

Santaquin City Resolution 03-05-2019

A RESOLUTION APPROVING AMENDMENT (#2) TO WIRELESS FACILITY AGREEMENT WITH INTELLIPOP, LLC.

WHEREAS, the City of Santaquin, a fourth class city in the State of Utah, has an interest in insuring that the citizens of Santaquin have access to Internet Services; and

WHEREAS, Intellipop, LLC. and Santaquin City entered into a Wireless Internet Services Contract by and through Resolution 11-01-2015, attached hereto as Exhibit 1, and

WHEREAS, Intellipop, LLC. installed its equipment and began providing services to the community and fulfilled its contractual obligations by providing internet services to Santaquin City facilities at no cost; and

WHEREAS, Intellipop, LLC. proposed an amendment to the Agreement, which was approved by the Santaquin City Council by and through Resolution 03-07-2017, attached hereto as Exhibit 2, to provide better coverage to the residents of Santaquin through a relocation of the second equipment site; and

WHEREAS, Intellipop, LLC. has continued to fulfill its contractual obligations outlined in the Agreement and first amendment, and continues to provide high quality high speed internet service offerings to the residents of Santaquin; and

WHEREAS, Intellipop, LLC. would like to now extend the duration of the term of the original Agreement under the provision changes outlined below;

NOW, THEREFORE, BE IT RESOLVED, the Santaquin City Council approves Amendment #2 to the aforementioned Agreement to extend the duration of the Agreement under the following provisions:

- **Term.** The term of this Agreement (the "Initial Term") is five (5) years, commencing on date both Lessee and Lessor have executed this Agreement. This Agreement shall renew for up to three (3) additional five (5) year terms. Lessee will provide notice of intent to renew six (6) months prior to expirations of any term outlined by this agreement. Lack of notification is assumed to be intent of the Lessee not to pursue renewal
- **Trade of Services.** In exchange for the lease described in this Agreement, Lessee shall provide internet services to the City, at no cost to the City, as described in this paragraph, ("Trade of Services"). Trade of Services will commence upon the Construction start date and/or installation of Lessee's Antenna Facilities, but in no event more than sixty days after the effective date of this Agreement (the "Trade Commencement Date"). Thereafter, Lessee will provide internet access on Lessee's service facilities to Lessor at sites located at: (1) The Santaquin City Public Safety Building, 275 West Main Street, Santaquin UT, (2) at the Santaquin City Water Reclamation Facility (WRF) 1215 North Center Street, Santaquin, UT and (3) at the

Santaquin City Public Works building south of the WRF. Furthermore, Lessor shall be entitled to seven (7) additional commercial connections in the future, to begin within thirty days of the City's written request to the Lessee. The connection speeds will be equivalent to the highest available wireless speed available in that market based upon infrastructure capabilities in the area of the connection, unless a lower connection speed is approved by the City. Internet services to Santaquin City will remain free of charge for the length of the contract. All standard commercial installation, setup, and equipment costs involved in providing internet services to the Lessor shall be paid by the Lessee. Any costs in excess of standard commercial installation rates will be negotiated between the Lessor and Lessee.


- **Termination.** Lessee may terminate this Agreement at any time by 90-day notice to Lessor without further liability if Lessor does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi-governmental authority or any easements required from any third party to operate the installed equipment, or if any such approval is canceled, expires or is withdrawn or terminated. Lessor may terminate this Agreement upon any material default by Lessee that is not cured within sixty (60) days written notice by Lessor. Either Lessee or Lessor may terminate this agreement with a one (1) year written notice.

Approved and adopted by the Santaquin City Council this **19th** day of **March, 2019**.



Nick Miller, Mayor Pro-Tempore

Attest:



Kira Peterson, Deputy City Recorder

EXHIBIT 1: ORIGINAL AGREEMENT – (RESOLUTION 11-01-2015)

**City of Santaquin
INTELLIPOP WIRELESS FACILITY SITE AGREEMENT**

Lessor leases to Lessee, the site(s) described below:

- Area on properties belonging to the City of Santaquin to host equipment needed for wireless internet service including, but not limited to, mounting enclosure, wireless equipment and necessary cabling and grounding.
- Site "A" is a water tower located south of Orchard Elementary (See Exhibit A). Site "B" is the Santaquin Pole Canyon Urban Fishing Park (See Exhibit B).
- Easement on properties for access to site at any time as needed.

