractor, allowing said contractor to proceed with the work in accordance with the terms of this Agreement and the permit. As-built drawings shall be submitted to the City within thirty days of the completion of construction. All applicable regulations and permits of City shall be fully complied with by UTOPIA and its contractor(s).

4. Protection of Traffic During Construction. UTOPIA shall require its contractor to conduct its construction operation so that there shall be a minimum of interference or interruption to City with respect to the handling of traffic. UTOPIA's contractor shall at all times require such watchmen, barricades, lights or other reasonable measures for the protection of traffic as may be reasonably required to warn and safeguard the public against injury or damage during construction, maintenance, repair or replacement of the Facilities and shall hold City harmless from any and all liabilities arising from UTOPIA's negligence or intentional wrongdoing during any construction commenced under the terms of this easement.

5. Compaction of Backfill. The backfilling of any trench within the paved portion of the street, the shoulders thereof, within park strips, under sidewalk or curb and gutter, or the portion under or intersecting the street, shall be thoroughly compacted in accordance with all applicable standards and regulations, including City's construction standards. The method of compaction shall be subject to review by City at the time the permit application is reviewed. UTOPIA shall require its contractors to comply with City's construction standards and permit requirements.

6. Restoration of Existing Pavement. UTOPIA shall require its contractor to replace any hard surface removed or damaged with the same type and depth of hard surface as that which is adjoining, including the gravel base material. All disturbed surfaces shall be restored to the standards established by City. In the event weather conditions do not permit immediate replacement of permanent hard surface, a temporary surface shall be placed until such time as weather conditions are favorable, at which time the temporary surface shall be removed and replaced with a permanent road surface. If the gravel surface, gravel shoulder, or gravel surface approach to City roads become fouled with clay or other unsuitable material, such surfacing shall be removed and replaced with new gravel surfacing material. The repairs to hard surface shall include hard surfaces which are damaged by construction equipment used in constructing, maintaining, or repairing the Facilities. In all cases UTOPIA hereby agrees to cause its contractor to restore those portions of the street through which the work actually traverses, to as near its original condition as is reasonably possible. 

7. Disposal of Surface Material in Cleaning Up Street. Upon completion of the work, UTOPIA shall assure that all surplus material shall be removed from within the limits of the Streets and properly disposed of by the contractor. The disturbed surface shall be carefully graded to the lines and grades established. UTOPIA shall immediately notify the City in the event that any highway facility such as signs and culverts are disturbed or damaged during the process of the

work and shall promptly restore or replace the same to as near their original condition as is reasonably possible. No material shall be left on private property adjacent to the Streets.

8. Maintenance of Facilities by UTOPIA. The Facilities and their attached appurtenances shall at all times be maintained, repaired and operated by and at the expense of UTOPIA.

9. Reconstruction of Street. In the event that any Street, or portion thereof is so reconstructed at any future date as to location, grade or width, so as to require the adjustments or relocation of manholes or other Facilities, UTOPIA shall assume and pay all costs incident to the adjustment or relocation of such manholes or other Facilities in accordance with paragraph 14.

10. Crossing of Facilities and Expansion of Street System. It is expressly understood and agreed by the Parties that as part of the consideration for this Agreement, that City shall have the right to cross the Facilities at any point deemed necessary in the future construction and expansion of City's street system, provided that City shall use due care and diligence in the protection of the Facilities in making such crossings. City shall provide a minimum 96 hour notice of anticipated work unless an emergency necessitates immediate work take place. UTOPIA will mark and identify its Facilities in or adjacent to the zone of the City's work within 2 days prior to City work.

11. Indemnification. Both parties are governmental entities under the Utah Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code, 1953, as amended. Consistent with the terms of this Act, it is mutually agreed that each party is responsible and liable for its own negligent acts which it commits or which are committed by its agents, officials, or employees. UTOPIA agrees to defend and indemnify City against any and all claims of third-parties against City, which arise from UTOPIA's exercise of any of its rights under this Agreement, except in the case of City's sole negligence. Neither party waives any defenses otherwise available under the Governmental Immunity Act. This Agreement shall in no manner constitute an admission of any liability as to any third party or give any third party any greater or further right or cause of action. It is hereby expressly understood and agreed that neither City nor UTOPIA is hereby acknowledging any liability for any act of negligence, whether of omission or commission, of their respective agents, servants, contractors or employees. UTOPIA shall procure and maintain in force at its sole expense during the term of this Agreement property damage and public liability insurance providing liability coverage for UTOPIA's actions in relation to this interlocal agreement and shall provide certificates of insurance to City upon request, which certificates shall name the City as an additional insured. Such insurance shall provide for such coverages, protections, insurable amounts, etc., as deemed advisable by the Parties and available through Utah Local Governments Trust, or any other insurance provider utilized by City or UTOPIA, and which would be standard and reasonable for the uses contemplated hereunder.


12. Agreement Not to be Assigned. Neither party shall assign this Agreement nor any interest hereunder without first obtaining the written consent of the other party.


13. Successors and Assigns. All covenants and agreements herein contained shall be binding upon the parties hereto, and their respective successors in interest and assigns.

14. Subject To Relocation. This license is subject to the right of City at all times as City deems necessary to construct roads, sidewalks or to carry out any other City purpose over the areas covered by this license, and when UTOPIA's Facilities and appurtenances or any of them materially interfere with any City purpose, UTOPIA will remove, adjust and/or relocate such Facilities and appurtenances within a reasonable time after written notice to do so by City and at the expense of UTOPIA.

15. Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, return receipt requested postage prepaid, to the parties as follows:

To UTOPIA: General Counsel
5858 South 900 East
Murray, UT 84121

To City: 

Copy to: 

The City and UTOPIA may change their addresses by providing written notice, as required under this provision.

16. Contract Integration. This Agreement embodies the entire agreement between the Parties and shall not be altered, enlarged or modified except in writing signed by both Parties. The benefits and protection provided by this Agreement shall not inure to the benefit of third-parties.

17. Governing Law. This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

18. Venue. Venue for any dispute related to this Agreement shall lie exclusively in the Third Judicial District, Salt Lake County, State of Utah.

19. No Separate Legal Entity Created; Interpretative Joint Board. No Separate legal entity is created by this Agreement; however, to the extent that any administration of this Agreement becomes necessary, then the City Mayor and the UTOPIA Executive Director, or their designees, shall constitute a Joint Board for such purpose. Each of the Parties shall bear its own costs associated with the Joint Board.

20. Manner of Acquiring, Holding and Disposing of Property. No real property will be acquired pursuant to the terms of this Agreement. Unless otherwise agreed by the Parties in

writing, upon termination of this Agreement all personal property installed within the City shall be dedicated to and become the property of the City.

21. Review by Legal Counsel. Each of the Parties hereby certifies that, pursuant to the requirements of Section 11-13-202.5, Utah Code (1953 as amended), it has submitted this agreement to an attorney authorized to represent it for review as to proper form and compliance with applicable law.

22. Filing of Interlocal Agreement. Executed copies of this Interlocal Cooperation Agreement shall be placed on file with the official keeper of records of each of the Parties within twenty-four hours of its execution and shall remain on file for public inspection during the term of this Interlocal Cooperation Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY

By: _____
Mayor

ATTEST:

City Recorder

UTOPIA

Roger Timmerman, Executive Director