

BOUNTIFUL CITY COUNCIL

TUESDAY, May 23, 2023

6:00 p.m. – Work Session

7:00 p.m. - Regular Session

NOTICE IS HEREBY GIVEN on the Utah Public Notice Website, the Bountiful City Website and at Bountiful City Hall not less than 24 hours prior to the meeting that the City Council of Bountiful, Utah will hold its regular Council meeting at **City Hall, 795 South Main Street, Bountiful, Utah**, at the time and on the date given above. The public is invited to all meetings. Deliberations will occur in the meetings. Persons who are disabled as defined by the Americans With Disabilities Act may request an accommodation by contacting the Bountiful City Manager at 801.298.6140. Notification at least 24 hours prior to the meeting would be appreciated.

If you are not on the agenda, the Council will not be able to discuss your item of business until another meeting. For most items it is desirable for the Council to be informed of background information prior to consideration at a Council meeting. If you wish to have an item placed on the agenda, contact the Bountiful City Manager at 801.298.6140.

The meeting is also available to view online, and the link will be available on the Bountiful City website homepage (www.bountifulutah.gov) approximately one hour prior to the start of the meeting.

AGENDA

6:00 p.m. – Work Session

1. General Plan update – process suggestions – Mr. Francisco Astorga p. 3
2. UTOPIA Contract final review – Mr. Gary Hill p. 7

7:00 p.m. – Regular Session

1. Welcome, Pledge of Allegiance and Thought/Prayer
2. Public Comment - If you wish to make a comment to the Council, please use the podium and clearly state your name and address, keeping your comments to a maximum of two minutes. Public comment is limited to no more than ten minutes per meeting. Please do not repeat positions already stated. Public comment is a time for the Council to receive new information and perspectives.
3. Consider approval of minutes of previous meeting held May 9, 2023 p. 61
4. Council reports
5. Consider approval of expenditures greater than \$1,000 paid May 1 & 8, 2023 p. 69
6. Consider approval of Ordinance 2023-02 which prohibits the discharge of fireworks east of 400 East and Orchard Drive – Mr. Clinton Drake/Chief Dane Stone p. 73
7. Consider approval of the purchase of 54 radios from Motorola in the amount of \$175,716 – Chief Ed Biehler p. 79
8. Consider approval of the purchase of 34 body-worn cameras and 18 vehicle cameras from Motorola in the total amount of \$284,756 to be paid over five years – Chief Ed Biehler p. 81
9. Consider approval of a fiber network construction and management agreement with UTOPIA Fiber – Mr. Gary Hill p. 7
10. Adjourn


City Recorder

City Council Staff Report



Subject: Comprehensive General Plan Update:
Bountiful by Design
Author: Francisco Astorga, AICP, Planning Director
Date: May 23, 2023

Background

On July 12, 2022, the City Council and the Planning Commission held a joint meeting to kick-off the City's Comprehensive General Plan Update. The City received a matching grant through WFRM to hire a consultant to complete the Update. A Steering Committee, consisting of community members, was created to be an advocate for the process, a sounding board for key concepts and alternatives, and assisting in the outreach process throughout the anticipated fourteen (14) month process.

In light of recent comments and suggestions by Councilmember Jesse Bell, who has also been appointed as a Steering Committee member, Staff recommends that the Council provide staff direction/guidance based on provided comments and suggestions.

Analysis

Comment #1: Proposal to add two (2) additional joint meetings (two hours each) with the City Council and Planning Commission before public draft.

The City has held three of the four (3 of 4) scheduled joint meetings. The fourth meeting is scheduled to take place before official public review. Staff and the consultant had already considered adding a fifth (5th) joint meeting:

- 4th joint meeting before preliminary draft
- 5th joint meeting before final draft

Direction requested: Does the Council support this additional joint meeting?

Comment #2: Proposal to have an additional round table meeting with business owners and property owners to hear current obstacles, receive input regarding the City and/or RDA, and to enhance collaboration.

A special Downtown (DN) open house was held on April 27, 2023. All DN property owners were sent a letter invitation. All DN business owners were sent an e-mail invitation. The virtual open house period ended on May 14 which allowed specific DN comments for two (2) weeks. The consultant is in the process of incorporating provided comments that will be presented to the Steering Committee prior to their upcoming June 7 Steering Committee meeting.

The requested round table can be accommodated in the process which would require more time for Staff, the consultant, and the Steering Committee to be able to provide their final comments

to the Commission and City Council. If this request is chosen, Staff would need to amend the consultant's scope of work including additional expenses as well as the anticipated process timeline to accommodate the meeting and to further incorporate significant input and results from the round table.

Direction requested: Does the Council support the requested round table meeting?

Comment #3: When will the City review the leakage study, which would include economic component?

It is anticipated that the City Council and Planning Commission would review the Economic Development element during the next joint meeting tentatively scheduled for July 11.

Comment #4: Will the plan identify redevelopment opportunities?

The General Plan will determine future priorities to guide goals and cost-effective implementation strategies, identify key redevelopment areas, and potential redevelopment options.

Comment #5: How is a review of Downtown parking standards going to align with the General Plan process? Nothing has been discussed to date.

As the DN virtual open house concluded on May 14, 2023, the consultant is currently drafting/aligning DN goals, objectives, policies, etc. A Downtown Land Use Code assessment, including parking requirements, etc., itself is not part of the General Plan process, but rather a possible recommendation from the Plan itself. A possible recommendation of the Plan could be a policy of this effect: *"the City should consider reducing parking requirements within the DN core to match actual parking demand, trends, proximity to transit, amount of public parking, etc."* Staff has shared with the consultant the current DN Code parking requirements that represent the actual density that could be accommodated in this zone. Additionally, a recent Land Use Code Text Amendment application has been submitted to the City by the public requesting that the City reduce the DN parking requirements at this time.

Comment #6: How are the non-land use elements of the General Plan Update going to be addressed?

While the Steering Committee has spent a significant amount of time on land use, it has also incorporated housing and transportation (active and vehicular) discussions, analyses, etc. It is expected to have the Steering Commission spend time reviewing the water conservation and economic development policies during their upcoming meeting on June 7 prior to the preliminary draft to be presented to the Planning Commission and City Council on July 11. The plan is to have the following elements: land use, housing (moderate-income housing), transportation, water resource, economic development, and downtown. The consultant is currently drafting all of these elements at this time. If more information is required Staff can request to receive additional details from the consultant.

Department Review

The Planning Director is the City's project manager for the Comprehensive General Plan Update. This staff report was reviewed by the City Manager.

Significant Impacts

Once the General Plan is completed, the City will need to analyze its Land Use Code and make appropriate changes, as needed. The General Plan will need to be an active document for future decision making. Future decisions would be based on following a proactive approach instead of reacting to "bad development that met the code at the time" that then trigger changes to the Land Use Code. Due to the ever-changing effects of the economy currently based on technological advances that affect housing, transportation, land use, etc., it is difficult to have a long-lasting plan. It is recommended that comprehensive General Plans be amended when needed, which in some cases include minor changes and in some other cases involves major updates.

Recommendation

Staff recommends that the Council provide staff direction/guidance on each of the questions and comments listed in the staff report.

Attachments

None.

City Council Staff Report



Subject: Bountiful Fiber Project - Update
Author: Gary Hill
Department: Administration
Date: 5/23/2023

Background

(Much of this staff report is taken from the report presented to the City Council on May 24, 2023. New information is underlined).

In spring 2020 at the request of residents, Bountiful City began exploring the need, demand, and desirability of fiber-based broadband services in Bountiful. The COVID-19 pandemic had recently forced residents to seek more online services such as education and remote work access. City elected officials and staff began hearing more from concerned citizens about their frustrations and difficulty of obtaining reliable and high-quality internet services in Bountiful.

Beginning Fall 2020, members of the City Council and city staff had conversations with incumbent providers about their ability and willingness to provide fiber and/or reliable high speed connections to all parts of Bountiful. These conversations continued sporadically through at least May 2021. Although we are aware of small expansion projects, we were unsuccessful in obtaining service area maps, data about speeds or reliability, or commitments to improve services to residents.

In February 2021, the Mayor and City Council requested that staff explore options of providing fiber internet services to all homes and businesses in Bountiful City.

In April 2021, a ***Request for Information*** was released to potential fiber providers. Four possible providers were interviewed. During the interviews, the providers discussed options available to the City and shared their proposals. These fiber optic network options included:

- *Provider-Owned and Operated*
- *City-Owned and Operated*
- *City-Owned and Provider-Operated*

In August 2021 the results of the RFI were shared with the Mayor and Council. Potential benefits of a City-owned network were discussed. The council approved engaging the services of Magellan Advisors to perform a Feasibility Study. The results of this study were

presented at the council meeting on May 24, 2022. Details can be found in our meeting minutes and on our city webpage.

On June 22, 2022, the City Council tasked staff with issuing a ***Request for Proposals (RFP)*** for a fiber provider to build and operate a city-owned fiber network. The ideal partner would have experience in both areas and a track record of cost-effective and rapid deployment. Over the next several months City staff worked with partners Keller and Heckman to develop the RFP. It was released on November 1, 2022.

On December 12, 2022, two qualified firms were identified. They were interviewed in December by an internal review team consisting of staff and councilmember Richard Higginson.

On January 10, 2023 the team's findings were shared with the City Council who directed staff to begin contract negotiations with UTOPIA Fiber. Since that time staff and UTOPIA have been working through contract details. A draft of the contract should be available for the Council to review this week, with contract approval tentatively scheduled for May 9, 2022.

Financing for the project will need to be secured shortly after contract approval. On March 14, 2023 the City's current financial advisor Jason Burningham (Lewis, Young, Robertson, and Burningham) presented financing scenarios to the City Council. Staff is currently working with Jason and LYRB to develop an excise tax-backed bond to provide \$48 million in proceeds. The amount of bonds issued will be approximately \$43 million. The debt service for the bond will be paid for using system revenues. It is intended that the City's sales and use tax revenue will be used to back the bonds in order to obtain the most favorable interest rate and financing terms.

On May 25, 2023, representatives from UTOPIA discussed their marketing approach with the City Council. The work session also included a discussion of the construction and operating agreement between UTOPIA and Bountiful.

Analysis

City staff and elected officials have studied and deliberated over the best way to bring citywide fiber services to Bountiful for nearly 3 years now. The attached agreement with UTOPIA Fiber is the culmination of that effort. The following paragraphs outline the philosophy of Bountiful Fiber and summarize the Agreement with UTOPIA Fiber.

Philosophy

The purpose of the City's involvement with fiber is to provide a competitive marketplace for internet service providers through an open access network. Resident requests and sentiment (provided by direct resident requests and the Magellan feasibility study)

demonstrate a need for city involvement to provide adequate competitive, reliable broadband services. It is the intent of the Bountiful Fiber program for the services to pay for themselves through user revenues and to use those revenues for the benefit of the fiber customers.

Bonding

- Bountiful will issue bonds generating \$48 million to pay for construction of the network.
- Based on conservative estimates of take rates provided by UTOPIA, Bountiful Fiber should have enough customers to generate a profit above debt service beginning in year five.
- Net revenues will be used to pay off the bond as soon as possible. It is the intent of the City to prepay the bond well in advance of the 30-year term. All excess system revenues will be used to achieve the goal of repaying obligations as soon as possible and to then make rates as affordable for users as possible.

Contract Terms with UTOPIA

- Bountiful City will engage UTOPIA Fiber to build, operate, and maintain a fiber network owned by the residents of Bountiful for an initial term of 10 years.
- Construction is anticipated to take 2-3 years. Customers in certain areas will have access to fiber within 18 months (or better) of construction beginning. Substantial completion will mean providing 95% or more of potential end users with access to Bountiful Fiber. The contract price of \$45,432,000 will include installations to approx. 7,400 users in the network area (40% take rate). Bountiful will be responsible to pay for connections above that amount.
 - A proforma model projecting fees, revenues, and take rates indicates a take rate of 35% is the “break even” number.
- Fees to residential customers will be equal to or competitive with fees charged by other UTOPIA/UIA cities. **The following are preliminary estimates:**
 - 250 Mbps \$70-\$78
 - 1 Gbps \$80-\$90
 - 10 Gbps \$220-\$250
- From those amounts, Bountiful will retain \$35-\$40 for debt service and an additional \$6.50 to be placed in capital reserve for refreshment of infrastructure.
- Fees to non-residential customers will be the same as currently offered by UTOPIA.
- UTOPIA has a certain amount of infrastructure and a number of non-residential customers in Bountiful already. The City will purchase these from UTOPIA for \$850,000 at the time the contract is executed. Customer revenue will become Bountiful’s from that time forward.

A section-by-section summary of the agreement with UTOPIA is included as Attachment A to this staff report.

Department Review

This report was prepared by the City Manager with assistance from various departments.

Significant Impacts

A successful fiber project in Bountiful could positively impact every citizen, business, and city department.

Recommendation

Staff recommends the City Council approve a Fiber Network Construction and Management Agreement with UTOPIA Fiber.

Attachments

Attachment A – Summary of UTOPIA contract

Attachment B – Fiber Network Construction and Network Management Agreement with UTOPIA Fiber.

UTOPIA Contract Summary

5/18/23

Recitals

Explains the nature of the partnership between UTOPIA and Bountiful and makes clear that Bountiful will be the owner of the improvements, while UTOPIA will install and manage them.

Article I – Definitions

Article II – Construction Services and Acquisition of Improvements

Section 2.1 -UTOPIA responsible for all construction services including contracting with third parties.

Section 2.2 -Construction to start upon approval of the agreement.

-Construction to be substantially completed (95% or better) within 36 months (UTOPIA is aiming for 24 months. 5% of the construction cost will be retained until Final Completion, which means all contract terms are met and punch list items are finished – see Section 2.5(f)).

-Bountiful required to provide locations for fiber huts (nearly complete: City still needs to purchase some land from Weber Basin at corner of 2600 S and 200W. Appraisal is in progress).

-Exemption from winter construction moratorium may be requested by UTOPIA.

Section 2.3 -Construction amount is \$45,432,000.

-Construction includes installations for 7,479 end users (40% take rate).

-1 non-residential installation is equal to 3 residential installations.

-small cell facilities (5G) will not be included in this number for the time being and will be negotiated separately.

-Bountiful will also pay UTOPIA \$850,000 for existing customers and infrastructure in the city, due at the time of contract signing.

Section 2.4 -Sets forth invoicing, accounting and record keeping requirements.

Section 2.5 -Bountiful agrees to obtain the necessary financing for the project within 90 days of agreement approval.

-Upon execution of the agreement, Bountiful will make a payment of \$5,191,000 to UTOPIA for the purchase of materials necessary for the first phase of construction. This includes the \$850,000 for the existing improvements and end users.

-UTOPIA will bill Bountiful monthly thereafter for work that has been completed and accepted by Bountiful.

-Bountiful will retain 5% of each invoice amount until Final Completion is achieved.

Section 2.6 -Outlines the inspection and acceptance process for improvements.

Section 2.7 -Customer installations can be requested via online ordering system. UTOPIA will install based on a lowest-cost-path standard. The customer (or Bountiful) could pay for a different method of installation.

-Installations beyond the agreed-upon end user number of 7,497 must first be approved by Bountiful. UTOPIA shall give Bountiful an estimate of the cost per installation, and upon approval, Bountiful shall pay UTOPIA (the current cost is \$1,300 per residential connection).

Section 2.8 -Sets forth the process for acceptance of improvements after Final Completion.

Section 2.9 -UTOPIA's maintenance responsibilities. Exhibit D has been added to enumerate these responsibilities. UTOPIA will coordinate with Bountiful when maintenance is necessary.

Section 2.10 -The system will provide a minimum of 1 gigabit per second (Gbps) speed for any customer on the network. It will be designed so that 10 Gbps can be provided anywhere with only a change of electronics.

-UTOPIA agrees to remit \$6.50 per subscriber per month to Bountiful for Renewal and Replacement. The following is the anticipated Renewal and Replacement schedule (included in Exhibit F of the agreement):

Long Term – 10 years

- Generators
- Heating/Cooling Units
- UPS Systems

Middle Term – 7-8 years

- Customer demarcation devices (fiber gateways)
- Aggregation Electronics
- Transceivers
- Core Electronics
- Security Systems/Video Surveillance

Short Term – 3-5 years

- UPS Batteries

-UTOPIA will be responsible to identify and coordinate with Bountiful and Renewal and Replacement projects. Bountiful will be billed for any of the items listed above. All other items will be paid for by UTOPIA.

Section 2.11 -UTOPIA will be responsible for blue stake services.

Section 2.12 -UTOPIA will maintain a GIS system of the network and will provide the data to Bountiful after Substantial Completion.

Section 2.13 - Bountiful will own all improvements including all associated authorizations.

Section 2.14 - UTOPIA will obtain a performance bond for the period of construction which shall be released when the final retainage payment is made.

Article III – Network Management Services

Section 3.1 -UTOPIA will provide network management services including connection services to Bountiful City so Bountiful Fiber customers can connect to our system.

Section 3.2 -UTOPIA will provide a minimum of 20 Gbps to each fiber hut. UTOPIA guarantees 30% excess capacity at each location and will monitor the capacity and utilization and coordinate upgrades with Bountiful if 70% utilization is exceeded.

- Section 3.3** -UTOPIA will provide continuous network management services (internet availability to customers) except in emergencies or scheduled downtimes.
- Section 3.4** -The network can only be used by ISPs managed by UTOPIA and approved by Bountiful.
- Section 3.5** -UTOPIA will manage the service providers and select them per criteria approved by Bountiful, consistent with how they select ISPs for any other UTOPIA network.
- Section 3.6** -UTOPIA will monitor our system 24/7 through its Network Operations Center (NOC).
- Section 3.7** -UTOPIA to be responsible for network engineering (IT) services.
- Section 3.8** -Billing and Collection. Customers will receive two monthly bills. One from Bountiful City for the bond payment fee (called the Infrastructure Fee and currently estimated at \$38/month) and one from the ISP. The ISP bill will include UTOPIA's management fee, the ISP's fee, and the \$8 network refresh fee. UTOPIA will remit \$6.50 per customer per month to Bountiful from the network refresh fee (see Section 2.10 above)
- Section 3.9** -UTOPIA is responsible for all customer services. Calls will first go to the ISP. If the ISP cannot resolve the issue, UTOPIA will be responsible to resolve the problem.
- Section 3.10** -UTOPIA will provide technical support to the customer up to the demarcation switch in each home or business. The ISP or customer will be responsible for services after that point.
- Section 3.11** -UTOPIA will pay for IT systems software costs.
- Section 3.12** -Contractual minimum response times and resolution expectations for UTOPIA.