In the location(s) ("Site") shown on Exhibit A and Exhibit B together with a non-exclusive easement for reasonable access thereto. The Site will be used by Lessee for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service system facility, including, without limitation, radio equipment, cable wiring, back-up power sources, related fixtures and, if applicable to the Site, and wireless facility structure. Lessee will use the Site in a manner which will not unreasonably disturb the occupancy of Lessor or Lessor's other tenants. Lessee will have unrestricted access to the Site 24 hours per day, 7 days per week, unless such access interferes with City operation and maintenance of facilities.

- **Term.** The term of this Agreement (the "Initial Term") is five (5) years, commencing on date both Lessee and Lessor have executed this Agreement. This Agreement will not automatically renew. Lessee will provide notice of intent to renew six (6) months prior to expirations of this agreement. Lack of notification is assumed to be intent of the Lessee not to pursue renewal.
- **Trade of Services.** In exchange for the lease described in this Agreement, Lessee shall provide internet services to the City, at no cost to the City, as described in this paragraph, ("Trade of Services"). Trade of Services will commence upon the Construction start date and/or installation of Lessee's Antenna Facilities, but in no event more than sixty days after the effective date of this Agreement (the "Trade Commencement Date"). Thereafter, Lessee will provide internet access on Lessee's service facilities to Lessor at sites located at: (1) The Santaquin City Public Safety Building, 275 West Main Street, Santaquin UT, (2) at the Santaquin City Water Reclamation Facility (WRF) 1215 North Center Street, Santaquin, UT and (3) at the Santaquin City Public Works building which is currently under construction adjacent to the WRF. Furthermore, Lessor shall be entitled to two additional commercial connections in the future, to begin within thirty days of the City's written request to the Lessee. The connection speeds for site (1) shall be at a minimum speed of 50 Mbps down and 20 Mbps up. The connection speed for sites (2) – (5) shall be at a minimum 20 Mbps down and 20 Mbps up. Internet services to Santaquin City will remain free of charge for the length of the contract. All standard commercial installation, setup, and equipment costs involved in providing internet services to the Lessor shall be paid by the Lessee. Any costs in excess of standard commercial installation rates will be negotiated between the Lessor and Lessee.

- **Title and Quiet Possession.** Lessor represents and agrees (a) that it is the owner of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that Lessee is entitled to reasonable access to the Site at all times and to the non-exclusive possession of the Site throughout the Initial Term and any Renewal Term so long as Lessee is not in default beyond the expiration of any thirty (30) day cure period; (e) that Lessor shall not unreasonably interfere with Lessee's use of the leased sites or with Lessee's equipment; and (f) that Lessor will upon sale or transfer of the underlying property, provide an assignment letter to Lessee that instructs Lessee to give Trade of Services to the transferee. Lessor further agrees to defend, indemnify and assume all liability for failure to provide Lessee with proper transfer information or required documentation pertaining to subsequent Lessor.
- **Notices** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or sent by recognized overnight carrier to the addresses specified below. Notices, requests, demands and other communications may also be given by facsimile transmission, provided that notice is concurrently given by one of the above methods. Communication by electronic or computerized mail shall not be accepted as effective notice under this Agreement. Notices to Lessee must be sent to the address shown underneath Lessee's signature. Notices to Lessor must be sent to the address shown underneath Lessor's signature.
- **Improvements.** Lessee may, at its expense, make such improvements on the Site, as it deems necessary from time to time, for the operation of the facility. Upon termination or expiration of this Agreement, Lessee shall remove its equipment and improvements and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear.
- **Compliance with Laws.** To the best of Lessor's knowledge, Lessor's property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Lessor makes no representation or warranty whatsoever concerning the suitability of its facilities for Lessee's intended use. Lessee shall be solely responsible for such determination. Lessee will substantially comply with all applicable laws relating to its possession and use of the Site.
- **Interference.** Lessee will resolve technical interference problems with other equipment located at the site on the commencement date or any equipment that becomes attached to the site at any future date when Lessee desires to add additional equipment to the site. Subsequent users: Lessor will not permit or suffer the installation of any future equipment, which (a) results in technical interference problems with Lessee's then existing or proposed equipment, (b) encroaches onto the site, or (c) permits the interference by any subsequent users following the installation of Lessee's facilities in a way which materially interferes with the rights of Lessee hereunder. Any proposed co-location of a subsequent lessee shall include a planned frequency map for the purpose of interference mitigation. Interference disputes between the Lessee and any subsequent co-locators will be subject to an independent third party analysis from a mutually agreed upon third party consultant at the expense of the proposing party. In the event that the third party finds that the subsequent co-locator's frequency plan has the potential to interfere with the then current lessee, the subsequent co-locator will modify their proposed frequency plan

