

RESOLUTION NO. 16-43

**A RESOLUTION OF THE DRAPER CITY COUNCIL
AUTHORIZING THE EXECUTION BY THE MAYOR OF A
RIGHT OF WAY LICENSING AGREEMENT BETWEEN
DRAPER CITY AND UTAH TELECOMMUNICATIONS OPEN
INFRASTRUCTURE AGENCY**

WHEREAS, Draper City Municipal Code Title 11 Chapter 6 “Excavation Permits” describes the permitting process for applicants who desire to perform work in the public right of way; and

WHEREAS, The Utah Telecommunications Open Infrastructure Agency (“UTOPIA”) desires to install fiber optic cable and other transmission and distribution structures and facilities in the public right of way in order to serve customers in Draper; and

WHEREAS, the City Council has reviewed and considered the attached Right of Way Licensing Agreement between Draper City and UTOPIA; and

WHEREAS, the City Attorney has reviewed the Right of Way Licensing Agreement and has approved it as to form; and

WHEREAS, the City Council has determined the Right of Way Licensing Agreement to be in the best interest of the City and will be beneficial to the health, safety and welfare of citizens of the City; and

WHEREAS, the Mayor is authorized to execute agreements.

NOW, THEREFORE, BE IT RESOLVED by the Draper City Council as follows:

Section 1. Resolution. The Right of Way Licensing Agreement between UTOPIA and Draper City, attached hereto as Exhibit A and by this reference made a part hereof, is hereby approved and authorized for signing by the mayor on behalf of Draper City.

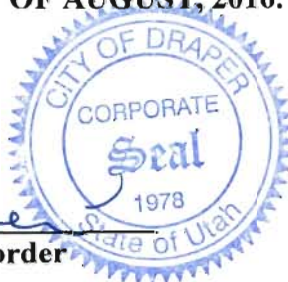
Section 2. Effective Date. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS 16th DAY OF AUGUST, 2016.

ATTEST:

DRAPER CITY


Rachelle Conner, City Recorder



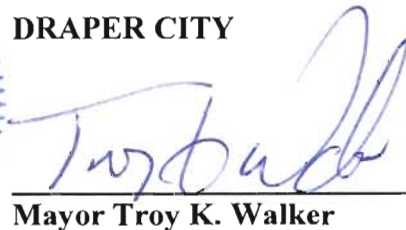

Mayor Troy K. Walker

EXHIBIT A

**RIGHT OF WAY LICENSING AGREEMENT
BETWEEN DRAPER CITY AND
UTOPIA**

THIS AGREEMENT, made and entered into this ____ day of August, 2016, by and between the **DRAPER CITY**, a municipality and political subdivision of the State of Utah, hereinafter called "City," and Utah Telecommunications Open Infrastructure Agency, an interlocal entity of the State of Utah created pursuant to the Interlocal Cooperation Act, Utah Code Ann. 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, alleys, 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, contractors and assigns 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

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, sells and sets over unto Utopia, its successors and assigns, a license to lay, maintain, operate, repair, inspect, protect, install, remove and replace the Facilities over and through the public highways, streets, roads, alleys, 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.

2. Term. The term of the license shall be fifteen (15) years, unless terminated early pursuant to this Agreement.

3. Construction and Location. The Facilities shall be installed 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, Utopia shall apply for an encroachment permit, or other applicable City permit. Upon compliance with this Agreement and applicable permit requirements, a permit shall issue from City to Utopia's contractor, allowing said contractor to proceed with the work in accordance with the terms of this Agreement and the permit. Following completion of construction, as-built

drawings shall be submitted to the City. All applicable regulations and permits of City shall be fully complied with by the contractor.

4. Underground Installation. Utopia expressly agrees to install and maintain all of its Facilities in accordance with City ordinances regarding the undergrounding of utility lines in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require Utopia to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

5. 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 of the Facilities and shall hold City harmless from any and all liabilities arising from said 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, or the portion under or intersecting the street, shall be thoroughly compacted. The method of compaction shall be subject to review by City at the time the permit application is reviewed. Utopia shall require its contractor to comply with City's standard 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 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 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 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, all surplus material shall be removed from within the limits of the Streets. The disturbed surface shall be carefully graded to the lines and grades established. Any highway facility such as signs and culverts which are disturbed or damaged during the process of the work shall be promptly restored to as near their original condition as is reasonably possible.

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 of manholes, Utopia shall assume and pay all costs incident to the adjustment of manholes or other facilities thereof.

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 said 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.

12. Indemnification. Both parties are governmental entities under the Utah Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code Ann., 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. 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.

13. Agreement Not to be Assigned. Neither party shall assign this Agreement or any interest hereunder without the prior written consent of the other party first obtained.

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, and/or relocate such Facilities and appurtenances within a reasonable time after 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: UTOPIA
2175 S Redwood Rd.
West Valley City, UT 84119

To City: Draper City
Attention: City Manager
1020 East Pioneer Road

With a copy to:
City Attorney
1020 East Pioneer Road

Draper, UT 84020

Draper, Utah 84020

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 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. 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 Manager and the _____, or their designees, shall constitute a Joint Board for such purpose.

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.

DRAPER CITY

By: _____
Troy K. Walker, Mayor

ATTEST:

City Clerk

UTOPIA

By: _____
Roger Timmerman, Executive Director