Article IV – Payment for Network Management Services; Distribution of Revenues

- Section 4.1** -Charges for Service and Revenue.
- UTOPIA will charge residential customers the following fees to operate Bountiful's network (this is referred to as Resident Transport Fee):
- 250 Mbps \$27/month
 - 1 Gbps \$31/month
 - 10 Gbps \$60/month
- These charges include the Network Refresh fee of \$8/month.
- Non-resident Charges. Fees are based on UTOPIA's catalog of non-residential transport services. Revenue will be split 50/50.
- UTOPIA's customer charges (\$27, \$31, and \$60 respectively) may be adjusted regularly upon written mutual approval of UTOPIA and Bountiful, or solely by UTOPIA only if the following conditions are met:
- a. The increase is no greater than the Consumer Price Index (CPI),
 - b. The increase is the same amount as all other UTOPIA cities, and
 - c. The increase is done at the same time as all other UTOPIA cities.

Section 4.2-4.3 -Remedies for non-payment.

Article V – General Provisions

Section 5.1 -Attorneys required to review and approve the agreement.

- Section 5.2 -UTOPIA and Bountiful each agree to obtain/maintain all authorizations required by law.
- Section 5.3 -Parties are not obligated to the other respective party.
- Section 5.4 -Contract termination conditions. These include reasons for termination, notification timelines and remedies.
- Section 5.5 -Disposition of funds and transition requirements at time of contract termination.
- Section 5.6 -Each party is responsible for their own risk of loss unless there is negligence or fault of the other party.
- Section 5.7 -Explanation of Several and Individual obligations.
- Section 5.8** -Insurance and Liability requirements and obligations (by way of information, Bountiful and UTOPIA are both insured by Olympus. They worked directly with Clint to come up with this language).
- Section 5.9 -skipped
- Section 5.10 -Damages section
- Section 5.11 -skipped
- Section 5.12 -Record keeping requirements for both parties.
- Section 5.13 -Bountiful and UTOPIA must comply with all regulatory permits, requirements, and obligations.
- Section 5.14 -Neither party is liable for the actions of the other party.
- Section 5.15** -The agreement cannot be assigned without permission of the other party.
- Section 5.16 -This agreement does not require UTOPIA to provide the same services to any other party.
- Section 5.17 -Uncontrollable Forces clause
- Section 5.18 -The parties acknowledge that neither is providing cable television services or public telecommunications services as defined by the Telecommunications Act.
- Section 5.19 -Confidentiality requirements for both parties.
- Section 5.20 -Intellectual property clauses.
- Section 5.21 -This section clarifies that the Agreement constitutes the entire agreement on the subject of services between the parties and cannot be amended without consent of parties.
- Section 5.22 -Outlines with sections can be amended which cannot.
- Section 5.23** -Effective Date and Original Term. The contract shall be effective as of the date specified in the agreement and upon approval of both governing bodies. It shall last for an initial term of ten (10) years. It shall be renewed for five additional one-year periods unless either party gives a 90 day notice of intent to not renew.
- Section 5.24 -Notice requirements to each party.
- Section 5.25 -Third Party Beneficiaries clause
- Section 5.26 -Governing Law and Venue
- Section 5.27 -Requirement by parties to negotiate in good faith if applicable laws change the ability of either party to perform.
- Section 5.28 -Execution in Counterparts. The agreement may be execute in parts, each of which would still be part of the whole.
- Section 5.29 -Severability Clause

The following Exhibits are also included in the contract and provide additional detail on certain aspects of the contract clauses:

- Exhibit A -Construction Services
- Exhibit B -Network Management Services
- Exhibit B1 -Service Level Parameters
- Exhibit C -Area of Improvements (maps)
- Exhibit D -Maintenance Services
- Exhibit E -Existing Improvements (map)
- Exhibit F -Refresh and Replacement Schedule
- Exhibit G -Form of Performance Bond example (to be provided)

FIBER NETWORK CONSTRUCTION AND NETWORK
MANAGEMENT SERVICES AGREEMENT

Dated Effective as of May ____, 2023

between

UTAH TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY

and

BOUNTIFUL CITY, UTAH

FIBER NETWORK CONSTRUCTION AND NETWORK
MANAGEMENT SERVICES AGREEMENT

This FIBER NETWORK CONSTRUCTION AND NETWORK MANAGEMENT SERVICES AGREEMENT (the “Agreement”) is entered into effective as of May __, 2023 (the “Agreement Effective Date” or “Effective Date”) by and between the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”), an interlocal cooperative and separate legal entity, body politic and corporate and a political subdivision of the State of Utah, organized under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, and Bountiful City, Utah (sometimes referred to herein as “Bountiful,” the “City,” and/or “Bountiful City”), a municipal corporation and a political subdivision of the State of Utah, (UTOPIA and Bountiful are sometimes referred to individually as a “Party” and collectively as “Parties” herein).

R E C I T A L S

1. Pursuant to Section 10-8-14, Utah Code Annotated 1953, as amended, cities may construct, maintain, and operate telecommunication lines and cable television lines.

2. Pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, (the “Interlocal Cooperation Act”), local governmental units may exercise and enjoy jointly with other governmental units any power, privileges or authority exercised or capable of exercise by those governmental organizations.

3. The Interlocal Cooperation Act permits local governmental units, like municipalities, to make the most efficient use of their power by enabling them to cooperate with other local governmental units on the basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs of development of local communities and will provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the State of Utah. Pursuant to the Interlocal Cooperation Act, certain municipalities organized UTOPIA to provide for the acquisition, construction, and installation of facilities, fiber wires, and equipment, together with related improvements for the purpose of connecting properties within such municipalities and elsewhere to an advanced fiber optic communications network (the “UTOPIA Network”).

4. In 1892 Bountiful was granted a charter and established itself as a municipal corporation.

5. Bountiful has determined that there is a need to provide additional fiber optic communications services to its residents and local businesses.

6. UTOPIA has determined that it has excess capacity in the UTOPIA Network to provide the Construction Services and Network Management Services (as more fully described herein) and desires to offer such excess capacity to Bountiful.

7. Bountiful now desires to cause an advanced fiber optic communications network to be acquired, installed, constructed, and operated to serve residents and businesses of Bountiful through the undertaking of the improvements contemplated hereby (as more fully described herein as the “Improvements”) and desires further that UTOPIA shall construct and

operate the Improvements pursuant to the terms of the Agreement.

8. The Improvements shall be owned by Bountiful.

9. It is the intention of the Parties that the Improvements initially be operated and managed for the mutual benefit of the Parties and that Bountiful will pay or cause to be paid certain charges to UTOPIA in accordance with Section 4.1 of this Agreement for the term of this Agreement provided the acquisition, installation, and construction is completed such that Bountiful may elect, in its sole discretion, to take over operation and maintenance of the Bountiful Network at the end of the Term, the end of subsequent terms, or pursuant of this Agreement.

10. The Connections Services provided under this Agreement are not Cable Television Services or Public Telecommunications Services as defined in the Municipal Cable Television or Public Telecommunications Services Act, Title 10, Chapter 18, Utah Code Annotated 1953, as amended, (the “Telecommunications Act”).

AGREEMENT

In consideration of the Construction Services and the Network Management Services herein provided, the benefit Bountiful shall receive from such activities and the mutual covenants contained herein, the Parties agree as follows:

TABLE OF EXHIBITS

The following Exhibits, Schedules, Appendices and Addenda referenced in and made part of this Agreement:

<u>EXHIBIT A</u>	<u>CONSTRUCTION SERVICES</u>
<u>EXHIBIT B-1</u>	<u>SERVICE LEVEL AGREEMENT</u>
<u>EXHIBIT B</u>	<u>NETWORK MANAGEMENT SERVICES</u>
<u>EXHIBIT C</u>	<u>AREA OF IMPROVEMENTS</u>
<u>EXHIBIT D</u>	<u>MAINTENANCE SERVICES</u>
<u>EXHIBIT E</u>	<u>EXISTING IMPROVEMENTS</u>
<u>EXHIBIT F</u>	<u>REFRESH AND REPLACEMENT SCHEDULE</u>
<u>EXHIBIT G</u>	<u>FORM OF PERFORMANCE BOND</u>

ARTICLE I

DEFINITIONS

In addition to the defined terms in the recitals and elsewhere in this Agreement, the following terms, whether in the singular or in the plural, when used herein and in the exhibits hereto, shall have the meanings set forth below:

“Additional Installations” means the installation of conduit, fiber, electronics, and other materials necessary to be able to provide Connection Services to an End User beyond the initially contracted number of Agreed Upon End Users.

“Aggregation Site(s)” means the real property or easement on real property on which the Bountiful Hut(s) will be located.

“Agreed Upon End Users” means the number of End Users that UTOPIA estimates will enter into an Infrastructure Fee agreement with Bountiful as part of the Agreement Price in Section 2.3, which shall be End Users. UTOPIA does not represent or guarantee Bountiful the number or percentage of End Users.

“Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; easements to private property; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation, or use of tangible or intangible public or private property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

“Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind applicable to the construction, maintenance, or operation of the Bountiful Network, whether imposed by a governmental authority or a private entity.

“Bountiful Hut(s)” means the shelter(s), electronics, switches, routers, fiber terminations, conduits, cables, racking, generator, UPS units, cooling systems, and other support systems to support the Mainline System, Interconnect(s), and other current and future potential interconnects located on the Aggregation Site.

“Bountiful Network” means Improvements including but not limited to fiber optic lines, connection lines and related improvements, existing, purchased, transferred or constructed, including all access rights and capacity in the Bountiful Network, pursuant to the terms of this Agreement and owned by Bountiful as set forth in Exhibit A.

“Connection Service” means the connection of an End User to the Bountiful Network together with Network Management Services through which an End User may contract with Service Providers to receive communication services.

“Construction Services” means the services provided by UTOPIA to Bountiful pursuant to this Agreement whereby UTOPIA will construct the Bountiful Network, including engineering, construction management, materials management, and other services necessary for the provision and support of Connection Services throughout Bountiful. The scope of Construction Services is more particularly described in Exhibit A, attached hereto and incorporated herein.

“End User(s)” means the residential and non-residential entities that enter into agreements to receive Connection Services and remit an Infrastructure Fee to Bountiful.

“Existing End User(s)” means the non-residential entities on the UTOPIA Network in Bountiful prior to the Agreement Effective Date pursuant to Section 2.3(b).

“Existing Improvements” means the conduits, fiber cables, splice cases, enclosures, and handholes, along the mainline, and interconnect routes within Bountiful as depicted in Exhibit E.

“Final Completion” means that construction of the Improvements is complete and fully in accordance with the requirements of this Agreement, including completion of all “punch list” items remaining at Substantial Completion.

“Improvements” means those facilities constructed by UTOPIA for Bountiful, as more fully described in Exhibit A.

“Infrastructure Fee” means the fee that Bountiful charges End Users for connecting their premises to the Bountiful Network.

“Infrastructure Fee Revenue” means the revenue generated by the Infrastructure Fee.

“Interconnect” means the connectivity between the UTOPIA Network and the Bountiful Network.

“Mainline System” means all newly installed fiber, conduits, splice closures, handholes, restorations, and other materials along the public utility easements and city rights-of-way within Bountiful City limits as depicted in Exhibit C.

“Multiple Tenant Environment” or “MTE” means a multiple tenant environment, including commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, cooperatives, gated communities, or other premises utilized by multiple entities to whom service is delivered.

“Network Management Services” means the services provided by UTOPIA to Bountiful pursuant to this Agreement whereby End Users within Bountiful have access to the Improvements through which they may contract with Service Providers to receive communication services provided by means of the Bountiful Network.

“Non-residential Installation” means any installation that is not Residential Installation or a Small Wireless Facility.

“Operating Contingency” means an unplanned event or circumstance, a series of events or circumstances, or any restriction or condition imposed by any governmental authority, which reduces and materially adversely affects access to the Improvements.

“Original Term” has the meaning ascribed to such term in Section 5.21 hereof.

“Residential Installation” means any installation to a single-family residential property.

“Service Provider” means a third-party that has contracted with UTOPIA to provide internet or telecommunications services using the Bountiful Network.

“Small Wireless Facility” means a wireless facility on which each wireless provider’s antenna could fit within an enclosure of no more than six cubic feet in volume, and for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty-eight cubic feet (28 cu. ft.) in volume, not including any electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable run for the connection of power or other service, wireless provider antenna, or coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

“Substantial Completion” means the stage in the progress of developing the Bountiful Network when the Improvements are designed, fitted, and constructed in accordance with the specifications of the Agreement and available to ninety-five percent (95%) or more of the potential End Users within Bountiful such that they can sign up for Connection Services and schedule installations. Any properties that refuse to allow access to UTOPIA for the installations of Improvements, including such properties controlled by homeowner associations or units within MTEs, are excluded from the number of End Users required to reach Substantial Completion.

“Uncontrollable Forces” means (i) any cause beyond the control of the Party affected, (ii) that renders it commercially impracticable for a Party to comply with its obligations under this Agreement (other than an obligation to pay money), (iii) that is beyond the reasonable control of such Party, (iv) that does not result from the fault or negligence of such Party, and (v) that could not have been avoided by the affected Party through the exercise of reasonable diligence. Uncontrollable Forces may include, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbances, labor disturbance, sabotage, restraint by court or public authority, or other causes, which a reasonable person would consider to be “beyond the control of the Party affected”.

“UTOPIA” means the Utah Telecommunications Open Infrastructure Agency, a Utah interlocal agency and separate legal entity, body, politic and corporate, and a political subdivision of the State of Utah, created pursuant to the Utah Interlocal Cooperation Act.

“UTOPIA Network” means fiber optic lines, connection lines and related improvements and facilities acquired, constructed, and owned or managed by UTOPIA that is not included in the Bountiful Network, including all access rights and capacity in the UTOPIA Network and access rights and capacity in other networks.

ARTICLE II

CONSTRUCTION SERVICES AND ACQUISITION OF IMPROVEMENTS

Section 2.1 Construction Services and Manufacturer’s Warranties.

(a) Construction Services. UTOPIA shall provide Construction Services to, and Bountiful shall receive Construction Services from UTOPIA.

(b) The Construction Services shall consist of the work necessary to construct, install, and activate the Improvements, within the area depicted on Exhibit C, which will allow End Users to sign up and schedule installation for services under UTOPIA’s typical process and timeframes. In the event that UTOPIA is not able to construct in any area requested by Bountiful and depicted on Exhibit C as a result of circumstances beyond the control of UTOPIA, including but not limited to unforeseeable delays by third-parties in granting necessary permits, UTOPIA will use its best efforts to complete construction as soon as possible.

(c) Manufacturer’s Warranties. Unless otherwise specified, all manufacturer’s warranties and remedies relating to Improvements shall be assigned and transferred to Bountiful, and UTOPIA agrees to reasonably assist and cooperate with Bountiful in the enforcement of such warranties.

(d) Protection of Persons and Property. UTOPIA shall be responsible for commercially reasonable precautions for the safety of, and reasonable protection to prevent damage, injury, or loss to (a) employees and contractors; (b) other persons who may be affected by the work; (c) Construction Services materials and equipment to be incorporated into the Improvements, whether in storage on or off the construction site; and (d) other property at or adjacent to the construction site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities. UTOPIA shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety or persons or property, or their protection from damage, injury or loss.

Section 2.2 Contractors, Staffing, Date of Commencement and Project Area.

(a) UTOPIA may contract with a third-party or third-parties, pursuant to previously awarded or newly issued RFPs or other selection model in accordance with UTOPIA's internal policies or other legal requirements, to provide Construction Services.

(b) UTOPIA shall hire and maintain internal staff sufficient to perform its duties in a timely manner under this Agreement and to complete work as required by the Construction Services.

(c) The date of commencement of the Construction Services shall be the Agreement Effective Date, or if provision is made for a later date to be fixed in a notice to proceed issued by Bountiful, the date fixed therein.

(d) UTOPIA shall achieve Substantial Completion within thirty-six (36) months from the Agreement Effective Date.

(e) Bountiful shall identify a parcel of real property to site each of the required Aggregation Sites, and all required Bountiful Huts, within thirty (30) calendar days from the Effective Date and obtain a parcel of real property or an easement to a parcel of real property, if necessary, sufficient to allow construction of each Aggregation Site together with the right to access the Aggregation Site as needed and provide gas and electrical connections to each site within sixty (60) calendar days, subject to the requirements, installation schedule, or materials availability for the utility service providers, after a site has been identified.

(f) Bountiful shall provide UTOPIA the plans, charts, maps, GIS data, and any other information necessary to allow UTOPIA to locate, access, and use (subject to this Agreement and all required permitting and any other approvals) all telecommunications conduit, fiber optic lines, and any other infrastructure that is owned by Bountiful in providing the Construction Services.

(g) Bountiful shall provide to UTOPIA and UTOPIA's engineering and construction contractors permitting for all work related to this Agreement.

(h) UTOPIA and its subcontractors may request an extension and Bountiful may grant UTOPIA and its subcontractors an exemption to any seasonal or other moratoriums that would prevent or delay the construction of the Improvements needed to complete the buildout of the Bountiful Network. If such exemption is granted,

UTOPIA shall provide to the City Engineer a schedule and plan for work to be performed during the moratorium.

Section 2.3 Construction Services Fee; Purchase of Existing Improvements; Additional Construction Services.

(a) Fees for Construction Services, through Final Completion of Improvements, shall be paid by Bountiful to UTOPIA for a total amount of Forty-Five Million Four Hundred Thirty-Two Thousand Dollars (\$45,432,000) (“Construction Services Fee”). Any additional costs or expenses for Construction Services beyond the total amount shall be the sole responsibility of UTOPIA.

(b) Construction Services and installations for the Agreed Upon End Users are more particularly set forth in Exhibit A. The number of Agreed Upon End Users is Seven Thousand Four Hundred and Ninety-Seven (7,497). Non-residential Installations have an agreed-upon equivalency—and count—as three (3) Residential Installations for purposes of establishing the Agreed Upon End Users and cost of installation. Connections to Small Wireless Facilities do not count as a residential or non-residential installation, and cost and revenue allocations for such connections will be negotiated at a later time.

(c) Bountiful shall purchase UTOPIA’s Existing Improvements and Existing End Users within Bountiful for Eight Hundred Fifty Thousand Dollars (\$850,000). The Existing Improvements to be transferred from UTOPIA to Bountiful are described in Exhibit E.

(d) UTOPIA may offer to provide, or Bountiful may request, further Construction Services during the Term. Any Construction Services or Improvements in addition to the Agreed Upon End User number may occur if both Parties agree in writing to the additional price and UTOPIA’s estimate of Improvements required to accommodate the additional growth.

Section 2.4 Documentation and Records Provided by UTOPIA. UTOPIA shall provide records supporting the percentage completion of the construction project along with the number of customers that have been connected to the network.

Section 2.5 Payments. Bountiful shall make full payment for the Improvements listed in Section 2.3 as follows:

(a) Bountiful shall obtain the necessary funding/financing to pay UTOPIA (pursuant to this Agreement) to Final Completion. In the event that Bountiful is not successful in obtaining funding/financing within ninety (90) calendar days following the Effective Date, either party may elect to terminate this Agreement without additional cause by either party against the other, excepting those amounts owed by Bountiful to UTOPIA pursuant to this Subsection 2.5(a) by providing notice in writing to the other party pursuant to Section 5.24 of this Agreement. Following termination by either Party pursuant to this Subsection 2.5(a), each Party shall remit payment to the other Party of any amounts accrued or due under this Agreement prior to termination, including payment by Bountiful to UTOPIA for design and construction related services performed by UTOPIA within ninety (90) calendar days following proper service as determined pursuant to Section 5.24 of this Agreement.