until the third party deems that the subsequent co-locator's plan will not interfere with the equipment or operations of the original lessee. Lessor shall require any subsequent co-locators to adhere to the frequency plan approved by the third party consultant. Lessee shall indemnify the Lessor for any findings or decisions of the third party.

- **Termination.** Lessee may terminate this Agreement at any time by 90 day notice to Lessor without further liability if Lessor does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi governmental authority or any easements required from any third party to operate the installed equipment, or if any such approval is canceled, expires or is withdrawn or terminated. Lessor may terminate this Agreement upon any material default by Lessee that is not cured within sixty (60) days written notice by Lessor.
- **Indemnity.** Lessor and Lessee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the Lessorship, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Paragraph will survive termination of this Agreement.
- **Hazardous Substances.** Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.
- **Taxes.** Lessee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. Lessee will pay to Lessor any increase in real property taxes attributable solely to any improvements to the Site made by Lessee within 60 days after receipt of satisfactory documentation indicating calculation of Lessee's share of such real estate taxes and payment of the real estate taxes by Lessor.
- **Maintenance.** Lessee will be responsible for repairing and maintaining the tower site and facility and any other improvements installed by Lessee at the Site in a proper operating and reasonably safe condition; provided, however if any such repair or maintenance is required due to the acts of Lessor, its agents or employees, Lessor shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. Lessor will maintain and repair all other portions of the property of which the Site is a part in a proper operating and reasonably safe condition.
- **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement, including any successor by merger or sale of assets; (b) this Agreement is governed by the laws of the State of Utah; (c) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (d) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be

affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (e) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

- **Non-Binding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.
- **Authority.** Each party hereby represents and warrants to the other that the undersigned person is duly authorized to execute this Lease Agreement by and on behalf of such party.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A (Site Description for site "A") and Exhibit B (Site Description for site "B")

EXHIBIT A: Site Map and Description

Site situated in the City of Santaquin, County of Utah, State of Utah

Note: Either Lessor or Lessee may replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

Such Agreement provides in part that Lessor leases to Lessee a certain site ("Site A") located at geocoordinates 39.9582944, -111.7762361, within the property of Lessor which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto for a term of five years commencing on ___/___/20__

EXHIBIT B: Site Map and Description

Site situated in the City of Santaquin, County of Utah, State of Utah

Note: Either Lessor or Lessee may replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

Such Agreement provides in part that Lessor leases to Lessee a certain site ("Site B"), within the property of Lessor which is described in

Exhibit B attached hereto, with grant of easement for unrestricted rights of access thereto for a term of five years commencing on ___/___/20__

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

LESSOR:

City of Santaquin

275 West Main Street
Santaquin, UT 84655

LESSEE:

Intellipop, LLC
358 South 700 East
Suite B-202
Salt Lake City, UT 84102

LESSOR:

Kirk F. Hunsaker
Santaquin City Mayor

LESSEE:

