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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
09/26/2020 09:19 AM
FEE \$0.00 Pgs: 8
DEP RTT REC'D FOR BOUNTIFUL CITY

WHEN RECORDED MAIL TO:

Utah Telecommunication Open Infrastructure Agency
ATTN: General Counsel
5858 S 900 E
Murray, Utah 84121

Affects Parcel Number(s): 030360154

CABLE AND FACILITIES EASEMENT

Bountiful City Corporation, a municipal corporation and political subdivision of the State of Utah ("Grantor"), hereby grants to the Utah Telecommunication Open Infrastructure Agency, an interlocal cooperative agency organized under the laws of the State of Utah ("Grantee"), for the annual sum as more particularly provided herein, and other valuable consideration, a non-exclusive easement, subject to all matters of record (the "Easement") for the express purpose to, at Grantee's sole cost and expense, locate, survey, conduct environmental surveys for, excavate, construct, entrench, maintain, protect, inspect, operate, repair and replace (collectively referred to as Grantee's "Necessary Actions") communications cables and associated system facilities, hardware and equipment (collectively referred to as "Cables and Facilities"), as graphically depicted on the drawing attached as **Exhibit "A"** and incorporated by reference, over, under and through a portion of Grantor's land situated at approximately 745 South Main, Bountiful City, Davis County, State of Utah, more particularly described as follows and referred to herein as the "Easement Property":

EASEMENT AREA DESCRIPTION: A 10 foot wide strip of land for a Utility easement lying within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, Township 2 North, Range 1 East, Salt Lake Base and Meridian; The centerline of said strip of land is described as follows: Beginning at a point on the East Right of Way line of Main street, said point lies 2192.49 feet N. 89°42'34" W. along the North section line, and 1533.60 feet South of the Northeast Corner of Section 30, Township 2 North, Range 1 East, Salt Lake Base and Meridian; thence the following courses along a line that parallels 5' southerly of an existing curb, N. 89°47'09" E. 144.35 feet, thence N. 85°02'47" E. 66.63 feet, thence N. 88°49'07" E. 208.34 feet, thence along a curve turning to the left with an arc length of 48.51 feet, a radius of 100.02 feet and a chord bearing and distance of N. 74°55'26" E. 48.04 feet, thence N.61°01'46" E. 23.14 feet, thence along a curve turning to the right with an arc length of 48.46 feet, a radius of 95.02 feet and a chord bearing

and distance of N. 75°38'22" E. 47.94 feet, thence S.89°45'02" E. 21.78 feet to the West line of 100 West Street and the terminus of said centerline. The above described strip of land is 561.21 feet long and 10 feet wide and contains 5,612.14 square feet in area or 0.13 of an acre more or less.

See Exhibit "A" attached hereto and made a part hereof.

In addition to any other limitations set forth herein, this Easement is granted subject to the following terms and conditions:

1. Grantor reserves its existing uses, together with any and all future uses, of the Easement Property. Grantor further reserves for itself, its successors and assigns, the right to use the Easement Property and to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted to Grantee.

In its use and enjoyment of this Easement Grantee shall:

- (a) comply with all applicable local, state and federal laws, rules and regulation; and
- (b) act reasonably to minimize interference with the use and enjoyment of Grantor's property by Grantor, and its invitees, successor and assigns and any other easement or license holders.

3. The Easement granted herein is subject to the rights of Grantor and its invitees, successors and assigns to use the surface of the Easement Property, provided such use is reasonably compatible with the use of the Easement Property by Grantee for the purposes described herein.

4. Any and all rights granted herein are subject to the rights of existing utilities, rights-of-way, easements or other property interests in the Easement Property. Grantee shall be responsible, at Grantee's sole cost and expense, for obtaining consents and approvals, including those of the City for relocating or modifying the alignments of existing utilities as of the date of this Easement, if any, in order to maintain reasonable clearances between such utilities and the Cables and Facilities. Grantor may require the relocation the Easement at Grantee's cost if in the opinion of Grantor it unreasonably interferes with the present or future use by Grantor of Grantor's land and such need for relocation is directly attributable to public convenience and necessity. Grantor shall provide to Grantee a substitute Easement reasonably suited to Grantee's needs.