(b) Upon the date the date of the execution of this Agreement, UTOPIA shall immediately invoice Bountiful for the Existing Improvements and Existing End Users, and purchase of materials necessary for the first phase of construction pursuant to the total cost of the design and engineering in the amount of Five Million One Hundred Ninety-One Thousand Dollars (\$5,191,000) (“Initial Payment”). The Initial Payment shall be due and payable within thirty (30) calendar days of invoice receipt by Bountiful.

(c) Following the Initial Payment, payments shall proceed as follows: Each month, UTOPIA shall provide Bountiful (and the Trustee, if applicable) with a notice that includes a detailed description of work completed, inspected and tested by UTOPIA during the preceding month (such notices shall be referred to herein individually as a “Notice of Payment”).

(d) Bountiful may require that all Notices of Payment involving work performed by UTOPIA contractors be accompanied by unconditional lien waivers, executed by each subcontractor providing work or materials in excess of \$10,000 during the previous payment period, waiving all rights to a mechanics lien or other claim for labor and materials such subcontractor provided during the applicable period.

(e) Bountiful shall pay UTOPIA for the Construction Services, Improvements, Installations, and other work provided under the terms of this Agreement at the later of the following: (i) within thirty (30) calendar days of receipt of a Notice of Payment; (ii) if Bountiful requests any such documentation or walk-through provided for in Section 2.6, within thirty (30) calendar days of its receipt of such documentation and the walk-through inspection; or (iii) if Bountiful delivers to UTOPIA a Notice of Deficiency, within thirty (30) calendar days from UTOPIA’s resolution of such deficiencies or resolution of such dispute according to mediation undertaken by the Parties pursuant to Section 2.6(c).

(f) Retainage. Bountiful shall be entitled to withhold from each payment due for System Construction a sum equal to five percent (5%) of the total invoice amount (“Retainage”). Bountiful shall remit payment of the total Retainage amount to UTOPIA within thirty (30) calendar days of Final Completion.

(g) Payment Dispute. In the event there is a good faith dispute relating to the payment of any amount due under this Agreement, the Party claiming the amount in dispute will notify the other Party of the dispute in writing and the Parties will meet to discuss the dispute and attempt to resolve it in good faith. Pending the resolution of a payment dispute, the failure to pay a disputed charge shall not constitute a breach of the Agreement provided that the payor Party continues to pay all fees and charges that are not being contested.

Section 2.6 Inspection and Acceptance by Bountiful; Notice of Deficiency; Dispute Resolution.

(a) Upon receipt of Notice of Payment for any Improvement, Bountiful shall have fourteen (14) calendar days to request a detailed walk-through inspection of such Improvement or installation with any representatives or inspectors

designated by Bountiful and review of as-built drawings, inspection reports, and test documentation of the completed Improvements from UTOPIA or third-party contracted by Bountiful.

(b) Upon delivery of any requested materials and after a walk-through inspection, as provided for in the preceding paragraph, Bountiful shall have an additional fourteen (14) calendar days to provide written notice to UTOPIA of any Improvement or installation deficiencies that would prevent the Bountiful Network from operating as provided in this Agreement or any disputes related to the cost accounting in the Notice of Payment (“Notice of Deficiency”).

(c) Upon receipt of a Notice of Deficiency relating to the Construction Services or any amount to be paid to UTOPIA, UTOPIA may consent to the adjusted cost and/or remedy the deficiencies outlined in such notice, or UTOPIA shall be entitled to request mediation (from a mediator mutually agreed upon by the Parties, with the cost of mediation to be split 50/50 between the Parties) of the disputed cost or deficiency. A request for mediation shall be made by UTOPIA within fourteen (14) calendar days after receipt of Notice of Deficiency. Failure to request mediation within this fourteen (14) day period shall result in the Notice of Deficiency becoming binding upon UTOPIA. If, subsequent to final payment and at Bountiful’s request, UTOPIA incurs costs to correct defective or nonconforming work, Bountiful shall reimburse UTOPIA such costs on the same basis as if such costs had been incurred prior to the Notice of Payment but in no event in excess of the agreed upon construction cost.

Section 2.7 Installations.

(a) UTOPIA shall coordinate installations to subscribed locations within Bountiful as part of the Network Management Services and the Infrastructure Fee agreement entered into with an End User. Installations include the typical signup process available through an online ordering system to be provided by UTOPIA, scheduling, material, and labor for the placement of drop conduit, fiber cable, splicing, indoor fiber termination electronics, and a single Cat5e installation to the subscriber’s router. Only a standard UTOPIA installation based on a lowest-cost path is included. Alternative routes, cable fishing, or subscriber preferences that increase the expense of UTOPIA’s standard installation may be negotiated with UTOPIA or a UTOPIA approved contractor on a case-by-case basis at Bountiful’s or the subscriber’s expense.

(b) The Agreement only includes installations to the Agreed Upon End Users according to the terms in Section 2.3(b). In the event Bountiful desires that Connection Services be provided to more than the Agreed Upon End Users, it shall request from UTOPIA the estimated cost per installation for a residential and nonresidential connection consistent with UTOPIA’s Utah-based network costs. Upon receipt of the estimated cost per installation, Bountiful shall submit to UTOPIA a written proposal, requesting additional installations and capacity from UTOPIA. Said proposal shall specify the total number of additional End Users to be provided Connection Services and the date on which Bountiful requests the capacity for such Connection Services to be effective. UTOPIA shall accept or

reject said proposal in full or in part within fourteen (14) calendar days after being deemed served pursuant to Section 5.24. If not accepted in full, UTOPIA shall provide Bountiful with an estimate of the costs required by, and acceptable to, UTOPIA to provide the requested additional installations.

Section 2.8 Acceptance after Final Completion. UTOPIA will provide as-built drawings, inspection reports, test documentation and walk-through inspection of the completed Improvements. UTOPIA shall notify Bountiful of completed Improvements and coordinate a time for inspection. Acceptance by Bountiful will occur within fourteen (14) calendar days from the date when Bountiful has completed a walk-through inspection, and received any documentation requested pursuant to Section 2.6, if Bountiful has not yet issued a Notice of Deficiency for such Improvement; or if Bountiful has timely issued a Notice of Deficiency for such improvement, upon receipt by Bountiful of written notice from UTOPIA or third-party contractor of successful remediation of each item on such Notice of Deficiency. Acceptance by Bountiful pursuant to this Section 2.8 does not constitute a waiver of Bountiful's right to enforce any term of this Agreement, and Acceptance is not a waiver of any future claim, remedy, or cause of action Bountiful may have in the future, whether under warranty or contract, related to the Bountiful Network and this Agreement.

Section 2.9 Maintenance. UTOPIA shall be responsible for repairing or replacing any Bountiful Network conduit, fiber, or system electronics that become damaged or defective, in accordance with the maintenance obligations set forth in Exhibit D. UTOPIA shall monitor the Bountiful Network for needed repairs and coordinate repair work.

Section 2.10 Refresh and Replacement. At all times after acceptance pursuant to Section 2.9, UTOPIA is responsible for keeping the components of the Bountiful Network capable of supporting the same Connection Services as are available in other UTOPIA Utah-based networks. UTOPIA commits that all components of the Bountiful Network are new or like-new condition and meet current industry standards at the time of installation. All electronics components of the Bountiful Network will support at minimum One Gigabits Per Second (1 Gbps) speeds throughout the Bountiful Network. The Bountiful Network shall also be designed so that Ten Gigabits Per Second (10 Gbps) service can be provided anywhere within Bountiful with only a change of electronics specific to the requesting subscriber. At the time that a generational upgrade is desired by Bountiful, such as replacement of all End Users' switches and upstream switches to support Ten Gigabits Per Second (10 Gbps) as a minimum, Bountiful may submit a request to UTOPIA and UTOPIA shall provide a proposal for the costs and deployment plan to provide the requested upgrade.

(a) UTOPIA agrees to remit monthly payments to Bountiful for the Refresh and Replace Fund in the amount of \$6.50 per subscriber per month.

(b) Except in the case of an emergency, UTOPIA and Bountiful shall jointly evaluate and determine when refresh and replacement is necessary for the Bountiful Network. Bountiful shall provide a notice to proceed for any desired refresh and replacement.

(c) Bountiful agrees to reimburse UTOPIA for any refresh and replacement expenses, including labor, whether its Refresh and Replace Fund has accumulated enough money to cover the expenses or not.

The estimated Refresh and Replacement schedule is described in Exhibit F.

Section 2.11 Utility Locating. UTOPIA shall be responsible for providing utility locating services directly or via sub-contractor for the Bountiful Network.

Section 2.12 Geographic Information System (GIS). UTOPIA shall be responsible for maintaining GIS data for the Bountiful Network, including the costs for any software licensing, hardware, and data archival expenses. UTOPIA shall provide a full buildout schematic (both paper and electronic in a format acceptable to Bountiful) of the Network System to Bountiful within ninety (90) calendar days of Substantial Completion and any time there is Bountiful Network expansion.

Section 2.13 Ownership of Improvements. All real and personal property constituting the Bountiful Network, including all associated Authorizations and data, shall be owned by Bountiful upon payment of agreed costs (notwithstanding Retainage) related to the particular Improvements.

Section 2.14 Performance Bond.

(a) Prior to performing any Construction Services, UTOPIA shall provide a payment and performance bond in a penal sum equal to five percent (5%) of the Construction Services Fee and obligating the surety to the terms of the Construction Services terms of this Agreement.

(b) The form of the payment and performance bonds shall comply with the requirements of applicable law, and unless otherwise agreed, shall be in the form attached hereto as Exhibit G. The performance bond shall be valid through the construction period of UTOPIA's obligations under this Agreement.

(c) The payment bond shall remain valid until retainage has been released. Any surety issuing bonds naming UTOPIA as the bond principal shall be authorized to conduct business in the State of Utah. No personal surety shall be permitted.

ARTICLE III

NETWORK MANAGEMENT SERVICES

Section 3.1 Network Management Services. UTOPIA shall provide to and within Bountiful and Bountiful shall receive from UTOPIA, Network Management Services, to allow End Users benefitting from the Improvements within Bountiful to connect to the Bountiful Network.

Section 3.2 System Capacity.

(a) UTOPIA has determined that it has excess capacity in the UTOPIA Network to provide the Network Management Services and that it will make such capacity available to Bountiful.

(b) UTOPIA agrees to design the Improvements to provide a minimum of Twenty Gigabits Per Second (20 Gbps) of network capacity to each of the Bountiful Hut(s) upon acceptance of the completion of the Bountiful Hut(s). The Improvements will maintain at least thirty percent (30%) headroom of unused capacity to the Aggregation Site and will monitor and coordinate upgrades to the capacity to the Aggregation Sites of the Bountiful Network if seventy percent (70%) utilization is exceeded based on a ninety-five percent per five (5) minute (95%/5min) interval

monthly calculation.

Section 3.3 Availability. UTOPIA shall provide continuous Network Management Services barring only emergency or scheduled downtime, curtailments, and Operating Contingencies.

Section 3.4 Exclusive Use. Subject to the terms of this Agreement, UTOPIA shall manage all use of the Bountiful Network for purposes of providing services directly or in partnership with Service Providers approved by UTOPIA to End Users of the Bountiful Network.

Section 3.5 Service Providers. Other than terms specified in this Agreement, UTOPIA shall make the Bountiful Network available to Service Providers upon comparable terms used by UTOPIA for approved service providers in other UTOPIA networks. UTOPIA shall manage interconnects, technical operations, and all other aspects of on-boarding and maintaining connectivity and services to support Service Provider offerings on the Bountiful Network.

Section 3.6 Network Operations Center (“NOC”) Services. UTOPIA shall provide monitoring of the Bountiful Network on a 24/7 (24-hours/day, 7-days/week) basis from its NOC. This includes device monitoring, outage notifications, configuration of devices, diagnostics, repair dispatch, and other services as generally provided by the NOC.

Section 3.7 Network Engineering Services. UTOPIA shall maintain the configurations, code, and design of the Bountiful Network to ensure that it meets the needs of the Bountiful Network. Additionally, UTOPIA shall provide network design services to Bountiful for the purpose of interconnecting the Bountiful Network with the UTOPIA Network.

Section 3.8 Billing and Collection by UTOPIA. UTOPIA shall provide billing and collection services, including collection of late payments, for Connection Services provided to End Users directly (if applicable) and to Service Providers. All billing of Infrastructure Fees shall be performed by Bountiful utilizing its preferred billing system and processes. UTOPIA shall provide monthly reports of all customers, installations, disconnects, charges, etc., for Bountiful billing purposes. UTOPIA shall provide reasonable effort to automate and integrate billing data through Bountiful’s preferred billing/accounting system, but no guarantees of automation or compatibility are provided, and raw data files shall always be available as a fall-back option for Bountiful to utilize if automated billing cannot be achieved.

Section 3.9 Customer Service. UTOPIA staffs a customer service call center for sales, information, and other miscellaneous issues. UTOPIA shall maintain a staff sufficient to support the Bountiful Network. For outages, technical support, and billing issues, subscribers will be directed to first call their contracted Service Provider. In the event a Service Provider determines the issue is related to problems with the Bountiful Network and not the Service Provider or in-home equipment, then the Service Provider may escalate the issue to UTOPIA. Upon escalation to UTOPIA, UTOPIA shall have ultimate responsibility to resolve the problem, and shall do so as promptly as practicable.

Section 3.10 Technical Support. UTOPIA shall provide technical support for the connection up to the demarcation switch in each home or business. Technical support for customer routers, in-home wiring, computers, and in-home Wifi are not services that UTOPIA provides. Such services will be handled by the subscriber’s contracted Service Provider, based

on their terms of service, or by Bountiful if the City chooses to do so.

Section 3.11 IT Systems. UTOPIA shall be responsible for incremental costs for software licensing expenses incurred for managing the Bountiful Network including device monitoring, billing software, configuration management, and automated provisioning systems.

Section 3.12 Minimum Response and Resolution Deadline.

(a) UTOPIA shall provide the Network Management Services in a prompt and efficient manner in accordance with the standards outlined more fully in Exhibit B to provide for the uninterrupted operation of the Bountiful Network and in accordance with industry best practices.

(b) UTOPIA shall provide End User and Service Provider customer support through email and phone on a 24/7 (24-hours/day, 7-days/week) basis and shall provide support to address any failures in the Bountiful Network to provide Connection Services immediately upon notification of such failure.

(c) Failure of UTOPIA to provide Network Management Services as detailed in this Agreement at a level that is consistent with industry-accepted standards shall be considered a material breach of this Agreement and shall entitle Bountiful to pursue all remedies available including termination of this Agreement, injunctive relief, and monetary damages.

ARTICLE IV

PAYMENT FOR NETWORK MANAGEMENT SERVICES; DISTRIBUTION OF REVENUES

Section 4.1 Determination of Payment/Revenue Distribution. Bountiful may impose and collect Infrastructure Fees from End Users. UTOPIA shall impose and collect fees and charges from Service Providers and End Users for Connection Services under the pricing terms described below. Additional options and pricing may be adjusted regularly upon written mutual approval of UTOPIA and Bountiful, or solely by UTOPIA at the same rate and time as UTOPIA's Utah-based network cities and with thirty (30) calendar days advanced notice in writing so long as it does not exceed the annual percent increase of the Consumer Price Index for Internet Services and Electronic Information Providers published by the U.S. Bureau of Labor Statistics (https://data.bls.gov/timeseries/CUUR0000SEEE03?output_view=data).

(a) Residential Transport Services – The following fees shall be billed by UTOPIA to Service Providers and are retained by UTOPIA for providing Network Management Services as described under this agreement and for Bountiful to fund the costs of Refresh and Replacement (as described in Section 2.11). These fees do not include any Infrastructure Fee Revenues that the City imposes and collects from the End Users.

- 250 Mbps - \$27/month
- 1 Gbps - \$31/month
- 10 Gbps - \$60/month

(b) Non-residential Transport Services – Fees shall be billed by UTOPIA to Service Providers based on its catalog of non-residential transport services to be provided under NDA, which is classified as a trade secret and protected from disclosure under GRAMA. UTOPIA shall retain fees not remitted to the City for providing Network Management Services. UTOPIA will report on the services monthly and remit the revenue share to the City according to the following terms:

- Services within Bountiful – 50%
- Point-to-Point Transport Services with one end-point within Bountiful – 25%
- Multi-point (3 or more locations) Transport Services – Pro-rata share of 50% divided by the number of locations, scaled to the relative price of the service at the corresponding locations within Bountiful.

UTOPIA shall remit the revenue sharing for Non-residential Transport Services to Bountiful on a monthly basis.

(c) UTOPIA is not responsible for any changes in the retail pricing from Service Providers. Bountiful’s wholesale prices are subject to change according to changes in UTOPIA’s catalog of non-residential transport services.

(d) In consideration for the Network Management Services provided by UTOPIA herein, UTOPIA shall retain the costs of services at the prices included in Exhibit B after collecting wholesale or retail fees from Service Providers or End Users on a monthly basis in accordance with this Section 4.1 and remitting remaining wholesale or retail fees to Bountiful. Such Revenues are anticipated to commence when Bountiful is provided with Network Management Services related to the Improvements and when one or more End Users have been charged for Infrastructure Fees or Service Fees.

(e) Unless disputed, if Bountiful does not pay UTOPIA for Network Management Services in full on or before the close of business on the thirtieth (30th) day of the month in which said payment is due, an interest charge will be made at the rate of ten percent (10%) per annum or the maximum rate of interest legally chargeable, whichever is less.

Section 4.2 Remedies. UTOPIA and Bountiful may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the other Party under the provisions of this Agreement. Bountiful may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of UTOPIA under the provisions of this Agreement. UTOPIA and Bountiful shall have the right from time to time to begin and maintain successive proceedings against the other party for the recovery of the other Party’s obligations under this Agreement. Nothing herein contained shall be deemed to require any Party to defer commencement of any such proceeding until the end of

the term of this Agreement.

Section 4.3 No Exclusive Remedy. No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing. The failure of a Party to insist at any time upon the strict observance or performance by the other Party to this Agreement of any of the provisions of this Agreement, or to exercise any right or remedy provided for in this Agreement, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by a Party of any payments required to be made under this Agreement with knowledge of the breach of any provisions of this Agreement, shall not be deemed a waiver of such breach. In addition to all other remedies provided in this Agreement, each Party shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this Agreement, or to a decree concerning performance of any of the provisions of this Agreement, or to any other remedy legally allowed. If any proceeding shall be brought for the enforcement of any right or remedy provided for in this Agreement in which it shall be determined that Bountiful shall have failed and continued to fail to make a payment of Fees due under this Agreement at the time of commencement thereof, Bountiful shall pay UTOPIA or its designee all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees and expenses. In like manner, if it should become necessary for Bountiful to bring legal proceedings against UTOPIA to enforce any right given it hereunder, Bountiful shall have the right, if it is successful in such proceedings, to the payment by UTOPIA of all expenses incurred in connection therewith including, without limitation, reasonable attorneys' fees, and expenses.

