



**CITY COUNCIL
AGENDA ITEM APPROVAL FORM**

AGENDA ITEM INFORMATION

MEETING DATE: SEPTEMBER 20, 2023

AGENDA ITEM TITLE:

RESOLUTION No. 23-25: A RESOLUTION OF THE CITY OF TAYLORSVILLE APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF TAYLORSVILLE AND UTOPIA FOR THE INSTALLATION OF INTERNET NETWORK FACILITIES WITHIN THE CITY PUBLIC RIGHT-OF-WAY.

PUBLIC HEARING REQUIRED:

YES: _____

NO: _____

ORDINANCE REQUIRED:

YES: _____

NO: X

RESOLUTION REQUIRED:

YES: X

NO: _____

PRESENTER:

TRACY S. COWDELL

AGENDA ITEM SUMMARY: LIMIT 150 WORDS

UTOPIA has petitioned the City to install fiber optic cable and its accompanying facilities and structures within the City's right-of-way. This resolution approves the agreement granting UTOPIA the license to do so.

ATTACHMENTS:

Exhibit A: Non-Exclusive License Agreement between the City of Taylorsville and UTOPIA for the Installation of Internet Network Facilities within the City Public Right-of Way.

TAYLORSVILLE, UTAH
RESOLUTION NO. 23-25

A RESOLUTION OF THE CITY OF TAYLORSVILLE APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF TAYLORSVILLE AND UTOPIA FOR THE INSTALLATION OF INTERNET NETWORK FACILITIES WITHIN THE CITY PUBLIC RIGHT-OF-WAY.

WHEREAS, the Taylorsville City Council (the "Council") met in regular session on September 20, 2023, to consider, among other things, approving a non-exclusive license agreement between the City of Taylorsville and UTOPIA for the installation of internet network facilities within the City public right-of-way; and

WHEREAS, UTOPIA is a consortium of several Utah cities that have united to deploy and operate state-of-the-art fiber-optic networks in communities across the state of Utah; and

WHEREAS, UTOPIA desires to obtain from the City a non-exclusive license to lay, maintain, operate, repair, inspect, protect, install, remove, and replace fiber-optic cable and other transmission and distribution structures and facilities within the City's public right-of-way; and

WHEREAS, the City is willing to grant to UTOPIA said license under the terms and conditions set forth in the non-exclusive license agreement between the City of Taylorsville and UTOPIA for the installation of internet network facilities within the City public right-of-way (the "Agreement"), attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City and UTOPIA are authorized to enter into the Agreement pursuant to UTAH CODE ANN. § 11-13-101, *et. seq.*; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety, and welfare of the citizens of the City to approve the Agreement as presented.

NOW, THEREFORE, BE IT RESOLVED that the Taylorsville City Council hereby approves the non-exclusive license agreement between the City of Taylorsville and UTOPIA for the installation of internet network facilities within the City public right-of-way as presented in Exhibit "A."

This Resolution, assigned Resolution No. 23-25, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Taylorsville, Utah this _____ day of _____, 2023.

TAYLORSVILLE CITY COUNCIL

By: _____
Council Chair

SEAL:

VOTING:

Ernest Burgess	___ Yea ___	Nay
Curt Cochran	___ Yea ___	Nay
Bob Knudsen	___ Yea ___	Nay
Meredith Harker	___ Yea ___	Nay
Anna Barbieri	___ Yea ___	Nay

PRESENTED to the Mayor of the City of Taylorsville for approval this _____ day of _____, 2023.

APPROVED this _____ day of _____, 2023.

Mayor Kristie S. Overson

ATTEST:

Jamie Brooks, City Recorder

DEPOSITED in the office of the City Recorder this ____ day of _____, 2023.

RECORDED this _____ day of _____, 2023.

**NON-EXCLUSIVE LICENSE AGREEMENT
BETWEEN
THE CITY OF TAYLORSVILLE
AND
UTOPIA
FOR THE INSTALLATION OF INTERNET NETWORK FACILITIES WITHIN THE
CITY PUBLIC RIGHT-OF-WAY**

THIS LICENSE AGREEMENT (this “Agreement”), is made and entered into this _____ day of _____, 2023, by and between the **CITY OF TAYLORSVILLE**, a municipal corporation and political subdivision of Salt Lake County, State of Utah (“City”) and **UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY**, an interlocal entity of the State of Utah created pursuant to the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et seq.* (“UTOPIA”). The City and UTOPIA are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, UTOPIA desires to obtain from the City a non-exclusive 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, the 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 ANN. §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 legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Non-Exclusive 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, under, and through the public highways, streets, roads, and public rights-of-way (collectively, the “Streets”), which are within the jurisdiction and responsibility of the 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 shall expire upon termination of this Agreement.

2. **Term.** The Parties agree that either Party may terminate this Agreement for cause upon ninety (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 shall expire fifteen (15) years from its Effective Date, and shall automatically renew for an additional one (1) year term on each Anniversary. In no event shall this Agreement run for more than fifty (50) years.

3. **Compensation for Use of Public ROW.** UTOPIA shall pay to the City a fee ("License Fee") to compensate the City for UTOPIA's use and occupancy of the City's public right-of-way pursuant to this Agreement. UTOPIA and the City acknowledge and agree that the License Fee provides fair and reasonable compensation for UTOPIA's use and occupancy of the public right-of-way and other City property as authorized. The License Fee shall begin accruing on the Effective Date of this Agreement and shall be calculated as follows:

A. License Fee. UTOPIA shall pay to the City two percent (2%) (the "Revenue Percentage") of Gross Revenues for a calendar quarter, remitted on a quarterly basis, commencing upon the first date on which UTOPIA receives any Gross Revenues (as defined below). Such payments are due forty-five (45) days after the end of the calendar quarter.