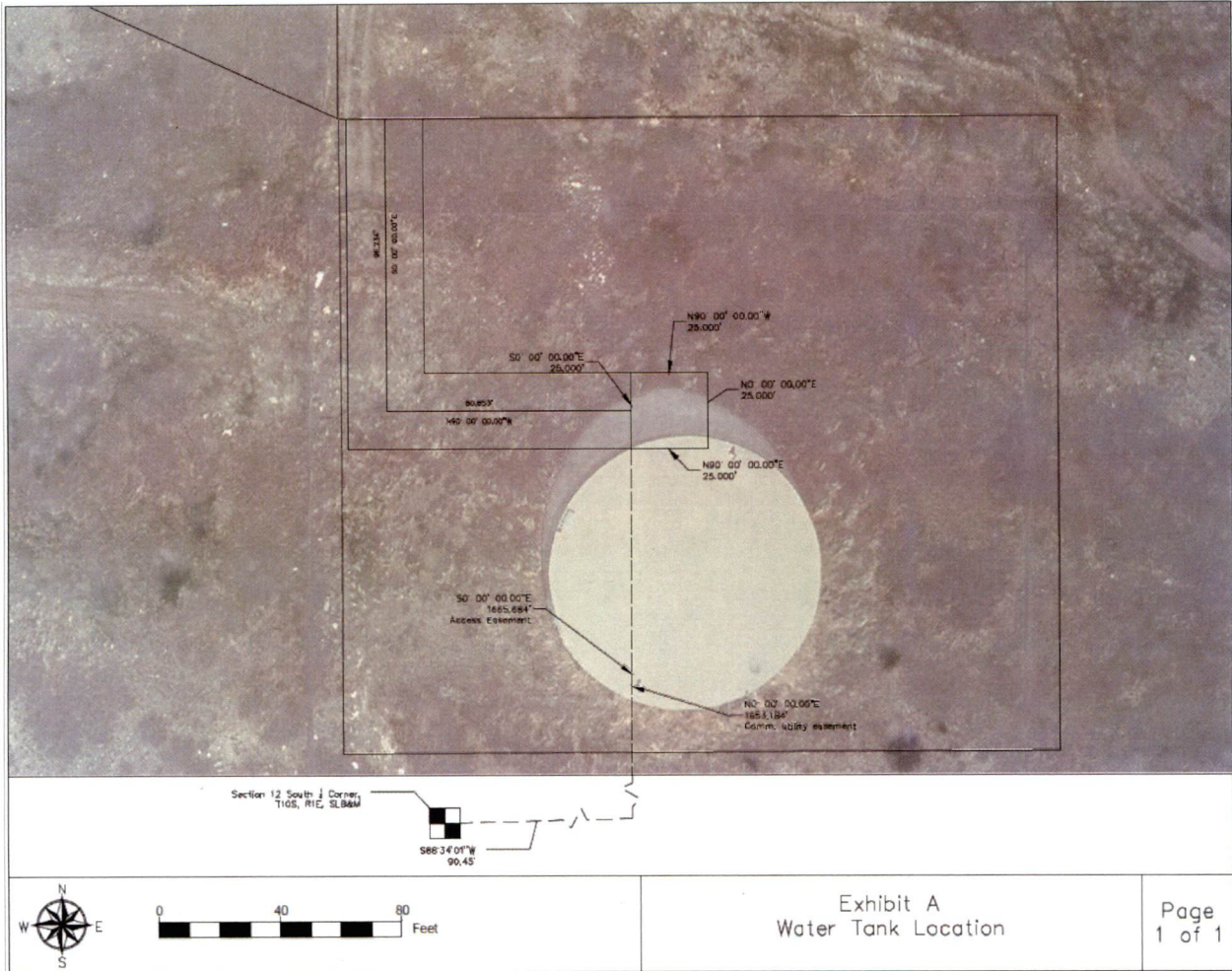
Aaron Hildreth
Intellipop Managing Member

Attest:

Susan B. Farnsworth
Santaquin City Recorder

Mathew Perkins
Intellipop Managing Member

Exhibit "A" Site Sketch



Site A located at: 39.9582944, -111.7762361

General Description of Site A: A 25 ft. wide access on the Santaquin property to a sled mounted array of antennae on top of the city's water tank. Access and utilization of this site includes only surface access and improvements. No penetrations, mechanical mountings, adhesions, etc. are allowed into or on the concrete water tank. The sled area on top of the water tank will be a 25'x25' area consisting of antennae, metal frame sled and antennae support structure with minimal ballasts for maintaining the sled position, solar panels, a Rigid Storage Chest (48" x 24"), batteries and incidental equipment for operation of any antennae. All storage will be self-contained and will not leak. Solar panels would be attached to a non-penetrating ballast behind the radio equipment.

Legal Description of Site A access easement and equipment pad area:

Access Easement. A 25-foot wide access easement (12.5 feet either side of centerline) following the center line, which is described as the following and traveling through Utah County Parcel number 32:018:0117.

Beginning at a point located South 88°34'01" West 90.45 feet and due North 1665.68 feet from the south 1/4 corner of section 12, Township 10 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah; thence due West 80.85 feet; thence due north 96.23 feet to the northern boundary of said parcel.