ARTICLE V

GENERAL PROVISIONS

Section 5.1 Submission to Authorized Attorney. This Agreement shall be submitted for approval to the governing bodies of UTOPIA and Bountiful and to an authorized attorney for UTOPIA and for Bountiful who shall approve this Agreement if such attorney determines that it is in proper form and compatible with the laws of the State of Utah.

Section 5.2 Authorizations. UTOPIA and Bountiful shall each obtain and maintain all Authorizations required to perform their respective obligations under this Agreement and shall pay all applicable Authorization Fees.

Section 5.3 Parties not Obligated for the Other Respective Party. All obligations of the Parties are payable solely by the respective Party and are not a debt or other obligation of UTOPIA or Bountiful, respectively; provided however, that nothing in this Section 5.3 shall be construed as limiting Bountiful's obligations under Section 4.1 of this Agreement.

Section 5.4 Termination. Either Party may terminate this Agreement for cause in the event of an uncured material breach by the opposing party, subject to the following:

- (a) In the case of a monetary default by Bountiful for failure to pay any undisputed charge, Bountiful shall have thirty (30) calendar days to effect a cure after receipt of written notice of a failure to pay. If Bountiful does not remedy the monetary default in full within thirty (30) calendar days after receipt of written notice of a failure

to pay, UTOPIA may suspend Construction until Bountiful has remedied the monetary default in full. If Bountiful does not remedy the monetary default in full, or raise a bona fide dispute regarding the outstanding amount, within ninety (90) calendar days after receipt of written notice of failure to pay, UTOPIA may elect to suspend Network Management Services or terminate this Agreement by providing written notice of such election to Bountiful.

(b) In the case of a non-monetary default by either Party, the non-defaulting Party shall give written notice of such occurrence to the defaulting Party. The defaulting Party shall have thirty (30) calendar days after receipt of written notice to effect a cure. If the default cannot be corrected within such thirty (30) calendar day period, the defaulting Party may be given additional reasonable time in which to effect a cure acceptable to the non-defaulting Party, in the sole discretion of the non-defaulting Party, provided the defaulting Party diligently commences corrective action within the original thirty (30) calendar day period and thereafter diligently prosecutes the corrective action to completion. If the defaulting Party does not timely cure the breach or default within the time periods specified above, the non-defaulting Party may elect to terminate this Agreement by providing written notice of such election to the defaulting Party.

Section 5.5 Disposition and Transition at Termination.

(a) After this Agreement has expired or is to be terminated in accordance with its terms, unless otherwise agreed to by the Parties, all revenues generated under this Agreement shall belong to each Party as designated by this Agreement.

(b) No later than one hundred eighty (180) days prior to the date on which this Agreement will terminate, whether by expiration of term or by request from either Party, the Parties shall engage in good faith negotiations to plan a smooth transition enabling Bountiful to assume control of Improvements (“Transition Plan”). Unless otherwise agreed by the Parties, no termination of this Agreement may occur until the Transition Plan has been completed. Bountiful may reasonably require, in accordance with the Transition Plan, that UTOPIA undertake certain obligations after termination, or cause the termination date to be extended beyond the original date to execute the Transition Plan. Bountiful shall reimburse UTOPIA for reasonable actual costs incurred for executing the Transition Plan other than the costs that UTOPIA would otherwise have incurred in the absence of the Transition Plan.

Section 5.6 Risk of Loss. Each Party is solely responsible for the risk of loss of, or damage to, equipment of that Party (regardless of where located), unless the loss or damage results from the negligence or fault of the other Party.

Section 5.7 Several and Individual Obligations. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement and shall not be liable for any obligation of the other.

Section 5.8 Insurance/Indemnification.

(a) To the extent authorized by law, each Party shall indemnify and hold harmless the other Party, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorney's fees, that may at any time arise or be set up because of damages to property, bodily injury or personal injury resulting from its breach of this Agreement, or its grossly negligent or willful misconduct.

(b) Bountiful shall maintain at all times during this term of this Agreement, General Liability and Management Liability insurance with a limit of no less than \$3,000,000 per occurrence.

(c) UTOPIA and its subcontractors shall procure and maintain for the term of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the contracting party, its agents, representatives, employees or subcontractors. Insurance shall be through insurance companies authorized to do business in the State of Utah, (i) having a Best Insurance Reports rating of "A" or better and a financial size category of "X" or higher. All sureties shall be listed in the Department of the Treasury Circular 570, with bond amounts not exceeding the 'underwriting limitation' amount listed. Said insurance shall include:

- Workers' Compensation Insurance: Statutory workers' compensation insurance (Part A). Such insurance shall also include employer's liability (Part B) insurance in a limit of not less than \$1,000,000 for each: accident, disease and employee. No owner or officer may be excluded.
- General Liability Insurance: Commercial General Liability insurance written on an occurrence basis, arising out of claims for bodily injury (including death), property damage, products liability, completed operations liability, personal injury, advertising injury, damage to premises rented to you, with not less than \$5,000,000 per occurrence and \$5,000,000 aggregate.
- Automobile Liability Insurance: Automobile liability insurance for liability arising out of the use of any owned, leased, non-owned and hired vehicles of UTOPIA and any subcontractors, with a symbol 1 for any auto, statutory no-fault limits and a liability limit not less than \$5,000,000 each accident.
- Excess Liability Insurance: The amounts of insurance required in the foregoing subsections may be satisfied by UTOPIA purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the required limits specified above, and the Excess Liability policy includes/is excess of all required underlying endorsements. Evidence of excess liability or umbrella policies shall include a schedule of underlying coverages.
- Crime Insurance: In the event the UTOPIA should have direct access to city funds, crime insurance shall be maintained in an amount not less than \$1,000,000 and including the following insuring agreements:

- Employee Theft
- Forgery or Alteration
- Theft of Money & Securities
- Theft of Money & Securities In-Transit
- Money Orders and Counterfeit Currency
- Computer Crime
- Funds Transfer Fraud
- Theft of Client Funds
- Social Engineering Fraud (Impersonation Fraud)

Section 5.10 Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER PROVISION OF THIS CONTRACT AND EXCEPT FOR CLAIMS MADE BY THIRD PARTIES WHICH SHALL NOT BE LIMITED BY THIS SECTION, THE PARTIES AGREE THAT THE RECOVERY BY ANY PARTY, INCLUDING ANY LIABILITIES, DAMAGES, COSTS OR OTHER EXPENSES (i) AS A RESULT OF ANY BREACH OR NONFULFILLMENT BY A PARTY OF ANY OF ITS COVENANTS, AGREEMENTS OR OTHER OBLIGATIONS UNDER THIS CONTRACT OR (ii) BY REASON OF OR ARISING OUT OF ANY OF THE EVENTS, CONDITIONS OR OTHER MATTERS UNDER THIS CONTRACT, SHALL BE LIMITED TO ACTUAL DAMAGES AND SHALL NOT INCLUDE OR APPLY TO, NOR SHALL ANY PARTY BE ENTITLED TO RECOVER, ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION OR DIMINUTION IN VALUE) SUFFERED OR INCURRED BY ANY PARTY; PROVIDED, HOWEVER, THAT SUCH RESTRICTION AND LIMITATION SHALL NOT APPLY TO A PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY: (a) AS A RESULT OF A THIRD PARTY CLAIM FOR SUCH INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, (b) FOR CLAIMS THAT ARE COVERED BY INSURANCE AND ANY RELATED DEDUCTIBLES, OR (c) FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LIABILITIES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION OR DIMINUTION IN VALUE) THAT ARE A RESULT OF SUCH INDEMNIFYING PARTY'S OR ITS AFFILIATES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 5.12 Books and Records. UTOPIA agrees that it shall maintain separate books and records relating to the Improvements and that proper and equitable allocations of revenues and expenses will be made with respect to the operations of the Improvements. Bountiful shall receive from UTOPIA a monthly statement on the accounting and disposition of Infrastructure Fees. UTOPIA shall submit to Bountiful such supporting data with respect to all annual budgets and yearly accounting reconciliations as are reasonably necessary to enable Bountiful to effect proper accounting therefor. All bank records, books of account and accounting records of UTOPIA relating to this Agreement shall be available for inspection and utilization by a duly authorized officer or designee of Bountiful at all reasonable times. UTOPIA shall cause such books of account of the Improvements to be audited annually by independent public accountants experienced in utility accounting. A copy of each such

annual audit, including any recommendations of the accountants with respect thereto, shall be promptly made available by UTOPIA to Bountiful.

Section 5.13 Relationship to Other Instruments. UTOPIA and Bountiful must comply with all licenses, permits and regulatory approvals necessary for the ownership, acquisition, construction, operation, and use of the Improvements. This Agreement is made subject to the terms and provisions of such licenses, permits and regulatory approvals, except that Bountiful shall not be bound by any term or provision of any license, permit, or regulatory approval, which may contradict or vary the terms of this Agreement unless it expressly consents in writing to be so bound.

Section 5.14 Liabilities. Bountiful, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of any kind or nature arising out of or resulting from the ownership (if any), acquisition, construction, installation, or operation by UTOPIA of the Improvements or for providing the Construction Services or Network Management Services contemplated by this Agreement. UTOPIA, its officers, designees, and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of any kind or nature arising out of or resulting from the performance by Bountiful under this Agreement.

Section 5.15 Assignment. Neither this Agreement nor any part hereof shall be assigned by any Party without prior written consent of the other, said consent shall not be unreasonably withheld.

Section 5.16 Furnishing Service to Others. UTOPIA, by entering into this Agreement, does not hold itself out to provide the Improvements or similar service to any other person or entity.

Section 5.17 Uncontrollable Forces. No Party shall be in default in respect to any obligation under this Agreement, if prevented from fulfilling such obligation by reason of an Uncontrollable Force. Such relief from a Party's obligations shall be limited to the period of time that the Uncontrollable Force is in effect. If a Party is rendered unable to fulfill any obligation by reason of an Uncontrollable Force, the Party shall exercise due diligence to remove such inability and to mitigate its impact with all reasonable efforts and shall keep the other Party fully informed of changes and conditions as far in advance as possible. For example, if an Uncontrollable Force prevents UTOPIA from constructing a portion of the Improvements in accordance with the construction plan described in Exhibit A, UTOPIA shall use its best efforts to perform other tasks that will offset delays caused by the Uncontrollable Force.

Section 5.18 Cable Television Services and Public Telecommunications Services. The Parties hereto acknowledge and represent that neither party, by entering into this Agreement, shall provide or be required to provide Cable Television Services or Public Telecommunications Services as defined in the Telecommunications Act, nor is either party capable of providing said services. Furthermore, the Parties hereby acknowledge and represent that to the best of their knowledge, Bountiful is paying for the full cost of providing the Network Management Services or other services received by it pursuant to this Agreement.

Section 5.19 Confidentiality.

(a) Subject to the exceptions set forth below, each of the Parties shall hold in confidence any information obtained by it pursuant to the performance of the obligations required or the transactions contemplated by this Agreement, unless the information is subject to disclosure pursuant to applicable law. Confidential Information includes proprietary or confidential information disclosed by either Party to the other for the purposes of developing, negotiating, implementing, and managing this Agreement that is either clearly identified as such in writing (“Confidential Information”), or is the type of information that is customarily treated as confidential, and includes all such information disclosed between the Parties prior to the Effective Date of this Agreement. Confidential Information shall be safeguarded and protected in the same manner as the recipient's procedures require to ensure protection and nondisclosure of recipient's own proprietary and confidential information.

(b) For all purposes of this Agreement, the term “Confidential Information” shall collectively refer to all non-public information or material disclosed or provided by one Party (“Disclosing Party”) to the other (“Recipient Party”), either orally or in writing including without limitation: (a) business plans, strategies, forecasts, projects and analyses, (b), financial information and fee structures, (c) business processes, methods and models, (d) employee information, (e) specifications, (f) manufacturing, purchasing, logistics, sales, technical, product and marketing information, and (g) customer information or personal data.

(c) The Recipient Party’s obligation to safeguard and not disclose such Confidential Information shall not apply to information in the public domain, lawfully in the recipient's possession prior to receipt hereunder, lawfully obtained from third parties, or that is required to be disclosed under applicable public records laws. The Parties acknowledge that Confidential Information may be disclosed as part of any normal reporting and review procedure with auditors and attorneys, or with any outside lender, or any proposed or actual successor in interest; provided, however, that prior to such disclosure, the third party to receive such disclosure shall agree to maintain the confidentiality of the Confidential Information.

(d) If required by order of a governmental authority, including a judicial body, the Recipient Party may release to such body the Confidential Information required by such order; provided, however, recipient agrees that prior to such release it shall promptly notify the Disclosing Party of the order and allow the Disclosing Party to contest any release of the Confidential Information; and provided, further, Recipient Party shall use all reasonable efforts to prevent such Confidential Information from becoming disclosed to the public.

(e) All Confidential Information of a Disclosing Party shall remain the exclusive property of such Party, and no right, title or interest in or to any of the Confidential Information or any material developed therefrom is transferred to the Recipient Party or by its delivery to the Recipient Party, unless otherwise specified in this Agreement.

(f) For avoidance of doubt, the owner of the Confidential Information shall have the ability to disclose such information at its discretion.

(g) The confidentiality provisions in this Section 5.19 shall survive

expiration or termination of this Agreement.

Section 5.20 Intellectual Property.

(a) Licenses, plans, designs, specifications, drawings, reports, data, work product, and other intellectual property, including Authorizations delivered by UTOPIA to Bountiful, or obtained or created by UTOPIA, whether alone or jointly with others, including all copyrights therein and with respect thereto (individually and collectively, the “Work Product”), in the performance of Construction Services and Network Management Services on behalf of Bountiful shall be owned by Bountiful and shall be, and by this Agreement is, assigned to Bountiful.

(b) Nothing in this Agreement restricts Bountiful from utilizing the Work Product in any manner. Nothing in this Agreement shall be construed as a grant of any other right or license under any copyrights, inventions, patents, trade secrets or other intellectual property now or later owned or controlled by UTOPIA or Bountiful; provided, however, to the extent that any of UTOPIA’s pre-existing intellectual property is included in the Work Product, UTOPIA grants to Bountiful a non-exclusive, royalty-free, paid-up, perpetual, irrevocable license to use and distribute such pre-existing intellectual property in connection with the Work Product and to the extent necessary or useful for Bountiful’ ability to meet its obligations under this Agreement.

(c) Additionally, nothing in this Agreement shall be construed as granting any right, title or interest in the other Party’s trademarks, trade names, service marks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks (“Marks”) of the other Party without prior written permission of the Party owning such Mark.

Section 5.21 Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof. No change, variation, termination, or attempted waiver of any of the provisions of this Agreement shall be binding on the Parties unless executed in writing by the other Party. This Agreement shall not be modified, supplemented, or otherwise affected by course of dealing.

Section 5.22 Amendments. This Agreement shall not be amended, modified, or otherwise altered in any manner without the consent of both Parties hereto, which consent shall not be unreasonably withheld; provided however, that Section 5.21, Section 5.23, and Section 5.24 hereof shall not be amended.

Section 5.23 Effective Date and Original Term. This Agreement shall be effective as of the Effective Date and shall continue in effect for ten (10) years, or such later time when any obligations issued by Bountiful and payable from amounts hereunder shall have been retired in accordance with their terms. Upon the expiration of the Original Term or any Renewal Term(s), this Agreement shall be automatically renewed for five (5) one-year (1-year) periods (“Renewal Terms”) unless, at least ninety (90) calendar days prior to the next immediate renewal date, either Party gives the other Party written notice of its intent not to renew the Agreement.

Section 5.24 Notice. Any notice, demand, or request provided for in this Agreement

shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

If to Bountiful:

Attn: City Manager
795 South Main Street
Bountiful, UT 84010

With a Copy to:

Attn: City Attorney
795 South Main Street
Bountiful, UT 84010

If to UTOPIA:

Attn: Executive Director
5858 South 900 East
Murray, UT 84121

With a Copy to:

Attn: Corporate Counsel
5858 South 900 East
Murray, UT 84121

The Parties may, at any time, by notice to the other designate different or additional persons or different addresses for the giving of notice hereunder.

Section 5.25 Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns, and is made for their benefit. No other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 5.26 Governing Law; Venue. This Agreement shall be interpreted, governed by, and construed under the laws of the State of Utah. With respect to any disputes arising out of or related to this Agreement, the Parties consent to the exclusive jurisdiction of and venue in, the state courts located Davis County, Utah, or, in the event of federal jurisdiction, the United States District Court seated in Salt Lake City, Utah. This provision shall not be interpreted to provide jurisdiction or venue in Utah for any third-party contracting with Bountiful.

Section 5.27 Invalidity or Change in Law. If there is a material change in a federal or state law, regulation, or rule that substantially affects this Agreement or the activities of either Party under it, or if there is a final non-appealable order, judgment, or decree of any court or governmental authority of competent jurisdiction that enjoins, restricts, or otherwise impairs this Agreement or the Parties' activities hereunder (the foregoing collectively called a "Change Event"), then either Party may provide the other Party written notice of its belief that the Change Event will have a substantial adverse effect on that Party's business operations or its rights or obligations under this Agreement. The Parties shall then negotiate in good faith to reach a solution that reasonably accommodates the Change Event. If the Parties cannot reach such a solution with ninety (90) days of the notice, then either Party may terminate this Agreement.

Section 5.28 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.29 Severability. If any provision of this Agreement shall be held or be deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatsoever.

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* * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date, as set forth in the initial paragraph hereof.

BOUNTIFUL:
BOUNTIFUL CITY

Dated: _____

Kendalyn Harris, Mayor

ATTEST:

APPROVED AS TO FORM:

Shawna Andrus, City Recorder

Clinton Drake, City Attorney

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the ___ day of _____ 2023, personally appeared before me Kendalyn Harris and Shawna Andrus, the Mayor and Recorder, respectively, of Bountiful City, the signer of the above instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that they executed the same.

Notary Public
My Commission Expires: _____

UTOPIA:
UTAH TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY

Dated: _____

Roger Timmerman, Executive Director

ATTEST:

APPROVED AS TO FORM:

Christa Evans, Secretary

Jeffrey N. Starkey, General Counsel

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the ___ day of _____ 2023, personally appeared before me Roger Timmerman and Christa Evans, the Executive Director and Secretary, respectively, of Utah Telecommunication Open Infrastructure Agency, the signer of the above instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that they executed the same.

Notary Public
My Commission Expires: _____

EXHIBIT A

CONSTRUCTION SERVICES

Planning, Design, and Implementation

As soon as reasonably possible following approval and execution of the Agreement by the governing bodies of both Parties (in other words, the Effective Date), UTOPIA shall continue to proceed with the planning and design of the Improvements. Among the many elements of the “Construction Services” provided by UTOPIA will be regular updates and reports to Bountiful of the status of the planning and design of the Bountiful Network, as well as the implementation—*in other words, the construction and installation of the Improvements*—that will become the Bountiful Network. The “Construction Services” provided by UTOPIA pursuant to the Agreement are more particularly set forth in this Exhibit A entitled “Construction Services”, which is an attachment of, and incorporated into, the Agreement.

