**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**GOLDEN STATE CONNECT AUTHORITY**

**AND**

**UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY**

**REGARDING**

**ENGINEERING MANAGEMENT SERVICES**

THIS **MEMORANDUM OF UNDERSTANDING** (“MOU”)is dated \_\_\_\_\_\_\_ and made between **GOLDEN STATE CONNECT AUTHORITY** (“GSCA”) and **UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY** (“UTOPIA”). This MOU is made in reference to the following facts:

**RECITALS:**

(a) GSCA is a joint powers authority and public agency organized and existing under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code.

(b) Under that certain *Golden State Connect Authority Joint Exercise of Powers Agreement*, GSCA is authorized to establish and operate programs and projects to facilitate provision and expansion of broadband internet access service in rural communities, and to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service.

(c) UTOPIA is an interlocal entity and public agency organized and existing under Title 11, Chapter 13, Utah Code Annotated 1953.

(d) Under that certain *First Amended and Restated Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency*, UTOPIA is authorized to provide cable television and telecommunications services on a wholesale basis, and to construct, maintain, and operate telecommunications lines or cable television lines.

(e) Under sections 6500 and 6502 of the California Government Code and Sections 11-13-201 and 11-13-202, Utah Code Annotated 1953, UTOPIA and UTOPIA, respectively, are each authorized to enter into agreements with out-of-state public agencies to jointly exercise any power common to both entities.

(f) Certain counties and cities within GSCA’s boundaries are applying for grant funding from the California Public Utilities Commission's Local Agency Technical Assistance program. If approved, this grant funding will cover the cost of preparing conceptual network design and cost estimation, refined high-level design and foundational planning, and low-level design and engineering for portions of a proposed open access broadband internet access network within GSCA's boundaries. These counties and cities propose to enter into one or more memorandums of understanding with GSCA, in accordance with Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code, under which GSCA will undertake responsibility for performance of the grant-funded work.

(g) GSCA has developed proposed *Agreements for Professional Services* (the "Engineering Agreements") with Tilson Technology Management (the “Design Professional”) for each affected county and city, attached hereto as **Attachments A-1 through A-\_\_**, under which the Design Professional will prepare the scope items and work products to be funded under the Local Agency Technical Assistance program.

(h) UTOPIA has the expertise and capability to provide network engineering management services to supervise the work performed by the Design Professional under the Engineering Agreements.

**THEREFORE, THE PARTIES SHALL JOINTLY EXERCISE THEIR COMMON POWER AS FOLLOWS:**

1. Recitals Incorporated. The above recitals are true and correct, and are hereby incorporated into this MOU.

2. Authority. This MOU is authorized by California Government Code sections 6500 et seq. and 26231, and by Title 11, Chapter 13 and Title 10, Chapter 18, Utah Code Annotated 1953.

3. No Separate Entity. This MOU does not create an agency or entity that is separate from the parties to the agreement.

4. Scope of Services. Upon award of funding under the Local Agency Technical Assistance program, and execution of the Engineering Agreements, UTOPIA shall provide engineering management services to assist GSCA in supervising the performance of the Design Professional under the Engineering Agreements, including all of the following:

* Provide GSCA with a single point of responsibility for the administration of quality, cost control, and schedule objectives as set forth in the Engineering Agreements.
* Develop project delivery strategy based on analysis of project requirements for function, quality, and cost, and schedule, operational and legal constraints.
* Develop master schedule showing duration, responsibility and precedence for major activities; identify critical activities and develop decision tracking system to report on the status of key issues which influence the project.
* Schedule, hold, and document project management meetings including representatives of the Design Professional and GSCA.
* Require performance by the Design Professional to support quality, cost, and schedule objectives.
* Review all plans, specifications, drawings, and other work product submitted by the Design Professional for compliance with contract scope and applicable technical and regulatory requirements. Such review shall include a check for biddability and constructability, and for conflict with plans for any other portion of the proposed network.
* Compare submitted designs to existing cost models, working with the Design Professional.
* Develop and implement a procedure for the review and processing of the Design Professional's invoices. Recommend approval and payment of the Design Professional for acceptable work effort expended. The procedure will be based upon the requirements of the GSCA’s accounting systems and adapted to any requirements of the State funding agency.
* Coordinate GSCA review and acceptance of all plans, specifications, drawings, and other work product submitted by the Design Professional.
* Assist GSCA in completing any reports or other documentation necessary to obtain reimbursement under the Local Agency Technical Assistance program.
* Any other management services necessary to facilitate low-level design and final engineering of the proposed network, as set forth in the Engineering Agreements.

The foregoing services shall be performed in cooperation and coordination with GSCA management. GSCA shall retain final authority to supervise all services performed by the Design Professional, to accept or reject all plans, specifications, drawings, and other work product submitted by the Design Professional, and to approve or disapprove all invoices and request for payment.