5. Subject to the provisions of Paragraph 6, and in consultation with Grantor, Grantee shall have the right to cut, damage or remove ground, trees, plants, landscaping and other improvements within the Easement Property to the extent reasonable and necessary, during construction, maintenance, repair or replacement of the Cables and Facilities. Grantee shall obtain an excavation permit from the Bountiful City Engineer prior

to installation or maintenance work which requires excavation in the street right of way or on City-owned property.

6. Grantee shall restore the surface of Grantor's land to the reasonable satisfaction of Grantor in a timely manner, not to exceed ten (10) business days (or as soon as weather reasonably permits) following the completion of any of Grantee's Necessary Actions, including without limitation, construction, maintenance, repair or replacement of the Cables or Facilities, or of any other disturbance of Grantor's property. Repairs to or restoration of landscaped areas shall include, but not be limited to, the restoration of turf areas, sprinkling systems, trees, shrubs and other landscape plantings or materials.

7. Grantee shall not damage Grantor's existing facilities, whether underground or overground, and in the event of such damage shall repair or cause to be repaired such damage, at Grantee's sole cost and expense. Any such repair shall be conducted to the reasonable satisfaction of Grantor in a timely manner, not to exceed ten (10) business days from the date of the damage, unless otherwise agreed to in writing by Grantor.

8. Grantor may terminate this Easement and all of the rights granted herein any time after Grantee's discontinued use of the Easement and/or the Cables and Facilities located therein for a term of one (1) year. Such discontinued use for a period of one (1) year shall be deemed a permanent abandonment without regard to Grantee's intent. Upon written notice from Grantor of such abandonment action, Grantee shall remove improvements constructed thereon within sixty (60) calendar days of such notice of abandonment and shall execute and record a reconveyance and release hereof within fifteen (15) business days of such notice of abandonment, whereupon this Easement and all rights and privileges other than the removal and indemnification provisions shall be fully cancelled and terminated. In the event Grantee fails or is unable to record a reconveyance and release of termination on the basis of abandonment within the time frame required herein, Grantor is hereby authorized to record against the Easement Property a notice of abandonment and termination this Easement terminating all of Grantee's interest therein.

9. The Cables and Facilities permitted to be installed and maintained within the Easement Property are specifically described in Exhibit "A," as attached hereto. The Cable and Facilities shall be installed strictly in accordance with the plans set forth in Exhibit "A," and shall be subject to all the terms and conditions of this Easement. Grantee shall not construct, erect or install any structures or other improvements within the Easement Property without the prior approval of Grantor and in accordance with Bountiful City Ordinances.

10. Grantee shall cause all of its activities hereunder to be performed in a safe manner and shall not cause to exist any dangerous condition within the Easement Property. Grantee shall remedy any dangerous condition within forty-eight (48) hours of notification of a dangerous condition. If such dangerous condition is not remedied within forty-eight (48) hours or poses an immediate risk, Grantor, it's contractors, agents or assigns, are authorized to take any actions necessary remedy or mitigate the dangerous condition and all costs associated with such actions shall be fully reimbursed by Grantee. Grantee shall

not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Easement Property or on any other real property of Grantor adjacent to the Easement Property. Grantee shall, at Grantee's sole cost and expense, perform all maintenance of the Cables and Facilities within the Easement Property. Grantee shall perform such maintenance of the Cables and Facilities in compliance with all applicable zoning laws, regulations and ordinances. Grantee shall remove or paint over any graffiti on the Cables and Facilities within the Easement Property within three (3) business days from written notice from the Grantor.

11. Any notice required or desired to be given hereunder shall be in writing and shall be delivered personally upon the party for whom it is intended or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Grantor: Bountiful City
Attn: City Engineer
795 South Main
Bountiful, Utah 84010

To Grantee: Utah Telecommunication Open Infrastructure Agency
Attn: Executive Director
5858 S 900 E
Murray, UT, 84121

With a copy (which copy shall not constitute notice) to:

Joshua Chandler
UTOPIA General Counsel
5858 S 900 E,
Murray, UT 84121

12. Grantor and Grantee agree that should either one default in any of the covenants and terms set forth herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing the terms of this Easement or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah.