The Construction Services will include a full outside plant design, network design and operational impact review will be provided along with a detailed project implementation plan timeline, and an associated budget for the plan. The plan shall include, at a minimum:

- Creation/Import of Bountiful records into GIS system
- Estimated cost for the outside plant build requested area
- Estimated cost for the network engineering build
- Project Engineer to interact and answer questions about the proposals and presentations
- Support for submittal of change orders for any changes on the design plan
- Supporting production map(s) and documentation for proposed build areas
- Extract information in supported format provided by UTOPIA

GIS Services

Upon implementation of new network designs UTOPIA shall create, manage, and maintain a Geo-spatial database to track the build of the Bountiful Network. UTOPIA will provide a conversion method to import engineering documentation (CAD Conversion) and modify the geo-spatial database to include As-Built updates as reported.

Continued support shall be offered by taking GPS data collection for key OSP elements, recording that information into the database, providing and tracking fiber assignments made for provisioning services and when requested, provide an extract of the database for Bountiful in an available format.

Outside Plant Services

During construction UTOPIA shall appoint a Project Manager to facilitate all approved construction for the specific project. Project Manager shall provide management over employees and contractors during the construction process by assigned construction

work packages and ensuring industry best practices and consistent engineering specifications are met.

The Project Manager shall conduct the following:

- Budget tracking and reporting
- Requests for necessary field permits and obligations are communicated to Bountiful
- Issues are tracked and brought to resolution for Bountiful or its residents
- Inventory is managed and accounted for
- Necessary levels of inventory to complete work packages are maintained
- Quality assurance procedures are followed for construction work

Network Engineering Services

UTOPIA shall provide network engineers and/or contractors to evaluate and recommend the needed electronics to provide wholesale services on the Bountiful Network. These network engineers shall:

- Test and certify network electronics for deployment
- Create and maintain physical and logical topology of the Bountiful Network
- Facilitate configuration and installation of the necessary devices in the network as needed
- Coordinate the resolution of any issues with these devices and replace parts or devices as needed
- Engage in Research and Development of new technologies along with strategic partners
- Manage capacity planning of the network

DESCRIPTION OF IMPROVEMENTS

Physical Improvements

Fiber Optic Communication lines shall be deployed throughout the area depicted in Exhibit C. These lines shall be constructed either overhead or underground in the municipal “rights of way” following all local, state, and federal regulations using industry best practices to deploy the most efficient and cost-effective infrastructure.

Elements of the infrastructure include three separate categories: Backbone or middle mile construction, access level or last mile construction and drop level construction.

Construction of additional Fiber Optic Communication lines may be necessary in locations outside of the area depicted in Exhibit C to provide redundancy, increased capacity, and other improvements as may be necessary or advantageous, in whole or in part, for the benefit of Bountiful.

Backbone or Middle Mile Construction

Consists of both overhead and underground paths, communication shelters to house distribution switches, fiber optic patch panels, uninterruptable power supplies (UPS) and generators. The communication shelters will serve as distribution points within Bountiful

and will be connected diversely with ring architecture. Other elements include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. The testing and certification of the improvements shall be in accordance with national industry standards and UTOPIA's Engineering Standards document.

Access Level or Last Mile Construction

Consists of both overhead and underground paths to every subscribed address within the build area. Elements of this type of build include fiber optic cable, conduit, strand, pole mounting hardware, vaults, splice closures and all other items necessary to construct and operate the network. This infrastructure will facilitate and serve as network access points for End Users to Bountiful.

Drop Level Construction

Consists of drop fiber and/or conduit being placed from a network access point to the demarcation point within the subscriber's premise where a network interface device will be placed. Elements of this type of build include three quarter inch drop conduit, drop fiber, aerial attachment hardware, network interface device (NJD), UPS, fiber pigtail, optical transceiver/receiver, power cord and all other items necessary to construct and operate the network.

PRICE FOR SERVICES

I. Design and Buildout of System

All materials, project management, engineering, construction, and deployment services provided to Bountiful by UTOPIA shall be paid for by Bountiful in the amount of the Construction Services Fee as described in Section 2.3 of the Agreement.

Any additional services requested by Bountiful and provided by UTOPIA through the use of UTOPIA's internal resources shall be paid for by Bountiful on the basis of the following hourly rates:

- Executive Time – \$150
- Engineering and construction – \$100
- Technician – \$75
- Marketing – \$60

Additional services and rates may be charged to Bountiful when agreed upon by the Parties in writing from time to time.

II. Interconnect Costs

UTOPIA shall pay any costs or fees associated with interconnecting the UTOPIA network with the Bountiful Network for the purposes of managing and providing services to the Bountiful Network.

III. Requests by Bountiful for Customization or Alternation of UTOPIA Network

Any variance or customization to the Bountiful Network at the request of Bountiful resulting in additional licensing costs for software, changes in standard network equipment, the need for specific software in design, or other additional costs to UTOPIA

will subject the pricing structure provided in this Exhibit A to change. Any changes requested by Bountiful must be mutually agreed upon in writing, togetherwith adjusted pricing, before they shall be binding on either party.

IV. Price Adjustments

All pricing identified herein may be adjusted on a biennial basis consistent with increases in the relevant Consumer Price Index.

EXHIBIT B

NETWORK MANAGEMENT SERVICES

Strategic Partner Management

UTOPIA will recruit and manage strategic partnerships, which will include but not be limited to business and residential Service Providers and other product providers. UTOPIA will attract new technologies to the network to facilitate new service offerings on the network and leverage Bountiful's existing network.

UTOPIA will negotiate and execute Service Provider contracts and contract amendments, enforce contracts with Service Providers, and ensure that service level agreements and other performance obligations within such contracts are met.

Product Management

UTOPIA will recommend and develop a wholesale pricing model, in coordination with Bountiful and strategic partners. This will include new wholesale pricing for newly developed products brought by UTOPIA and its strategic partners.

UTOPIA will present a developed wholesale pricing model, and any changes, to Bountiful and strategic partners. UTOPIA will maintain, modify, and bring to end-of-life wholesale products on the network.

Marketing/Advocate Awareness Program

UTOPIA shall instigate and oversee any marketing and communications efforts that are necessary to the network's success. This may include campaigns within city governments, residential markets, multi-dwelling unit markets, business markets, or with community and national thought leaders, policy makers and other audiences. In particular, UTOPIA may seek opportunities to develop and educate about future quality-of-life, public safety, and economic development opportunities on the **Bountiful** network, working to build the **Bountiful** network's reputation as necessary public infrastructure.

UTOPIA shall coordinate with Bountiful as to branding of the Bountiful Network and associated services, including any use of the City logo.

Operations Management

UTOPIA shall provide management oversight of operational support of the network. This will include:

Field Services: UTOPIA shall coordinate field crews and/or contractors to be deployed in the field to manage the physical plant which is constructed for Bountiful. UTOPIA will coordinate maintenance of the Bountiful Network in accordance with the Agreement and Exhibit D.

Integration: UTOPIA, **with Bountiful's approval will** integrate strategic partners onto the

network, establishing standard interfaces and operational methods and procedures with these partners. UTOPIA shall assist strategic partners in understanding integration points of products and services on the Bountiful Network.

Operational Methods and Procedures: UTOPIA will develop supporting methods and procedures to coordinate delivery of services to customers.

Network Operations Center (NOC): UTOPIA will operate a 24/7 (24-hours per day/7-days per week) NOC to monitor health of devices and services on the network. UTOPIA will respond to strategic partner requests, outages, customer service provisioning, and manage to resolution reported issues on the Bountiful Network.

Network Repair and Maintenance: UTOPIA will detect, record (through UTOPIA's trouble ticketing solution) and coordinate response to network maintenance and issues, and record and dispatch appropriate teams into the field for issue resolution, in accordance with the Agreement and Exhibit D.

Utility Locating Services: UTOPIA will provide utility locating services, including ticket management and dispatch of utility locators hired or contracted by UTOPIA.

Order Management System: UTOPIA will provide systems to allow the ordering and activation of wholesale services on the network, track customer acquisition and produce invoices, as needed, of wholesale services for Bountiful so that they may invoice residents and UTOPIA may invoice Service Providers in accordance with the Agreement.

Reporting: UTOPIA will provide customer, financial, and network reporting of the network on a regular basis not less than monthly, and in response to reasonable request of Bountiful.

Invoicing: UTOPIA will provide information to Bountiful to allow the invoicing of applicable Infrastructure Fees on the network in a manner and timeliness to allow integration with Bountiful City's established billing cycles.

Fees

In exchange for the Network Management Services, UTOPIA shall impose and collect fees in accordance with Section 2 of the Agreement.

Services not included above may be provided by UTOPIA upon request from Bountiful at the hourly rates identified in Exhibit A.

Service Provider Interconnect Fees: UTOPIA shall retain 100% of the fees for Service Provider Interconnects.

EXHIBIT B-1

SERVICE LEVEL PARAMETERS APPLICABLE TO, AND ADOPTED INTO THE AGREEMENT

1. Purpose

These service level parameters have been established in order to ensure reliable services, communication, and processes for this Agreement. UTOPIA strives to meet or exceed all of these parameters appropriate to the service that has been ordered by the End User. These parameters are provided in order for Bountiful to understand the expected responses and behavior of UTOPIA Services as it relates to network performance, availability, and outage resolution.

2. Definitions

“Jitter” – Refers to the instantaneous packet delay variation as described in RFC 3393

“Mean Time To Repair (MTTR)” – The average time from when a service outage is reported to UTOPIA and the time that Services have been restored.

“Packet Delivery” – means the percentage of packets that are successfully transmitted between the ingress user network interface (“UNI”) and the egress UNI to which the customer ports are attached. Packet Delivery is calculated based on the aggregate monthly measurement average of the particular Service.

“Outage” – Unscheduled period when a Service is unavailable due to an interruption of connectivity on the UTOPIA network. This does not include Service interruptions caused by customer premises equipment, Customer or those events listed under the Exclusions section of this SLA.

“Redundant Interconnect” – Customer must interconnect with UTOPIA at various core locations. For Services which include two or more places of interconnection with UTOPIA, such Services are entitled to the Redundant Interconnect SLA parameters.

“Single Interconnect” – Services that have only one place of interconnection with UTOPIA are only entitled to Single Interconnect service level parameters only.

“Service Availability” - is defined as the total minutes of outage in a month subtracted from the total minutes in a month divided by the total minutes in a month multiplied by 100 to represent a percent value.

$$\frac{\text{Total minutes in month} - \text{Total minutes of outage in month} \times 100}{\text{Total minutes in month}}$$

The outage minutes of outage are calculated beginning when the issue is reported to UTOPIA by Customer and ends when the service is restored.

“SLA Credit” –means a percentage of the monthly recurring charges for the affected Service which in no event shall exceed 100% of the monthly recurring charge for such Service, credited to Customer against the monthly invoice following the month in which Customer was entitled to receive the SLA Credit.

“Unavailability” – shall have the meaning given to it in Section 7.1.

3. Performance Objectives

Service Availability

UTOPIA will meet the following service availability

- 99.9% for single-interconnect services
- 99.99% for redundantly connected services

Network Latency

UTOPIA will meet the following round-trip latency requirement:

- 3 milliseconds + (1 millisecond per 50 miles) maximum

Jitter

UTOPIA will meet the following jitter requirement

- 0.5 ms or less average jitter

Packet Delivery

UTOPIA will meet the following Packet Delivery requirement

- Ethernet - 99.999% Packet Delivery
- Internet – 99.9%

Mean Time to Repair (MTTR)

UTOPIA will meet the following mean time to repair objective

- 4 hours or less

4. Outage Reporting

If a Customer or Service Provider experiences an Outage, Customer or Service Provider must notify the UTOPIA Network Operations Center

24/7 UTOPIA Network Operations Center

- Phone - (801-613-3820)
- Email - noc@utopianet.org

Each outage or incident will be assigned a unique ticket ID that must be referenced in the request for SLA credits.

The MTTR metric is calculated based on the time that an outage or event is reported to UTOPIA.

Outage Priorities

Priority 1	Service is degraded to the extent where the Customer is unable to use it and is prepared to release it for immediate testing and remediation.
Priority 2	Service is degraded to the extent that Customer is able/still to use the UTOPIA services but is not prepared to release it for immediate testing).
Priority 3	Service is useable but has one or more characteristics that do not meet the Network Performance Objectives as set forth in this document

If Customer does not initiate a trouble ticket with UTOPIA or does not release the Service to UTOPIA for testing, UTOPIA will not be obligated to meet the SLA parameters or issue an SLA Credit.

5. SLA Credit

5.1 Service Availability SLA Credit

Single Interconnect

Non-Availability	Credit as % of MRC
0 – 43 minutes (99.9%)	0%
44 - 86 minutes (99.8%)	2%
87 – 432 minutes (99%)	5%
> 432 minutes (<99%)	10%

Redundant Interconnect

Non-Availability	Credit as % of MRC
0 – 4.3 minutes (99.99%)	0%
4.3 – 8.6 minutes (99.98%)	2%
8.7 – 432 minutes (99%)	5%
> 432 minutes (<99%)	10%

5.2 Mean Time to Repair SLA Credit

Outage Time to Repair	Credit as % of MRC
> 4 hours	3%

> 4 hours	5% for each full hour thereafter
-----------	----------------------------------

5.3 Ethernet Performance SLA

Metric	Objective	Credits as % of MRC
Latency	3 milliseconds + (1 millisecond per 50 miles)	3%
Packet Delivery	99.999%	3%
Jitter	0.5 ms or less	3%

6. Exclusions

The following events and causes are excluded from the SLA

- Any act or omission by Customer or Customer’s client.
- Natural disasters
- Scheduled maintenance where UTOPIA provides Customer at least ten (10) business days’ prior written notice via email.
- Problems or other issues related to Customer Premises Equipment
- Force Majeure event
- Lapse of service due to failure of power at customer premises
- Failure of Customer to report an outage or degraded services.

7. Customer Termination Rights for Non-Performance

7.1 Chronic Failure – a Service is considered to be “Chronic” if it incurs: (i) Unavailability, which in the aggregate, exceeds twenty-four (24) hours in any thirty (30) consecutive day period; or (ii) three (3) or more periods of Unavailability in any thirty (30) consecutive day period. “Unavailability” is defined as a Service which (a) incurs a complete loss of signature or; (b) is degraded such that the Service is rendered unusable by the Customer; and (c) excludes events listed under the Exclusions section of this SLA. In the event a Service is deemed to be Chronic, Customer shall be entitled to terminate the affected Service without incurring early termination charges or other liability, provided Customer sends written notice of termination to UTOPIA within thirty (30) days of the event giving rise to Customer’s termination right under this section.

7.2 Degraded Ethernet Service – In the event an Ethernet Service incurs packet loss greater than 0.001% or jitter in excess of 5ms (“Degraded Ethernet Service”) and UTOPIA fails to remedy such Degraded Ethernet Service within 120 hours from the time a trouble ticket is opened with UTOPIA, Customer shall have the right to terminate the affected Ethernet Service without incurring early termination charges or other liability, provided Customer sends written notice of termination to UTOPIA with thirty

(30) days of the event giving rise to Customer’s termination right under this paragraph.

8. Service Delivery

8.1 UTOPIA Fiber will, after acceptance of a Services Order, notify Customer in writing of the date the Service is to be delivered to Customer (“Customer Delivery Date” or “CDD”). UTOPIA Fiber will use commercially reasonable efforts to meet the CDD in respect of the Service.

8.2 In the event UTOPIA Fiber fails to deliver a Service to Customer on or before the CDD, Customer will be entitled to receive a Service credit against the first full month’s monthly recurring charge as set out in the Services Order. The Service credit will be calculated based upon the number of working days after the CDD until the date the Service is delivered to Customer, not to exceed one (1) month’s recurring charge for the applicable Service.

8.3 Service credits under this Section 8 are calculated as follows:

Number of working days after the CDD	Service Credit (% of MRC)
1 – 7	15%
8 – 14	25%
15 – 30	50%
> 30	100%

8.4 In the event UTOPIA Fiber fails to deliver a Service by the CDD and such failure to deliver continues for more than thirty (30) working days, Customer shall have the right, but not the obligation, to cancel the affected Service Order without incurring early termination charges or other liability to UTOPIA Fiber and UTOPIA Fiber shall refund to Customer amounts, if any, previously paid by Customer for the cancelled Service.

EXHIBIT C – AREA OF IMPROVEMENTS*

* Property to which UTOPIA shall install the Bountiful Network Improvements, providing End Users access to Connection Service on the Bountiful Network.

(The Attached Maps Represent the Area to Which the Bountiful Network Will Serve; The Maps Depict the Current Municipal Boundaries of Bountiful City.)