5. Billing and Payment. GSCA shall pay UTOPIA an all-inclusive flat fee equal to three percent (3%) of the amount(s) invoiced by the Design Professional under the Engineering Agreements, not to exceed $\_\_\_\_\_\_\_\_. This flat fee is inclusive of all compensation, reimbursement, costs, or charges due to UTOPIA for services provided under this MOU. UTOPIA shall submit monthly bills for services rendered, based on the amounts invoiced by the Design Professional during the preceding month. Such bills shall conform to the general requirements for invoices to GSCA and shall be paid by GSCA under its normal invoicing procedures. It is the parties' intent that the cost of UTOPIA's services hereunder will be eligible for reimbursement under the Local Agency Technical Assistance program, and all of UTOPIA's services and invoices shall conform to the requirements of that program.

6. Term. This Agreement shall commence upon award of funding for the proposed work under the Local Agency Technical Assistance program, and terminate upon completion of, and final payment for, all services described in this MOU, unless terminated sooner due to the conditions set forth herein.

7. Termination. Either party may terminate this agreement on 30 days’ written notice. GSCA shall pay UTOPIA based upon the invoices submitted by the Design Professional as of the date of notice.

8. No Commitment to Proceed. No provision of this MOU shall be construed to obligate GSCA to accept an award of funding under the Local Agency Technical Assistance program, to execute the Engineering Agreements, or to otherwise proceed with design and engineering of the proposed network.

9. Compliance with Law. UTOPIA and GSCA shall perform all functions related to the services or activities described herein in accordance with all applicable federal, state, and local laws, ordinances, regulations, and rules, and in accordance with the terms of the aforementioned grants.

10. Independent Contractor. UTOPIA shall, during the entire term of this MOU, be construed to be an independent contractor and nothing in this MOU is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow GSCA to exercise discretion or control over the professional manner in which UTOPIA performs the services which are the subject matter of this contract. UTOPIA staff performing services under this MOU not be deemed employees of GSCA for any purpose.

11. Indemnification. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties hereto pursuant to Government Code section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree, pursuant to Government Code section 895.4, as follows:

a. UTOPIA shall hold harmless, defend, and indemnify GSCA, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person’s or persons’ bodily injury, including death, or property (including property of GSCA) being damaged by the negligent acts, willful acts, or errors or omissions of UTOPIA, or any person employed by or under UTOPIA in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of GSCA.

b. GSCA shall hold harmless, defend, and indemnify UTOPIA, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person’s or persons’ bodily injury, including death, or property (including property of UTOPIA) being damaged by the negligent acts, willful acts, or errors or omissions of GSCA, or any person employed by or under GSCA in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of UTOPIA.

12. Insurance. UTOPIA and GSCA shall each secure and maintain in full force and effect during the full term of this agreement commercial general liability insurance or participation in a self-insurance program with limits of liability of not less than $1 million combined single limit bodily injury and property damage. Policies shall be written by carriers reasonably satisfactory to each party. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.

13. No Third Party Beneficiary. Nothing in this MOU shall be construed to create any rights of any kind or nature in any other party not a named party to this MOU.

14. Authorization. Each party executing this MOU and each person executing this MOU in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purporting to act.

15. Entire Agreement/Amendments. This MOU supersedes all previous agreements or understandings, and constitutes the entire understanding between the parties with respect to the above referenced services, terms of compensation, and otherwise. This MOU shall not be amended, except in a writing that is executed by authorized representatives of both parties.

16. Governing Law and Venue. This agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California (excepting any conflict of laws provisions which would serve to defeat application of California substantive law). Venue for any action arising from this agreement shall be in Sacramento County, California.

17. Notices. Any notice required to be given pursuant to the terms and provisions of this MOU shall be in writing and shall be sent first class mail to the following addresses:

UTOPIA: UTOPIA

5858 South 900 East

Murray, UT 84121

Attn: Chief Executive Officer

GSCA: GOLDEN STATE CONNECT AUTHORITY

1215 K Street, Suite 1650

Sacramento, CA 95814

Attn: Executive Director

**IN WITNESS WHEREOF**, UTOPIA and GSCA have executed this Memorandum of Understanding on the day and year set forth below.

**Date: \_\_\_\_\_\_\_\_\_\_\_\_ UTAH TELECOMMUNICATION OPEN**

**INFRASTRUCTURE AGENCY**

**By:**

**Chief Executive Officer**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_ GOLDEN STATE CONNECT AUTHORITY**

**By**

**Executive Director**

**ATTACHMENTS A-1 through A-\_\_**

**[INSERT COPIES OF ENGINEERING AGREEMENTS]**