B. As used herein, "Gross Revenues" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by UTOPIA from customers for Internet services that are provided to customers through UTOPIA Facilities located at least in part within the City's public right-of-way.

i. Gross Revenues do not include:

- (a) any revenue not actually received, even if billed, such as bad debt;
- (b) refunds, rebates, or discounts made to customers or the City;
- (c) revenue received from the sale of Internet services for resale in which the purchaser is required to collect and remit similar fees from the purchaser's customer;
- (d) any forgone revenue from UTOPIA's provision of Internet services to customers at no charge if required by state law;
- (e) any tax of general applicability imposed upon UTOPIA or its customers by the City or by any state, federal, or any other governmental entity, and required to be collected by UTOPIA and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement); and
- (f) any forgone revenue from UTOPIA's provision, in UTOPIA's discretion or otherwise, of free or reduced cost Internet services to any person; provided, however, that any forgone revenue which UTOPIA

chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues.

C. Pass Through. UTOPIA may identify and collect, as a separate item on the regular bill of any customer whose Internet services are provided by UTOPIA's Facilities located at least in part in the City's public right-of-way, that customer's pro rata amount of the License Fee.

a. **Audit by City.** The City may examine the business records of UTOPIA as permitted under state or local law, but in any event only during reasonable times and following reasonable notice, and only to the extent reasonably necessary to ensure compliance with this Section. UTOPIA shall keep all business records reflecting its Gross Revenues for at least two (2) years. The City may, in the event of a dispute concerning compensation under this Section, bring an action in a court of competent jurisdiction.

b. **Government Records Access and Management Act.** The Parties hereby agree that the City is subject to the requirements of GRAMA. All materials submitted to the City by UTOPIA pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure shall rest solely with UTOPIA, and UTOPIA shall comply with the requirements of GRAMA in asserting any such exemption. UTOPIA may, at UTOPIA's sole expense, take any appropriate actions to prevent disclosure of any exempted material.

c. **Interest on Late Payments.** Any payments that are due and payable under this Agreement that are not received within fifteen (15) days from the due date shall be assessed interest compounded at the rate of 18% per annum from the due date. All sums paid with interest within thirty (30) days of the due date shall not constitute a material breach of this Agreement.

d. **Change in Law.** Notwithstanding anything to the contrary herein, in the event of a change in local, state, or federal law that (i) prohibits collection of any right-of-way-access fee from any provider of communications services, including Internet services or (ii) reduces the percentage of revenue on which the right-of-way-access fee paid by any provider of communications services is based to a percentage that is lower than the Revenue Percentage, then UTOPIA will have no obligation to pay the License Fee or to pay a Licensee Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which a right-of-way-access fee may be based, the Revenue Percentage will be commensurately reduced.

4. 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. The 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, the 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 (30) days of the completion

of construction. All applicable regulations and permits of the City shall be fully complied with by UTOPIA and its contractor(s).

5. **Protection of Traffic During Construction.** UTOPIA shall require its contractor(s) to conduct its construction operation so that there shall be a minimum of interference or interruption to the City with respect to the handling of traffic. UTOPIA's contractor(s) 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 the City harmless from any and all liabilities arising from UTOPIA's negligence or intentional wrongdoing during any construction commenced under the terms of this Agreement.

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

7. **Restoration of Existing Pavement.** UTOPIA shall require its contractor(s) 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 the 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 hard 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(s) to restore those portions of the Street through which the work actually traverses, to as near its original condition as is reasonably possible.

8. **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(s). 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 at any time.

9. **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.

10. **Reconstruction of Streets.** 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 below.

11. **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, the City shall have the right to cross the Facilities at any point deemed necessary in the future construction and expansion of the City's street system, provided that the City shall use due care and diligence in the protection of the Facilities in making such crossings. The City shall provide a minimum ninety-six (96) hour notice of anticipated work unless an emergency necessitates immediate work take place. UTOPIA shall mark and identify its Facilities in or adjacent to the zone of the City's work within two (2) days prior to the City's work.

12. **Performance Bond.** UTOPIA shall, promptly after the Effective Date of this Agreement, provide the City with a performance bond in the amount of Fifty Thousand Dollars (\$50,000) naming the City as Obligee and guaranteeing UTOPIA's faithful performance of its obligations under this Agreement. The performance bond shall remain in full force during the Term of this Agreement.

13. **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, employees, contractors, successors and assigns. UTOPIA agrees to defend and indemnify the City against any and all claims of third parties against the City, which arise from UTOPIA's exercise of any of its rights under this Agreement, except in the case of the 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 the 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 Agreement and shall provide certificates of insurance to the 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 the Utah Local Governments Trust, or any other insurance provider utilized by the City or UTOPIA, and which would be standard and reasonable for the uses contemplated hereunder.

14. **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.

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

16. **Subject To Relocation.** This license is subject to the right of the City at all times as the 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 shall remove, adjust and/or relocate such Facilities and appurtenances within a reasonable time after written notice to do so by the City and at the expense of UTOPIA.

17. **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: Taylorsville City Manager
2600 W. Taylorsville Blvd.
Taylorsville, Utah 84129

Copy to:
Taylorsville City Attorney
2600 W. Taylorsville Blvd.
Taylorsville, Utah 84129

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

18. **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.

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

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

21. **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, 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.

22. **Manner of Acquiring, Holding and Disposing of Property.** No real property shall be acquired pursuant to the terms of this Agreement.

23. **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.

24. **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 (24) hours of its execution and shall remain on file for public inspection during the Term of this 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.

TAYALORSVILLE CITY:

UTOPIA:

By: _____
Mayor Kristie S. Overson

By:  _____
Roger Timmerman,
Executive Director

ATTEST:

Jamie Brooks, City Recorder

Approved as to Form:

City Attorney