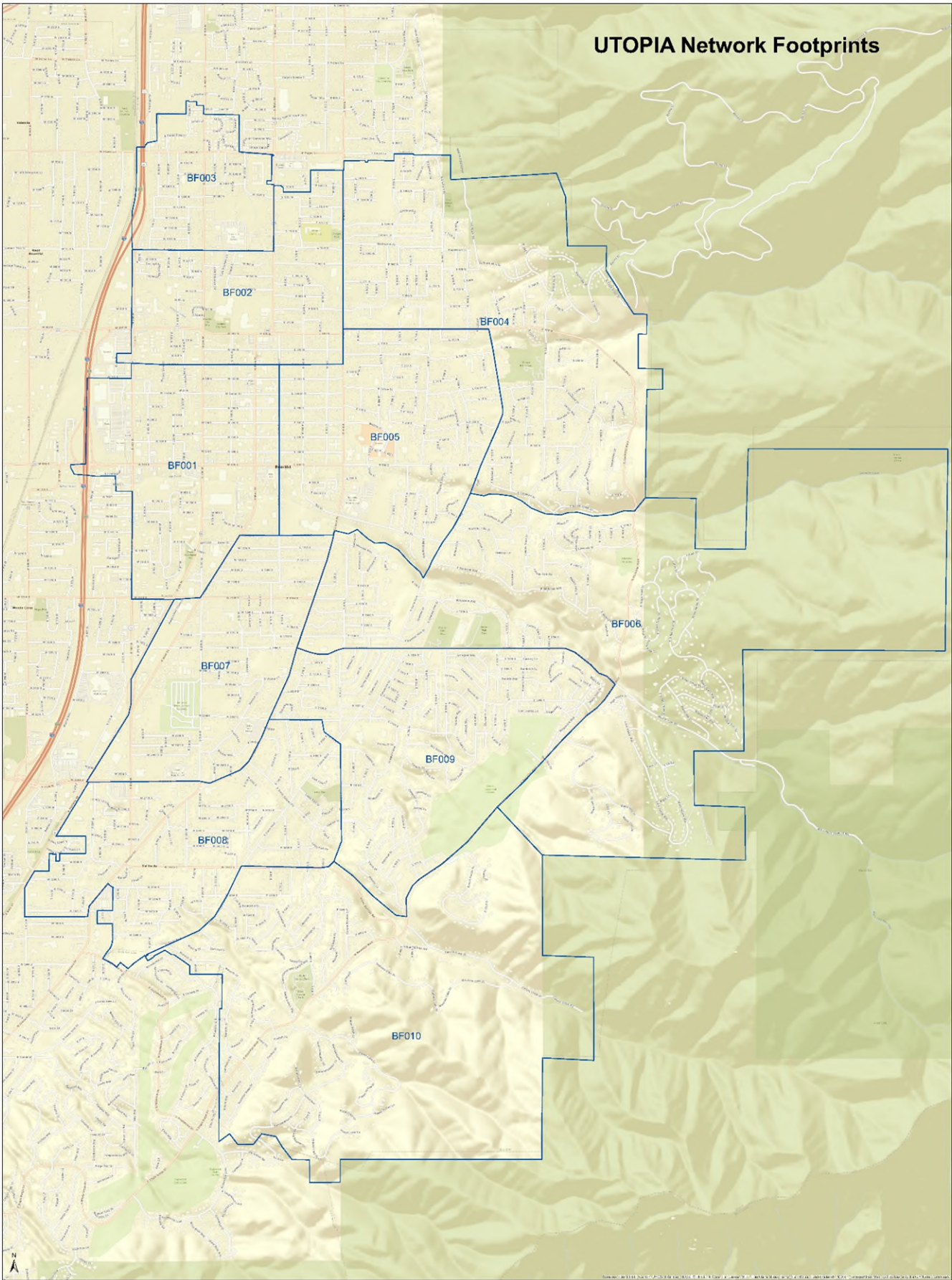




EXHIBIT D

MAINTENANCE SERVICES

1. Generally

- 1.1. In accordance with Sections 2.9 and 2.10 of the Agreement, UTOPIA shall at its own expense maintain and repair the Bountiful Network, including fiber optic cable, conduit, electronics (including aggregation switches, subscriber demarcation devices, and transceivers), support systems (including cabinets, backup systems, generators, transfer switches, and air conditioners) and other associated property.
- 1.2. UTOPIA shall have trained and qualified personnel on call and available for dispatch (24) hours a day, seven (7) days a week. trained and qualified personnel. UTOPIA will detect, record (through UTOPIA's trouble ticketing solution) and coordinate response to Network maintenance and repair issues, and will record and dispatch appropriate teams into the field for issue resolution in accordance with this Exhibit D.

2. Scheduled Maintenance

- 2.1. UTOPIA shall coordinate regular and routine maintenance and repair ("Scheduled Maintenance") of the Bountiful Network, including without limitation configuration updates, code updates, firmware updates, cleanings (as necessary), refueling, and other tasks needed to keep the Bountiful Network in working condition.
- 2.2. Scheduled Maintenance shall be performed by or under the direction of UTOPIA, at UTOPIA's reasonable discretion. Scheduled Maintenance obligations shall commence upon the Effective Date of this Agreement.

3. Unscheduled Maintenance

- 3.1. Non-routine maintenance and repair of the Network that is not included as Scheduled Maintenance ("Unscheduled Maintenance") shall be performed by or under the direction of UTOPIA. Unscheduled Maintenance obligations shall commence upon the Effective Date. Unscheduled Maintenance shall consist of:
 - "Emergency Unscheduled Maintenance" in response to an alarm identification by UTOPIA's NOC, notification by Bountiful, a customer, or notification by any third party of any failure, interruption or impairment in the operation of fibers or equipment within the Network, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Network.
 - "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or

impairment in the operation of fibers within the Network not covered by Scheduled Maintenance. UTOPIA will log the time of a report of a problem, verify the problem and dispatch personnel immediately to take corrective action.

- 3.2. Response to Emergency. UTOPIA shall have its first maintenance personnel at a part of the Network requiring Emergency Unscheduled Maintenance activity within twenty-four (24) hours after the time UTOPIA becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by Uncontrollable Events.
- 3.3. Repair Response. When correcting or repairing cable discontinuity or damage, including but not limited to an Emergency Unscheduled Maintenance event, UTOPIA shall repair a traffic-affecting discontinuity within eight (8) hours after UTOPIA's representatives' arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. In such event, within fifty-five (55) hours after completion of any such Emergency Unscheduled Maintenance, UTOPIA shall commence its planning for permanent repair, and shall implement such permanent repair within an appropriate time thereafter. In repairing any fiber outages, if the fiber is required for immediate service, the repair shall be scheduled for the next available Planned Service Work Period.

4. Cooperation and Coordination

- 4.1. In performing its services hereunder, UTOPIA shall take workmanlike care to prevent impairment to the signal continuity and performance of the Network. In addition, UTOPIA shall reasonably cooperate with Bountiful in sharing information and analyzing the disturbances regarding the Network.
- 4.2. Bountiful shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with UTOPIA's ability to perform its obligations under the Agreement.

5. Subcontracting

UTOPIA may subcontract any of the maintenance services hereunder; provided that UTOPIA shall require the contractor(s) to perform in accordance with the requirements and procedures set forth in the Agreement and this Exhibit D. The use of any such contractor shall not relieve UTOPIA of any of its obligations hereunder.

EXHIBIT E
EXISTING IMPROVEMENTS

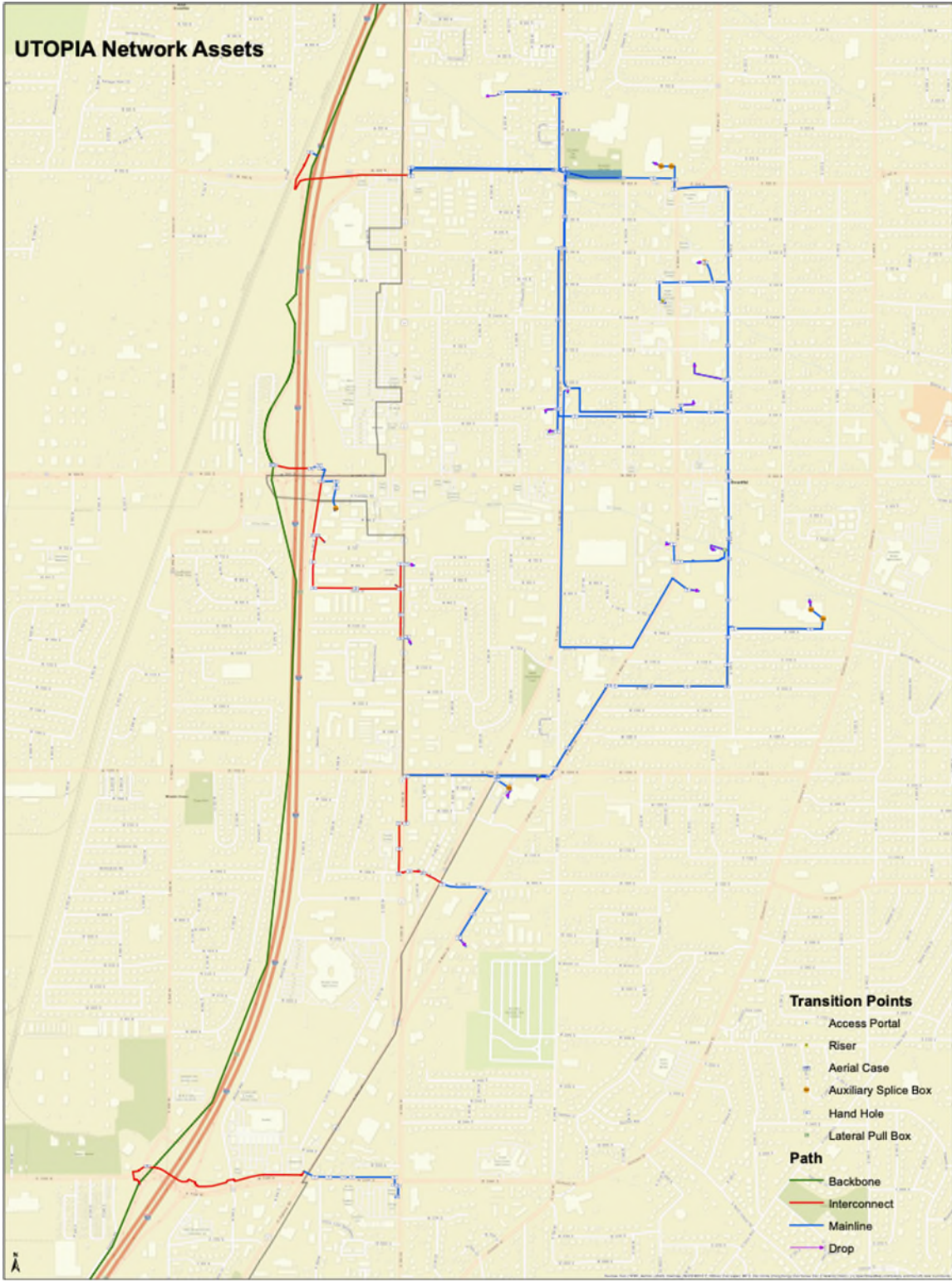


EXHIBIT F

REFRESH AND REPLACEMENT SCHEDULE

The following describes the estimated lifespan and Refresh and Replacement schedules of various parts of the system

Long Term – 10 years

- Generators
- Heating/Cooling Units
- UPS Systems

Middle Term – 7-8 years

- Customer demarcation devices (fiber gateways)
- Aggregation Electronics
- Transceivers
- Core Electronics
- Security Systems/Video Surveillance

Short Term – 3-5 years

- UPS Batteries

EXHIBIT G

FORM OF PERFORMANCE BOND

Minutes of the
BOUNTIFUL CITY COUNCIL
May 9, 2023 – 7:00 p.m.

Official notice of the City Council Meeting was given by posting an agenda at City Hall and on the Bountiful City Website and the Utah Public Notice Website and by providing copies to the following newspapers of general circulation: Davis County Journal and Standard Examiner.

Closed Session – 6:00 p.m.
Chamber Conference Room

Present:	Mayor	Kendalyn Harris
	Councilmembers	Millie Segura Bahr, Jesse Bell, Kate Bradshaw, Richard Higginson, Cecilee Price-Huish
	City Manager	Gary Hill
	City Attorney	Clinton Drake

CLOSED SESSION TO DISCUSS THE ACQUISITION OR SALE OF REAL PROPERTY, PENDING LITIGATION AND/OR TO DISCUSS THE CHARACTER AND/OR COMPETENCY OF AN INDIVIDUAL(S) (Utah Code §52-4-205)

The closed session began at 6:00 p.m.

The closed session ended at 7:08 p.m.

Regular Meeting – 7:00 p.m.
City Council Chambers

Present:	Mayor	Kendalyn Harris
	Councilmembers	Millie Segura Bahr, Jesse Bell, Kate Bradshaw, Richard Higginson, Cecilee Price-Huish
	City Manager	Gary Hill
	Asst City Manager	Galen Rasmussen
	City Engineer	Lloyd Cheney
	City Attorney	Clinton Drake
	Planning Director	Francisco Astorga
	Streets Director	Charles Benson
	Power Director	Allen Johnson
	Parks Director	Brock Hill
	Police Chief	Ed Biehler
	Water Director	Kraig Christensen
	Asst City Engineer	Todd Christensen
	Senior Planner	Amber Corbridge
	Recording Secretary	Maranda Hilton

1 **WELCOME, PLEDGE OF ALLEGIANCE AND THOUGHT/PRAYER**

2 Mayor Harris called the meeting to order at 7:12 p.m., apologized for the late start and
3 welcomed those in attendance. Mr. Sterling Harris led the Pledge of Allegiance and Mr. Jay Nielsen
4 offered a prayer.

5
6 **PUBLIC COMMENT**

7 The public comment section was opened at 7:14 p.m.

8
9 No comments were made.

10
11 The public comment section was closed at 7:15 p.m.

12
13 **CONSIDER APPROVAL OF MINUTES OF PREVIOUS MEETING HELD APRIL 10, 11, 12,**
14 **13 & 25, 2023**

15 Councilmember Bahr made a motion to approve the minutes and Councilmember Bradshaw
16 seconded the motion. The motion was approved with Councilmembers Bahr, Bell, Bradshaw,
17 Higginson and Price-Huish voting “aye.”

18
19 **COUNCIL REPORTS**

20 Councilmember Bradshaw reported on the ongoing SDRD budget discussions. She explained
21 that the SDRD has a current cash reserve of -\$1M and that although the COVID-19 pandemic
22 negatively affected the district financially, they clearly had issues even before that time using
23 reserves to fund additional employees. She said that some of the board members are seeking a
24 substantial raise in property taxes to remedy the budget imbalance, but she believes more work
25 should be done to reduce expenses and ensure that all programs are able to cover their costs in
26 addition to bringing property taxes up just enough to match rises in inflation. She reminded residents
27 that the SDRD board meetings are open to the public and encouraged everyone to attend.

28 Councilmember Higginson reported that Lake Powell is rising about one foot every day right
29 now, due to the melting snowpack, which is good news for the City’s power resource outlook.

30 Councilmember Bahr reminded the public about the Bountiful History Museum and
31 encouraged everyone to go and take their families. It is a wonderful resource for the Bountiful
32 community.

33 Councilmember Price-Huish reported that the Bountiful Davis Art Center (BDAC) will be
34 holding Summerfest again this summer on June 12, 19 and 26 from 5:30 to 8:30 p.m. at Town
35 Square. People wishing to volunteer for Summerfest should visit the BDAC website. She also
36 reported that the Free Family Art Night will be May 22 from 6:30 to 8:00 p.m. at the BDAC. She
37 reported that the 48th Annual Statewide Art Competition will open this Friday night, May 12, from
38 6:00 to 8:00 p.m. and run for the next few weeks. She also congratulated the Planning Department on
39 the wonderful open house events they held for the Bountiful General Plan update and encouraged all
40 residents to go online to bountifulgeneralplan.com to give their feedback and share ideas.

41 Mayor Harris reported that due to HB499 passing, Davis County will have to find emergency
42 winter shelter for homeless people and she wanted to make everyone aware that that process had
43 begun.

44 Councilmember Bell also encouraged everyone to go online and share ideas for the General
45 Plan.

1 **BCYC REPORT**

2 Ms. Kezia Holt, BCYC Mayor, reported that new leadership has been chosen for the
3 upcoming school year. She reported the BCYC participated in a tri-youth council food drive this past
4 weekend. They are planning a “Stomp on Main” event for June 9, which will be held at Town Square
5 from 8:30 to 10:30 p.m. and is open to all high school students with a student ID. They are also
6 putting together skits about recycling for the Sanitation Department which they will record at their
7 leadership conference on Friday. They will also be volunteering at the Chalk Art Festival,
8 Summerfest and the Coats for Kids Car Show.

9 Councilmember Bradshaw asked what the Councilmembers can do to help spread the word
10 about the “Stomp on Main” event. Ms. Holt said that sharing the flyer on social media would be a
11 great help.

12 Councilmember Bell commended the BCYC members for their commitment and dedication,
13 explaining how busy they have been the past few weeks.

14 Mayor Harris thanked Ms. Holt and the BCYC for how much they are doing.

15
16 **CONSIDER APPROVAL OF:**

17 **A. EXPENDITURES GREATER THAN \$1,000 PAID APRIL 17 & 24, 2023**

18 **B. MARCH 2023 FINANCIAL REPORT**

19 Councilmember Higginson made a motion to approve the expenditures paid April 17
20 & 24, 2023, and the March 2023 financial report and Councilmember Bell seconded the
21 motion, which passed with Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-
22 Huish voting “aye.”
23

24 **CONSIDER APPROVAL OF ENTERING INTO A CONTRACT WITH PARKIN TENNIS**
25 **FOR \$295,400 AND WITH JP ELECTRIC FOR \$43,870 FOR THE RECONSTRUCTION OF**
26 **PICKLEBALL COURTS AND LIGHTING AT TWIN HOLLOW PARK – MR. BROCK**
27 **HILL**

28 Mr. Brock Hill explained that in 2022 the City contracted with a different contractor for the
29 pickleball courts, but the contract was terminated due to inability to complete the work. He said that
30 he reached back out to the other bidders and Parkin Tennis came back with the low bid of \$295,400.
31 Mr. Hill said that JP Electric came back with the lowest bid for the electrical work on the lighting for
32 the courts at \$43,870. Staff recommends using these contractors for the project.

33 Mr. Brock Hill added that demolition was completed by the Streets Department and that the
34 reconstruction project should be completed by the end of June. He noted that they will be exceeding
35 the original budget for this project, but that Mr. Gary Hill helped them find some money from the
36 contingency account in the Legislative Budget.

37 Councilmember Bradshaw made a motion to approve the contracts with Parkin Tennis and JP
38 Electric for the pickleball courts at Twin Hollows Park and Councilmember Higginson seconded the
39 motion which passed with Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting
40 “aye.”
41

42 **CONSIDER APPROVAL OF A BID FROM BIG HORN CONTRACTORS, LLC TO BUILD**
43 **THE 2023 MUELLER PARK STRUCTURES – BRIDGE 1 PROJECT IN THE AMOUNT OF**
44 **\$74,500 – MR. TODD CHRISTENSEN**

45 Mr. Todd Christensen explained that some bridges are needed to support the expansion of the
46 trails system this year, and the first one will be placed across Kenny Creek near the Mueller Park

1 picnic area. He acknowledged the assistance of the Forest Service regional staff who helped provide
2 feedback for the project. Mr. Christensen said that staff recommends accepting the low bid from Big
3 Horn Contractors. The City has not contracted with them previously but they have no reservations
4 about using them due to their many good references. He added that this project will be funded by the
5 trails bond.

6 Councilmember Higginson made a motion to approve the bid from Big Horn Contractors and
7 Councilmember Bradshaw seconded the motion. The motion passed with Councilmembers Bahr,
8 Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
9

10 **CONSIDER APPROVAL OF THE ARCHITECTURAL AND SITE PLAN REVIEW FOR**
11 **TINO’S TAPROOM LOCATED AT 1385 SOUTH 500 WEST (ROBINTINO’S) – MS.**
12 **AMBER CORBRIDGE**

13 Ms. Amber Corbridge presented the architectural and site plan review for approval for Tino’s
14 Taproom, located at 1385 South 500 West. The Planning Commission recommends approval with the
15 following conditions: bar hours align with the restaurant hours of operation and no later than 11:00
16 p.m., submittal of a detailed floorplan showing seating in the bar and restaurant, the bar area be
17 limited to 49 occupants, and the implementation of the staff-recommended site plan for landscaping
18 requirements.

19 Councilmember Higginson made a motion to approve the architectural and site plan review
20 for Tino’s Taproom and Councilmember Price-Huish seconded the motion. The motion passed with
21 Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
22

23 **CONSIDER THE PURCHASE OF SOFTWARE DEVELOPMENT FROM ACCELERANT**
24 **USA IN THE AMOUNT OF \$28,000 – CHIEF ED BIEHLER**

25 Chief Biehler explained that as the Police Department has been going through the process of
26 switching from EFORCE to Motorola Flex dispatch software, they realized they will need to have
27 access to old records to fulfill GRAMA requests and expungements, etc. Staff researched the options
28 and decided to contract with Accelerant USA for software that would allow them to access all of their
29 past records for a one-time cost of \$28,000. Chief Biehler explained that the alternative would be to
30 enter into an agreement with EFORCE for a yearly fee of \$44,000. He explained that he has checked
31 with Motorola and with the IT Department to make sure this solution will work with their new
32 system, and everything is looking good. City Manager Gary Hill gave him permission to sign the
33 contract with Accelerant USA since this is a very time sensitive issue, and Accelerant needed a few
34 weeks to get the software written before the Police Department goes live with Motorola.