13. The parties expressly acknowledge that the Easement Property is located within public property that may be utilized by the public for park or other purposes. Grantee agrees, that, at all times, this Easement shall be subject to any use of the public property by the Grantor and the public and that Grantor shall not be liable to Grantee for any loss of use or damage to the Cables and Facilities resulting from such use.

14. If Grantee fails to cure a non-payment or default within ninety (90) days, this Easement shall be terminated and Grantee shall execute a record of reconveyance and release hereof within ninety (90) days of the termination date, whereupon this Easement

and all rights and privileges other than the removal and indemnification provisions shall be fully cancelled and terminated. In the event Grantee fails to record a reconveyance and release of termination on the basis of default within the time frame required herein, Grantor is hereby authorized to record against the Easement Property a notice of default and termination this Easement terminating all of Grantee's interest therein.

15. Grantee may not assign this Easement, or any of its rights under this instrument, in whole or in part, without Grantor's written permission; provided, however, that notwithstanding the forgoing provision, Grantee shall have no obligation to obtain Grantor's written permission to assign this Easement for purposes of Grantee's financing provided however, Grantee shall provide written notice to Grantor of any such assignment.

16. This Easement may be amended only by written instrument executed by both the Grantor and Grantee.

17. Grantee shall indemnify and hold Grantor, its officers, employees, successors and assigns harmless from any claims, costs, damages and liabilities to the extent they arise out of Grantee's exercise of this Easement. Grantor shall have no duty to inspect the Easement Property to which this Easement applies and shall have no duty to warn any person of any latent or patent defect, condition or risk that may exist on or within the Easement Property or that might be incurred in the exercise of the rights granted herein. This provision does not waive any requirements or limitations of Utah law regarding governmental immunity.

18. All of the grants, covenants, terms provisions and conditions in this Easement shall run with the land and shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors and administrators of the parties.

19. This Easement shall be subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Easement Property, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Property. Grantee shall not cause liens or encumbrances of any kind to be placed against the Easement Property; provided, however, that notwithstanding anything to the contrary contained in this Easement, Grantee may assign, mortgage, pledge, hypothecate or otherwise transfer without Grantor's consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Grantee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

20. Unless sooner terminated by abandonment or default as more particularly provided herein, this Easement shall be effective as of the date of execution by both parties and recording of the same in the Davis County Recorder's Office and shall be effective for a term of thirty-five (35) years. This Easement shall automatically renew for renewal terms

of one (1) year each in the event neither party terminates this Easement by providing the other party written notice of termination at least ninety (90) days prior to the then-existing term.

21. Grantee shall pay an annual Easement payment ("Annual Payment") to Grantor in the amount set forth herein. Upon execution of this Easement, and prior to recording of the same, Grantee shall pay to Grantor an initial Annual Payment of \$500. The Annual Payment for succeeding years shall be pre-paid and due and owing on January 2nd.

22. This Easement shall include the non-exclusive right of other public utilities with which UTOPIA contracts to provide necessary services to its Cables and Facilities within the Easement Property to install, maintain and operate such necessary utility facilities ("Necessary Utility Facilities") under and through the Easement Property, provided, that such Necessary Utility Facilities comply with all the terms and conditions of this Easement, including all requirements and restrictions regarding Cables and Facilities within the Easement Property. All Necessary Utility Facilities shall be installed underground, unless otherwise agreed to in writing by Grantor. All Necessary Utility Facilities shall be shown and specifically described in Exhibit "A."

23. Except as expressly set forth herein, this instrument, including any exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations, or agreements of the parties regarding the subject matter in this document.

GRANTOR:

BOUNTIFUL CITY CORPORATION



Randy Saw
By: Mayor

8/5/2020
Dated:

ATTEST:
Shawn Anderson
City Recorder

APPROVED AS TO FORM:
John W. Lewis
City Attorney's Office

GRANTEE:

UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY

Roger Timmerman Dated: 7/31/20

Roger Timmerman, Executive Director

ATTEST:

Christopher Evans
Secretary

APPROVED AS TO FORM:

John W. Lewis
UTOPIA General Counsel

EXHIBIT "A"