

**CITY OF WASHINGTON TERRACE  
ORDINANCE 23-08**

**FRANCHISE AGREEMENT – UTAH TELECOMMUNICATION OPEN  
INFRASTRUCTURE AGENCY (UTOPIA)**

**AN ORDINANCE OF THE CITY OF WASHINGTON TERRACE, UTAH,  
ADOPTING THE FRANCHISE AGREEMENT WITH UTAH  
TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, FOR  
CERTAIN FIBER OPTIC FACILITIES; SEVERABILITY; AND  
PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Washington Terrace City (“City”) is a municipal corporation, duly organized and existing under the laws of the State of Utah;

**WHEREAS**, **Utah Telecommunication Infrastructure Agency (Utopia)**, (“Franchisee”) is a corporation that provides fiber and telecommunications services as defined by state law;

**WHEREAS**, *Utah Code Annotated* §10-8-84 and 10-8-60 allow municipalities in the State of Utah to exercise certain police powers and nuisance abatement powers, including but not limited to providing for safety and preservation of health, promotion of prosperity, improve community well-being, peace and good order for the inhabitants of the City;

**WHEREAS**, *Utah Code Annotated* §10-8-11 authorizes the City to regulate the use of streets, alleys, avenues, sidewalks, crosswalks, parks and public grounds, prevent and remove obstructions and encroachments thereon;

**WHEREAS**, Franchisee desires to construct fiber and telecommunication facilities within the public right-of-way within the City and proposes the attached Franchise Agreement;

**WHEREAS**, the City has adopted Chapter 15.12 and Chapter 3.08 of the Washington Terrace Municipal Code to govern Franchise Agreements and the Telecommunications Service Provider Tax, and the City has regulations governing excavation and standards for construction in the public right-of-way;

**WHEREAS**, the public interest is served by the Franchise Agreement adopted and incorporated herein;

**NOW, THEREFORE**, be it ordained by the City Council of the City of Washington Terrace, Utah, as follows:

**Section 2: Severability.** If a Court of competent jurisdiction determines that any part of this Ordinance is unconstitutional or invalid, then such portion of this Ordinance, or specific application of this Ordinance, shall be severed from the remainder, which remainder shall continue in full force and effect.

**Section 3: Effective date.** This Ordinance take effect immediately upon mayoral approval and posting.

PASSED AND ADOPTED by the City Council on this 20 day of June, 2023.



MARK ALLEN, Mayor

ATTEST:



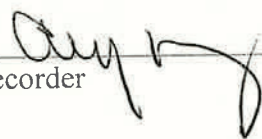
AMY RDRIGUEZ, City Recorder

RECORDED this 20 day of June, 2023.

PUBLISHED OR POSTED this 21 day of June, 2023.

**CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING**

In accordance with Utah Code Annotated '10-3-713, 1953 as amended, I, the City Recorder of Washington Terrace City, hereby certify that foregoing Ordinance was duly passed and adopted, published, and/or posted as provided by state law.



City Recorder

DATE: 6-21-23

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF WASHINGTON TERRACE AND UTOPIA**

**THIS INTERLOCAL COOPERATION AGREEMENT** (the “Agreement”), made and entered into this \_\_\_\_ day of \_\_\_\_, 2023, by and between the City of Washington Terrace, a municipality and political subdivision of the State of Utah, hereinafter called “City,” and Utah Telecommunication Open Infrastructure Agency, 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 franchise to install, 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 have negotiated this Agreement and receive mutual benefit under the terms of 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. Purpose and Scope. The purpose and scope is this Agreement is entirely limited to UTOPIA providing its service as specified in this Agreement to the Weber School District Administrative Office located in the City as set forth in the attached construction drawing provided by UTOPIA to the City as prepared by Horrocks Engineers in attached Exhibit “A” incorporated herein by this reference. No other service or connection of any kind is permitted whatsoever without a separate agreement between the Parties.

2. Grant of License. The City hereby grants, conveys and sets over unto UTOPIA, a non-exclusive franchise to install, maintain, operate, repair, inspect, protect, 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 franchise will expire upon termination of this Agreement.

3. 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 will expire fifteen (15) 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 (50) years.

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. 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 control 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 (30) days of the completion of construction. All applicable regulations and permits of City shall be fully complied with by UTOPIA and its contractor(s).

5. Traffic Control During Construction. UTOPIA shall require its contractor to conduct its construction operation and traffic control so that there shall be a minimum of interference or interruption to City with respect to the handling of traffic. Traffic control shall be in accordance with the current version of the Manual on Uniform Traffic Control Devices (MUTCD). 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 indemnify, defend, and hold City and its governing body, officers, employees, contractors, and agents harmless from any and all liabilities arising from UTOPIA's negligence or intentional wrongdoing during any construction commenced under the terms of this easement.

6. 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.

7. 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 in accordance with the City's applicable standards and specifications. 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.

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. The disturbed surface shall be carefully graded to the lines and grades established and in accordance with any applicable City standards and specifications. 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.

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 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 and subject to the applicable City standards and specifications.

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, 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 the required notice under Blue Stake of anticipated work unless an emergency necessitates immediate work take place. UTOPIA will mark and identify its Facilities in or adjacent to the area of the City's work within two (2) days, or other applicable Blue Stake period prior to City work.

12. 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 hold harmless, defend, and indemnify City and its governing body, officers, employees, contractors, and agents against any and all claims of third-parties against City, which arise from UTOPIA's exercise of any of its rights under this Agreement. 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 in sufficient amounts for UTOPIA's actions in relation to this 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.

13. 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.

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

15. 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.

16. 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: City Recorder  
Washington Terrace City  
5249 South 400 East  
Washington Terrace, UT 84405

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

17. 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.

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

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

20. 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.

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

22. 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.

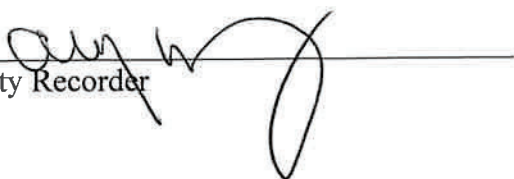
23. Filing of Interlocal Agreement. Executed copies of this Interlocal Cooperation Agreement shall be placed on file with the official keeper of records of each of the Parties within twenty-four hours of its execution and shall remain on file for public inspection during the term of this Interlocal Cooperation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

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Roger Timmerman, Executive Director