35 Councilmember Higginson thanked the Chief for finding a money-saving solution.

36 Councilmember Bell asked about a clause in the contract that talks about the two-year
37 expiration on confidentiality of the information. Chief Biehler said he was unsure what that meant,
38 because Accelerant does not have access to the information, but said that he would investigate it and
39 get the Council an answer. Mr. Clint Drake said that the Council could go ahead and approve the
40 purchase pending the results of that question if they chose.

41 Councilmember Bell made a motion to approve the purchase of software from Accelerant
42 USA and Councilmember Price-Huish seconded the motion. The motion passed with
43 Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
44

45 **CONSIDER APPROVAL OF THE FISCAL YEAR 2023-2024 TENTATIVE BUDGET AND**
46 **RELATED ITEMS – MR. GALEN RASMUSSEN**

1 **A. ORDINANCE 2023-01 ADOPTING RATES AND FEES AND ADMINISTRATIVE**
2 **POLICIES**

3 **B. ADOPTION OF THE FISCAL YEAR 2023-2024 TENTATIVE BUDGET**

4 **C. SETTING THE TIME, DATE AND PLACE FOR A PUBLIC HEARING ON THE**
5 **FINAL BUDGET**

6 Mr. Galen Rasmussen presented an overview of the budget process and went over the details
7 for the FY2023-2024 tentative budget. He went through proposed rate and fee increases, the
8 proposed COLA increase for employees and proposed additional City staff positions. He
9 explained that no property tax increase is being proposed. He then turned some time over to Mr.
10 Allen Johnson, Power Director, and Mr. Kraig Christensen, Water Director, to give reports on
11 their respective departments' proposed rate increases.

12 Mr. Allen Johnson explained that the proposed rate and fee increases for the coming fiscal
13 year were not arrived at lightly. He explained all of the many issues impacting the cost of power
14 resources right now (drought, coal mine fires, railroad logistics, increasing delivery times for
15 parts, power plant projects being shut down, etc.) and said that the Power Department needs to
16 increase rates in order to be able to keep supplying power to residents and to stay on top of
17 scheduled maintenance to the aging infrastructure. Councilmember Bell asked when the last time
18 the City raised its power rates was. Mr. Johnson said they generally raise the rates every couple of
19 years to keep up with increased prices; they did a 2% increase two years ago.

20 Mr. Kraig Christensen explained some of the issues driving costs up for the Water
21 Department and said that increasing the rates will be necessary for them to stay on track with their
22 40-year pipe replacement and meter replacement plans and to keep infrastructure operational. He
23 explained that part of the rate increase is the addition of a fifth tier to the tier system, which will
24 enable them to see who the high water users are in the peak months of the year. The overall goal
25 is for the Water Department to remain financially stable and able to keep up with improvements
26 to the system for the future.

27 Mr. Rasmussen then turned the time over to Mr. Gary Hill to talk about the fiber project and
28 its customer fees. Mr. Hill explained that this was not part of budget discussions because the City
29 was still in negotiations with UTOPIA Fiber at the time of the budget meetings. He presented the
30 fiber fee schedule and proposed it be adopted this evening along with the other proposed rates for
31 FY 2023-2024.

32 Mr. Rasmussen went through each of the City funds in the budget, and pointed out that there
33 is a slight change in how the Recycling, Landfill and Sanitation budgets are presented compared
34 to previous years. He then went over the details of the RAP Tax grant allocations. He then
35 explained that if the fiber project is approved, it will create a Fiber Optic Utility Fund that will
36 also be included in the final budget document. Next Mr. Rasmussen explained that certain
37 proposed expenditures from the RAP Tax fund, if approved by the Council, will delay the
38 repayment of the Capital Improvements Fund for the Ice Ribbon by another year.

39 Mr. Rasmussen explained that this evening the Council will need to adopt Ordinance 2023-01
40 with the proposed rates and fees and related policies, adopt the tentative budget, and set a time
41 and place for a public hearing on the tentative budget and its related items.

42 Councilmember Bradshaw made a motion to approve Ordinance 2023-01 with all the
43 associated rates and fees and Councilmember Bahr seconded the motion. The motion passed with
44 Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting "aye."

1 Councilmember Higginson made a motion to approve the FY2023-2024 tentative budget and
2 to set June 13, 2023 at 7:00 p.m. for a public hearing and Councilmember Bell seconded the motion
3 which passed with Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
4

5 **CONSIDER APPROVAL OF RESOLUTION 2023-06 WHICH AUTHORIZES AN**
6 **INTERLOCAL AGREEMENT WITH DAVIS COUNTY FOR A CDBG BLOCK GRANT**
7 **FOR FISCAL YEARS 2024, 2025 AND 2026 – MR. GALEN RASMUSSEN**

8 Mr. Rasmussen explained that this interlocal agreement allows the County to provide
9 Community Development Block Grant (CDBG) funds to residents in the Bountiful community, and it
10 comes around about every three years.

11 Councilmember Price- Huish asked if Bountiful City has ever used these funds before. Mr.
12 Rasmussen answered that the City has never directly applied for these funds, because Bountiful, is
13 not an entitlement community, but rather it allows the County to provide funds directly to Bountiful
14 residents. Mr. Gary Hill added that in the past Bountiful has not qualified as an entitlement
15 community because our area median income is too high, so the only option is to apply for CDBG
16 grants as an organization to the County. This agreement allows organizations within Bountiful to
17 apply for those funds instead, like the Food Pantry.

18 Councilmember Higginson made a motion to approve Resolution 2023-06 and to compel the
19 Mayor, City Recorder and City Attorney to sign it and Councilmember Bradshaw seconded the
20 motion, which passed with Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish
21 voting “aye.”
22

23 **CONSIDER APPROVAL OF MILLER PAVING’S PROPOSAL FOR THE 300 SOUTH &**
24 **400 SOUTH RECONSTRUCTION PROJECTS AT THE UNIT PRICES NOTED IN THE BID**
25 **TABULATION – MR. LLOYD CHENEY**

26 Mr. Lloyd Cheney explained that the Engineering Department put together a contract for a
27 split project on 300 South and 400 South and were fortunate to have seven companies respond with
28 proposals. Staff recommends accepting the proposal from Miller Paving, a very reputable local
29 company. He added that Miller Paving has their own concrete crew, which will help them get the
30 project done more efficiently.

31 Councilmember Bell made a motion to approve the proposal from Miller Paving as outlined
32 and Councilmember Price-Huish seconded the motion. The motion passed with Councilmembers
33 Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
34

35 **CONSIDER FINAL ACCEPTANCE OF THE JOE AND BETTE EGGETT PHASE 6**
36 **SUBDIVISION AND RELEASE OF REMAINING BOND FUNDS – MR. LLOYD CHENEY**

37 Mr. Cheney reported that the warranty period has expired for the Joe and Bette Phase 6
38 subdivision on 1800 South, and it is time for the City to assume the maintenance responsibilities of
39 those public improvements. Staff members inspected the improvements and found them to be in great
40 shape, so they recommend releasing the Eggetts from any future maintenance responsibilities and
41 releasing the remaining bond proceeds to the Eggetts.

42 Councilmember Bahr made a motion to accept the subdivision and release the remaining bond
43 proceeds and Councilmember Higginson seconded the motion. The motion passed with
44 Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”
45

1 **CONSIDER APPROVAL OF THE BOUNTIFUL CITY LIBRARY AND VOTE CENTERS IN**
2 **EACH DAVIS COUNTY CITY AS POLLING LOCATIONS FOR POSSIBLE AUGUST 15TH**
3 **PRIMARY ELECTION – MR. GARY HILL**

4 Mr. Gary Hill explained that every election year the City Council is required to approve the
5 polling locations and vote centers. He added that Fruit Heights was accidentally left out of the list of
6 locations and should be included in the motion as well.

7 Councilmember Price-Huish made a motion to approve the polling locations including Fruit
8 Heights, and Councilmember Higginson seconded the motion. The motion passed with
9 Councilmembers Bahr, Bell, Bradshaw, Higginson and Price-Huish voting “aye.”

10
11 **ADJOURN**

12 Councilmember Bradshaw made a motion to adjourn the regular session and Councilmember
13 Higginson seconded the motion. The motion passed with Councilmembers Bahr, Bell, Bradshaw,
14 Higginson and Price-Huish voting “aye.”

15
16 The regular session was adjourned at 8:33 p.m.
17

Mayor Kendalyn Harris

City Recorder

City Council Staff Report

Subject: Expenditures for Invoices > \$1,000 paid
May 1 & 8, 2023

Author: Tyson Beck, Finance Director

Department: Finance

Date: May 23, 2023



Background

This report is prepared following the weekly accounts payable run. It includes payments for invoices hitting expense accounts equaling or exceeding \$1,000.

Payments for invoices affecting only revenue or balance sheet accounts are not included. Such payments include: those to acquire additions to inventories, salaries and wages, the remittance of payroll withholdings and taxes, employee benefits, utility deposits, construction retention, customer credit balance refunds, and performance bond refunds. Credit memos or return amounts are also not included.

Analysis

Unless otherwise noted and approved in advance, all expenditures are included in the current budget. Answers to questions or further research can be provided upon request.

Department Review

This report was prepared and reviewed by the Finance Department.

Significant Impacts

None

Recommendation

Council should review the attached expenditures.

Attachments

Weekly report of expenses/expenditures for invoices equaling or exceeding \$1,000, paid May 1 & 8, 2023

**Expenditure Report for Invoices (limited to those outlined in staff report) >\$1,000.00
Paid May 1, 2023**

<u>VENDOR</u>	<u>VENDOR NAME</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>ACCOUNT DESC</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>INVOICE</u>	<u>DESCRIPTION</u>
9366	ADIDAS AMERICA INC	Golf Course	555500	448240	1,303.28	233450	6159256365	Ladies Wear
1164	ANIXTER, INC.	Light & Power	535300	448632	1,050.00	233452	5571524-01	1/0-2 Mini Wedge - Cust # 6000052
1164	ANIXTER, INC.	Light & Power	535300	448632	2,055.00	233452	5347925-01	5/16 D.E. Auto - Cust # 6000052
1233	AUTOMOTIVE SPECIALTY	Streets	104410	426000	2,930.65	233453	33289	Misc. Parts and Supplies - Customer ID BOU-BU2
1393	BTS LANDSCAPING PROD	Landfill	575700	462400	24,519.00	233457	113143	Tubgrinding at Bountiful City Landfill
10114	CLARK EQUIPMENT COMP	Streets	454410	474500	69,252.68	233463	3134253	Bobcat Purchase approved byCouncil- PO STR2023-001
9982	DIAMOND TREE EXPERTS	Light & Power	535300	448632	12,060.00	233469	76396	Tree Trimming
12227	GRAHAM FIRE APPARAT	Streets	104410	425000	1,448.23	233477	118	DEF Senders for SDMF
2562	HYDRO SPECIALTIES CO	Water	515100	448650	19,625.00	233484	26680.003	Meter Lids
8756	IRBY ELECTRICAL DIST	Light & Power	535300	448627	1,305.00	233486	S013445458.001	Relays and Terminals - Customer # 221694
8137	LAKEVIEW ASPHALT PRO	Streets	104410	441200	1,493.44	233488	9385	Patching - Customer # BOUN02610
13969	LAUNCH CONSTRUCTION	Legislative	454110	473100	105,396.39	233491	2202-9	Project Washing Park
3193	MOUNTAIN STATES INDU	Light & Power	535300	448635	9,172.96	233499	30359	Broom Repair
3195	MOUNTAINLAND SUPPLY	Water	515100	448400	1,274.57	233500	S104857396.005	Misc. Parts & Supplies - Customer # 18498
3195	MOUNTAINLAND SUPPLY	Water	515100	448400	2,445.88	233500	S105313559.001	Misc. Parts & Supplies - Customer # 18498
3195	MOUNTAINLAND SUPPLY	Water	515100	448400	3,628.96	233500	S105310235.002	Misc. Parts & Supplies - Customer # 18498
3271	NETWIZE	Legislative	104110	461000	6,868.33	233503	24177A	Tape Backup
3271	NETWIZE	Computer Maintenance	616100	429300	55,055.25	233503	24172	45 Desktop Computers
3321	NORTHERN POWER EQUIP	Light & Power	535300	448632	1,652.50	233504	86398	Misc. Parts and Supplies - Cust # 8012986111
10033	PINETOP ENGINEERING	Streets	104410	441300	1,789.84	233510	4718	Traffic & Signal Maintenance & Support
3832	SALT LAKE MAILING &	Treasury	104143	429050	20,000.00	233518	05022023	Mailing & Printing of Utility Bills
3832	SALT LAKE MAILING &	Water	515100	422000	4,015.97	233518	40088	Water & Power Dept Mail Notices
3832	SALT LAKE MAILING &	Light & Power	535300	422000	4,015.97	233518	40088	Water & Power Dept Mail Notices
13267	SLATE ROCK FR LLC	Light & Power	535300	445202	4,589.00	233520	64589	F.R. Shirts & Pants
3985	SOUTH DAVIS SEWER DI	Legislative	104110	466000	1,300.00	233521	C23063	3 Lateral Lining
14513	STAPP CONSTRUCTION	Legislative	454110	473100	87,000.00	233525	2418	Washington Skate Park - Application #1
4051	STATE OF UTAH	Light & Power	535300	448613	1,000.00	233527	NA2005	2023 NSR Annual Fee - Customer ID VC239216
14512	TOONE, DANIEL	Legislative	454110	473160	4,600.00	233534	51605	Stainless steel Sculpture "Daydream"
13259	WILKINSON SUPPLY	Cemetery	595900	474500	17,502.50	233543	415043	Machine & Parts - Customer # 27860
7732	WINGFOOT CORP	Police	104210	426000	2,295.00	233544	111414	April 2023 Janitorial Cleaning Service
TOTAL:					<u>470,645.40</u>			

**Expenditure Report for Invoices (limited to those outlined in staff report) >\$1,000.00
Paid May 8, 2023**

<u>VENDOR</u>	<u>VENDOR NAME</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>ACCOUNT DESC</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>INVOICE</u>	<u>DESCRIPTION</u>
4142	AXON ENTERPRISE	Police	104210 445100	Public Safety Supplies	2,028.00	233549	INUS155823	Misc. Parts & Supplies - Acct # 122106
1555	CALLAWAY GOLF	Golf Course	555500 448240	Items Purchased - Resale	1,723.11	233554	935988480	Clubs - Acct # 14853
1707	CLEVELAND GOLF/SRIXO	Golf Course	555500 448240	Items Purchased - Resale	1,155.60	233560	7316111 SO	Golf Balls - Billing # 80447
1707	CLEVELAND GOLF/SRIXO	Golf Course	555500 448240	Items Purchased - Resale	1,317.60	233560	7433809 SO	Golf Balls - Billing # 80447
1707	CLEVELAND GOLF/SRIXO	Golf Course	555500 448240	Items Purchased - Resale	2,637.29	233560	7324696 SO	Clubs - Billing # 80447
1707	CLEVELAND GOLF/SRIXO	Golf Course	555500 448240	Items Purchased - Resale	4,759.20	233560	7321238 SO	Golf Balls - Billing # 80447
9982	DIAMOND TREE EXPERTS	Light & Power	535300 448632	Distribution	12,060.00	233569	76397	Tree Trimming
5281	DOMINION ENERGY UTAH	Police	104210 427000	Utilities	2,553.06	233572	05012023A	Account # 3401140000
5281	DOMINION ENERGY UTAH	Streets	104410 427000	Utilities	1,071.33	233572	05012023I	Account # 3893910000
5281	DOMINION ENERGY UTAH	Parks	104510 427000	Utilities	1,771.57	233572	05012023K	Account # 2987969838
5281	DOMINION ENERGY UTAH	Water	515100 427000	Utilities	1,030.84	233572	05012023L	Account # 9591363682
2164	FERGUSON ENTERPRISES	Water	515100 448400	Dist Systm Repair & Maint	2,094.00	233577	1211097	Meter Boxes - Customer # 48108
2329	GORDON'S COPYPRINT	Legislative	104110 422000	Public Notices	1,409.00	233579	50048	Gloss Trifolds Copies
14037	HERRERA, NICO	Police	104210 415000	Employee Education Reimb	1,029.50	233584	06092023	Reimbursed for Spring Tuition 2023
2517	HOME DEPOT CREDIT SE	Golf Course	555500 426100	Special Projects	1,291.40	233587	3972203	Misc. Parts & Supplies
2523	HONNEN EQUIPMENT COM	Streets	104410 425000	Equip Supplies & Maint	1,055.08	233588	1474987	Misc. Parts and Supplies - Acct # 104094
11418	HUMDINGER EQUIPMENT	Landfill	575700 425000	Equip Supplies & Maint	1,421.09	233591	31446	Misc. Parts and Supplies
6959	JANI-KING OF SALT LA	Light & Power	535300 424002	Office & Warehouse	1,828.25	233594	SLC05230047	May 2023 Janitorial Cleaning - Cust # 065075
2727	JOHNSON, ALLEN R	Light & Power	535300 423000	Travel & Training	4,845.42	233595	05052023	Travel & Train Expense APPA E&O Conf.
13978	KELLER AND HECKMAN	Legislative	104110 461000	Miscellaneous Expense	18,225.00	233596	10143834	Legal Services for Bountiful Fiber Project
8137	LAKEVIEW ASPHALT PRO	Streets	104410 441200	Road Matl Patch/ Class C	1,454.44	233598	9415	Patching - Customer # BOUN02610
8137	LAKEVIEW ASPHALT PRO	Streets	104410 441200	Road Matl Patch/ Class C	1,457.04	233598	9440	Patching - Customer # BOUN02610
8137	LAKEVIEW ASPHALT PRO	Streets	104410 441200	Road Matl Patch/ Class C	1,762.80	233598	9453	Patching - Cust # BOUN02610
2886	LAKEVIEW ROCK PRODUC	Legislative	454110 473100	Improv Other Than Bldgs	2,524.27	233599	412827	Road Base for Washington Park - Cust # BCTY07399
2886	LAKEVIEW ROCK PRODUC	Legislative	454110 473100	Improv Other Than Bldgs	2,697.17	233599	412783	Road Base for Washington Park - Cust # BCTY07399
2886	LAKEVIEW ROCK PRODUC	Legislative	454110 473100	Improv Other Than Bldgs	3,110.03	233599	412878	Road Base for Washington Park - Cust # BCTY07399
2987	M.C. GREEN & SONS IN	Streets	454410 473600	New Road Construction	205,816.65	233606	4803 & 4821	Project Eagle Ridge Extension -Application # 5 & 6
3186	MOTOROLA	Liquor Control	104218 445100	Public Safety Supplies	6,304.00	233610	1187098395	Customer Account # 1000743551
3195	MOUNTAINLAND SUPPLY	Water	515100 448400	Dist Systm Repair & Maint	3,210.00	233612	S105310235.003	Misc. Parts & Supplies - Cust # 18498
3195	MOUNTAINLAND SUPPLY	Water	515100 448400	Dist Systm Repair & Maint	4,105.53	233612	S105355177.001	Misc. Parts & Supplies - Cust # 18498
3271	NETWIZE	Light & Power	535300 448613	Power Plant Operating Costs	3,493.26	233618	23189	Wireless Access Points 2X Power Dept.
3271	NETWIZE	Computer Maintenance	616100 429200	Computer Software	1,099.33	233618	24177C	Tape Backup System Support
4773	PEARCE, JESS	Light & Power	535300 423000	Travel & Training	1,211.61	233625	05052023	Travel & Train Expense APPA E&O Conf.
5553	PURCELL TIRE AND SER	Storm Water	494900 425000	Equip Supplies & Maint	1,045.26	233627	280042398	Tire Repairs - Acct # 2801867
5553	PURCELL TIRE AND SER	Cemetery	595900 425000	Equip Supplies & Maint	2,723.80	233627	280041746	Tire Repairs - Acct # 2801867
3735	ROBERT I. MERRILL CO	Legislative	104110 426000	Bldg & Grnd Suppl & Maint	1,423.72	233630	849114	Replaced existing operators with SW200
3735	ROBERT I. MERRILL CO	Treasury	104143 426000	Bldg & Grnd Suppl & Maint	1,158.91	233630	849114	Replaced existing operators with SW200
3735	ROBERT I. MERRILL CO	Engineering	104450 426000	Bldg & Grnd Suppl & Maint	1,681.98	233630	849114	Replaced existing operators with SW200
10586	ROCKY MOUNTAIN RECYC	Recycling	484800 431550	Recycling Processing Fees	9,292.56	233632	NP-115811	Recycling Fees for April 2023
3791	RUSH TRUCK CENTER-SA	Streets	104410 425000	Equip Supplies & Maint	3,044.60	233635	3032089905	Misc. Parts and Supplies - Customer # 187612
3791	RUSH TRUCK CENTER-SA	Streets	104410 425000	Equip Supplies & Maint	5,793.97	233635	3032289330	Misc. Parts and Supplies - Customer # 187612
3972	SOLAR TURBINES, INC.	Light & Power	535300 448614	Power Plant Equipment Repairs	10,565.53	233641	AR570079834	Taurus Repairs - Acct # 400004258
14517	SUNBELT RENTALS	Light & Power	535300 448617	Power Plant Major Repairs	16,016.31	233648	136217077-0001	Titan Repairs - Acct # 526383
13852	T & T CONSULTING	Police	104210 432000	Examination & Evaluation	1,000.00	233650	05/05/2023	Completed Backgrounds for Casey Doyle& Eli Bellozo
4171	THATCHER COMPANY	Water	515100 448000	Operating Supplies	3,160.59	233653	2023100111905	Tchlor for Treatment plant - Customer # C1303
4229	TOM RANDALL DIST. CO	Streets	104410 425000	Equip Supplies & Maint	4,331.30	233656	0361413	Bulk Oil - Acct # 000275

<u>VENDOR</u>	<u>VENDOR NAME</u>	<u>DEPARTMENT</u>	<u>ACCOUNT</u>	<u>ACCOUNT DESC</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>INVOICE</u>	<u>DESCRIPTION</u>
4229	TOM RANDALL DIST. CO	Streets	104410 425000	Equip Supplies & Maint	26,521.72	233656	0360426	Fuel - Acct # 000275
4229	TOM RANDALL DIST. CO	Streets	104410 425000	Equip Supplies & Maint	28,993.50	233656	0361173	Fuel - Acct # 000275
5442	TRAVIS MATHEW, LLC	Golf Course	555500 448240	Items Purchased - Resale	1,753.59	233657	91240224	Men's Wear - Account # 1006176
4281	TWIN D INC.	Golf Course	555500 426000	Bldg & Grnd Suppl & Maint	1,237.50	233659	24110	Flushing & Vacuuming Cleaning
4450	VERIZON WIRELESS	Police	104210 428000	Telephone Expense	1,988.59	233668	9933173387	Account # 771440923-00001
13259	WILKINSON SUPPLY	Cemetery	595900 474500	Machinery & Equipment	4,700.00	233671	413148	Misc. Supplies - Customer # 27860
TOTAL:					<u>429,985.90</u>			

City Council Staff Report



Subject: Fireworks Ordinance
Author: Clinton Drake
Dept: City Attorney
Date: May 23, 2023

Background

Utah Code Annotated 15A-5-202.5 allows municipalities to implement fireworks restrictions based on a fire code official's evaluation of the existing conditions within a city. If a fire code official determines that hazardous environmental conditions exist and recommends restrictions, a city council may enact an ordinance restricting fireworks.

Analysis

Fire Chief Dane Stone (Fire Code Official) has determined that current conditions within areas of Bountiful City are hazardous for fires and has recommended that restrictions be adopted for those areas posing a fire risk. Chief Stone's determination empowers the City Council to adopt fireworks restrictions by adopting a Fireworks Ordinance for 2022 which would expire on January 1, 2024.

Due to hazardous environmental conditions, the fire chief and city staff recommend the discharge of fireworks be prohibited at all times in the following areas of Bountiful City until January 1, 2024:

- (a) East of 400 East from Pages Lane to 500 South;
- (b) East of Orchard Drive from 500 South to the North Salt Lake border.
- (c) fireworks are prohibited in any other areas designated by South Davis Metro Fire Agency officials.

Notice to the public of the fireworks restrictions will be strategically placed within the City.

Department Review

This Staff Report was prepared by the City Attorney and reviewed by the City Manager.

Recommendation

It is recommended that the City Council adopt Ordinance 2023-02 to prohibit discharging fireworks east of 400 East and Orchard Drive

Significant Impacts

Imposing fireworks restrictions in the mountainous, brush-covered or forest-covered areas will minimize fire risks and increase public safety within the City.

Attachments

Ordinance 2023-02.

Map of Bountiful City including fire restricted areas.

Fire Chief Stone's letter of findings.



BOUNTIFUL

Bountiful City Ordinance No. 2023-02

MAYOR
Kendalyn Harris
CITY COUNCIL
Millie Segura Bahr
Jesse Bell
Kate Bradshaw
Richard Higginson
Cecilee Price-Huish
CITY MANAGER
Gary R. Hill

AN ORDINANCE ADOPTING RESTRICTIONS OF THE USE OF FIREWORKS WITHIN CERTAIN AREAS OF THE CITY OF BOUNTIFUL, UTAH, FOR THE YEAR 2023

WHEREAS, the Utah Legislature grants authority to local governments to regulate the sale and discharge of Class “C” fireworks; and

WHEREAS, the Utah Code provides for annual scrutiny and review of fire hazards and risks by fire code officials and legislative bodies regarding fireworks and fire restrictions; and

WHEREAS, the Fire Chief of the South Davis Metro Fire Agency, who is the Bountiful Fire Code Official, has determined under the International Fire Code, Chapter 3, Section 310.8, that hazardous environmental conditions in and around Bountiful necessitate controlled use of ignition sources, including fireworks, and has recommended temporary fireworks discharge restrictions; and

WHEREAS, the Governor has issued an executive order declaring a state of emergency due to extreme drought conditions; and

WHEREAS, the City Council finds it is in the best interest of the municipality and the general health, safety and welfare of the public that this Ordinance should be passed;

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOUNTIFUL CITY COUNCIL AS FOLLOWS:

Section 1. Ordinance Amendment. Section 5-10-108 of the Bountiful City Code is hereby amended as follows:

5-10-108. Fireworks Restrictions.

(1) Within the limits of the City of Bountiful east of Bountiful Boulevard, and, north of 400 North, east of 900 East:

(a) The discharge of class C common fireworks is prohibited at all times.

(2) Due to hazardous environmental conditions, the discharge of fireworks is prohibited at all times in the following areas of Bountiful City until January 1, 2024:

- (a) East of 400 East from Pages Lane to 500 South;
- (b) East of Orchard Drive from 500 South to the North Salt Lake border.
- (c) fireworks are prohibited in any other areas designated by South Davis Metro Fire Agency officials.

(3) Campfires and other fires are allowed only in an approved fire pit designed and installed by the Forest Service or the City. No homemade or makeshift fire pits are allowed. The restrictions of this Section do not apply to residential structures or improved fire pits adjacent to a residential structure.

(4) This Section does not apply to Bountiful City’s annual public fireworks display because of adequate fire prevention preparations.

(5) This Section shall not expire until rescinded or amended by the City Council.

(6) In other parts of the City where not prohibited by this Section, the possession, display or discharge of Class C common state approved fireworks is permitted only as provided by State law. Any other possession, display or discharge is prohibited.

(7) It is unlawful to negligently discharge class C common state approved explosives, in such a manner as to cause, or to recklessly risk causing, a fire or injury to people or property.

(8) This ordinance shall not limit the authority of the Fire Chief or Fire Marshal to at any time issue emergency decrees or order fireworks and/or other fire restrictions depending upon conditions or needs.

(9) Fireworks possessed, sold or offered for sale in violation of this Ordinance may be seized and destroyed and the license of the person selling or offering fireworks for sale may be revoked.

(10) All terms relating to fireworks used in this Ordinance shall have the same meaning as defined in Utah Code § 53-7-202 of the Utah Fire Prevention Act.

(11) A violation of this Section is a class “B” misdemeanor.

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

Adopted by the City Council of Bountiful, Utah, this 23rd day of May, 2023.

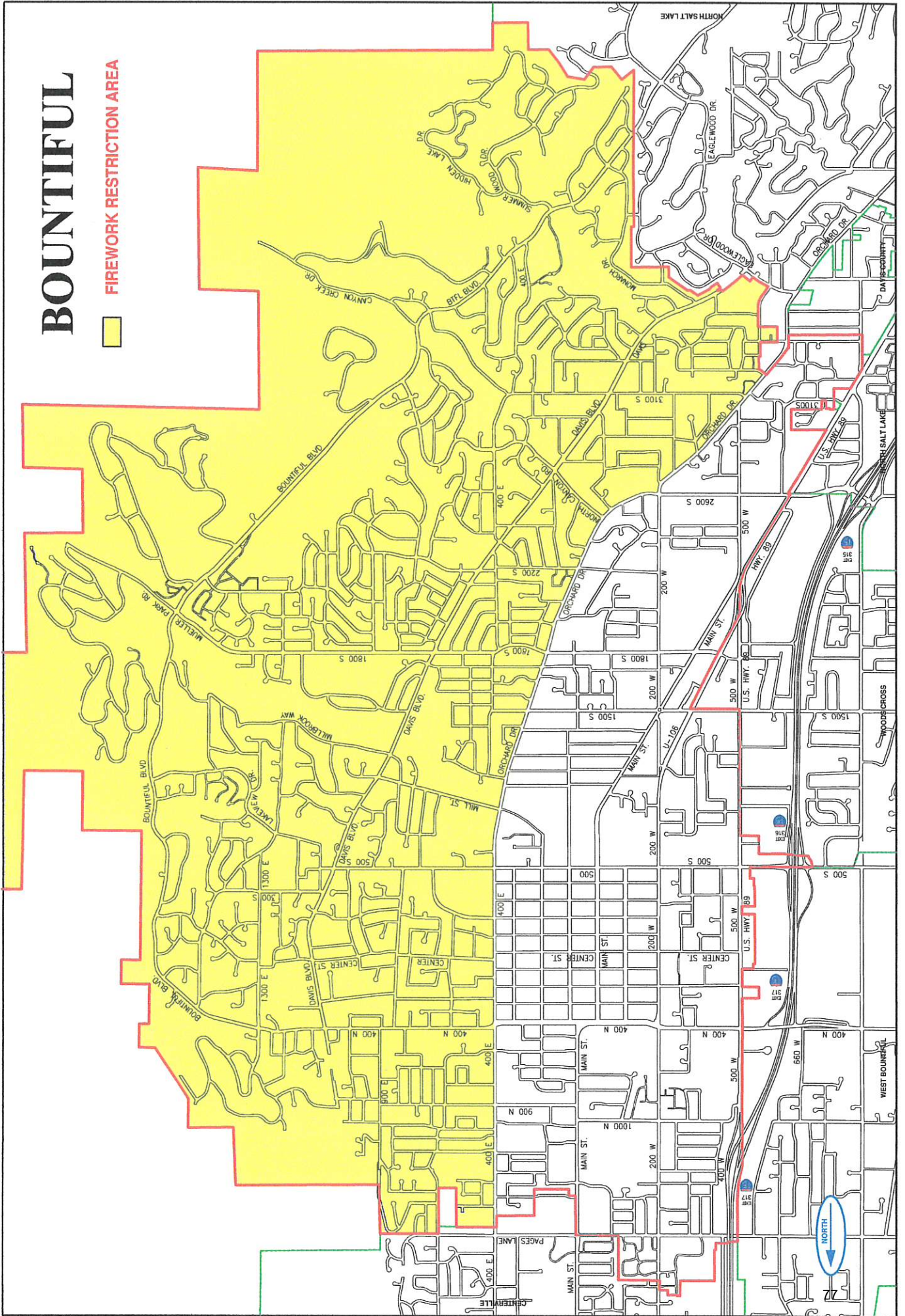
Kendalyn Harris, Mayor

Attest:

Shawna Andrus, City Recorder

BOUNTIFUL

 FIREWORK RESTRICTION AREA





South Davis Metro Fire Service Area

Proudly Serving the Communities of

Bountiful - Centerville - Davis County - North Salt Lake - West Bountiful - Woods Cross

Dane Stone, Fire Chief

May 2, 2023

Mr. Hill:

I have evaluated areas within Bountiful City where existing and historically hazardous environmental conditions exist and meet the requirements of 15A-5-202.5(b). It is anticipated these areas will become drier and more hazardous in the month of July. With the historical winter that we saw this year, these areas will have a significant amount of growth in flash fuels, which may contribute to possible wildland urban-interface fires. These areas where existing and historically hazardous environmental conditions exist are shown on the attached map and detailed below.

Based on the determination that existing or historical hazardous environmental conditions exist in the described and restricted areas on the attached map, the use of any ignition source, including fireworks, lighters, matches, sky lanterns, and smoking materials is prohibited in the restricted area.

It is my recommendation that the discharge of fireworks be prohibited in the city of Bountiful within the areas East of Orchard Drive, from the North Salt Lake City Boundary to 500 South and continuing 400 East to the Centerville City Boundary, as described on the attached map.

Campfires and all other fires are allowed only in an approved fire pit designed and installed by the forest service or the city. No homemade or makeshift fire pits are allowed. This restriction does not apply to residential structures or improved fire pits adjacent to a residential structure.

This does not apply to the Bountiful City Handcart Days public fireworks display because of adequate fire prevention preparations.

Respectfully,

A handwritten signature in black ink, appearing to read 'Dane Stone', written over a horizontal line.

Dane Stone
Fire Chief
South Davis Metro Fire Service Area

Board of Trustees: *Kendalyn Harris – Clark Wilkinson – Bob Stevenson – Brian Horrocks –
Ken Romney – Ryan Westergard*

P.O. Box 1547 • Bountiful, Utah 84011 • 801-677-2400 • Fax 801-677-0166

City Council Staff Report

Subject: Radio Purchase
Author: Chief Edward Biehler
Department: Police Department
Date: May 16, 2023



Background

Project 25 (P25) develops standards for interoperable land mobile radio (LMR) systems so emergency responders can exchange critical communication across agencies and jurisdictions. P25 standardizes interfaces between the various components of LMR systems that emergency responders use. The State of Utah has been making changes and upgrades to the statewide infrastructure and equipment to be P25 compliant. This new infrastructure is scheduled to be activated beginning in January of 2024. All radios need to be compliant with this P25 equipment.

The following is a request to approve the purchase of (50) APX6000 Motorola portable radios and (4) APX6500 mobile radios.

Analysis

Our current Motorola portable radios are not P25 compliant. When the new statewide P25 radio infrastructure and equipment are activated, our current radios will not transmit or receive a signal. The mobile radios that are currently in use in our police vehicles were purchased a few years ago and were bought to be P25 compliant. There are a few mobile radios used in dispatch that are not P25 compliant and we are seeking approval to replace four of them for the same reason. The Utah Communication Authority (UCA) has upgraded certain software capabilities and are offering certain services that will allow us to significantly reduce the number of radios needed in our dispatch center. Four new mobile radios in dispatch should be sufficient.

We did not seek multiple bids because our current mobile radios are P25 compliant and are all Motorola brand. In order to keep consistent and have similar radios with similar features we felt going away from Motorola would not be beneficial. Staff has been in various demos and meetings where pricing was discussed and there is not a significant difference in price between brands.

Department Review

The Police Department and City Manager have reviewed this staff report.

Significant Impacts

Sufficient funds have been allocated in the FY24 budget. We did receive grant funding in the amount of \$114,873.36 to help cover a large portion of the cost.

Recommendation

I respectfully request your approval to purchase 54 Motorola radios for \$175,716.

Attachments

Quote information available upon request

City Council Staff Report

Subject: Body Camera/Car Camera Purchase
Author: Chief Edward Biehler
Department: Police Department
Date: May 16, 2023



Background

The Bountiful Police Department has been using body worn cameras/car cameras for many years. Our current provider, Watchguard, was recently purchased by Motorola. Over the years we have seen the benefit of using body worn and vehicle installed cameras. Every officer is issued a body worn camera, except for administration, and every patrol officer is issued a car camera. Current video downloads are being stored on Bountiful owned server equipment.

The following is a request to approve the purchase of (18) M500 + V300 bundled cameras, (16) V300 body cameras, software subscription, and associated equipment.

Analysis

Our current Watchguard cameras system and equipment is beginning to fail. We replace roughly 5-10 body worn cameras a year. Due to the age of the Watchguard product it is becoming more difficult to get replacement cameras.

We researched various providers in search of a new product. All major camera providers have gone to a subscription-based product, meaning you store your video on their cloud service.

We received bids from three different providers for body worn and car camera bundles (Motorola, Digital Ally, Axon). Motorola came back with a quote of \$284,756 paid over 5 years. Digital Ally came back with a quote of \$320,215 paid over 5 years. Axon returned a quote of \$438,026 paid over 5 years. Motorola's subscription plan also includes a warranty on all their cameras for the 5 years. Motorola also provides potential future integration with the other Motorola products we are purchasing (Mobile radios, Flex/Spillman).

Department Review

The Police Department and City Manager have reviewed this staff report.

Significant Impacts

Sufficient funds have been allocated in the FY24 budget.

Recommendation

I respectfully request your approval to purchase 34 body worn cameras and 18 vehicle cameras with the associated equipment and video management software through Motorola Solutions for \$284,756 paid over 5 years.

Attachments

Quote information available upon request