Equipment Pad Area. A 25 foot by 25 foot communication utility equipment easement located on top of an existing Santaquin City water tank, which is described below:

Beginning at a point located South 88°34'01" West and due North 1653.18 feet from the south ¼ corner of section 12, Township 10 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah; thence due East 25 feet; thence due North 25 feet; thence due West 25 feet, thence due South 25 feet to the point of beginning.

Exhibit "B" Site Sketch



Site B Located at Pole Canyon Irrigation Reservoir

General Description of Site B: A 25 ft. wide access from 100 West and around the city's irrigation pond on the Santaquin property to a 25'x25' area consisting of an antenna, antennae support structure and associated power source and connective equipment for operation of any antennae. Any storage at the site will be self-contained and will not leak. This site will be subject to future design approval based on city adopted telecommunications regulations.

Legal Description of Site B access easement and equipment pad area:

Access Easement. A 25 foot wide access easement (12.5 feet either side of centerline) following the center line, which follows the existing gravel access road more or less, which is described as the following and traveling through Utah County Parcel number 32:017:0153.

Beginning at a point located along the west edge of 100 west, said point being North 00°04'51" West 847.54 feet and South 89°55'09" West 18.77 feet from Section 11, Township 10 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah; thence South 63°10'09" West 401.78 feet; thence with a curve turning to the left with an arc length of 138.18 feet, with a radius of 72.77 feet, with a chord bearing North 64°47'15" West, with a chord length of 118.34 feet; thence South 56°12'24" West 153.85 feet; thence South 39°56'38" West 166.4 feet; thence South 56°08'01" West; thence with a curve turning to the left with an arc length of 180.75 feet, with a radius of 150.75 feet, with a chord bearing of South 22°28'58" West, with a chord length of 170.42 feet; thence North 89°43'28" West 87.6 feet

Equipment Pad Area. A 25 foot by 25 foot Communication utility equipment area

Beginning at a point located South 88°42'16" West 928.90 feet and due North 323.67 feet from Section 11, Township 10 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah; thence due North 25 feet; thence due West 25 feet; thence due South 25 feet; thence due East 25 feet to the point of beginning.

EXHIBIT 2: AMENDMENT #1 – (RESOLUTION 03-07-2017)

Santaquin City Resolution 03-07-2017

A RESOLUTION APPROVING AN AMENDMENT TO WIRELESS FACILITY AGREEMENT WITH INTELLIPOP, LLC.

WHEREAS, the City of Santaquin, a fourth class city in the State of Utah, has an interest in insuring that the citizens of Santaquin have access to Internet Services; and

WHEREAS, Intellipop, LLC has approached the City of Santaquin in 2015 with a desire to lease two sites for the installation of Wireless Internet Services that will serve the community in exchange for providing wireless internet connections to Santaquin City facilities without charge pursuant to the terms of the attached agreement, and

WHEREAS, The City of Santaquin, through Resolution 11-01-2015, entered into a Wireless Facility Agreement with Intellipop, LLC; and

WHEREAS, Intellipop, LLC installed its equipment in the first of the two sites identified in the 2015 agreement and fulfilled its contractual obligations by providing internet services Santaquin City facilities; and

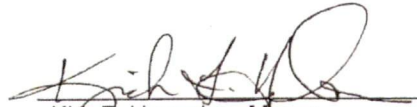
WHEREAS, Intellipop, LLC now desires to install its equipment on a second site within Santaquin City Limits; and

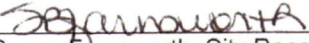
WHEREAS, Intellipop, LLC has determined that it would provide better coverage to the City of Santaquin if the location of the second site were changed from the City's Irrigation Pond Property to the City's East Bench Water Tank; and

WHEREAS, the Santaquin City Staff has evaluated the change of location and has determined that there is no negative impact to approving the change of their second location;

NOW, THEREFORE, BE IT RESOLVED, the Santaquin City Council approves an amendment to the aforementioned agreement to replace the location of the second Intellipop site, with its corresponding easement and exhibit, with the new location on the East Bench Water Tank, with the attached easement and exhibit.

Approved and adopted by the Santaquin City Council this **28th** day of **March, 2017**.


Kirk F. Hunsaker, Mayor

Attest: 
Susan Farnsworth, City Recorder

Addendum 1: Proposed 12/13/2016. Intellipop releases access to former site B "Pole Canyon Irrigation Reservoir" and proposes a new site "B" with information added

Exhibit "B" Site Sketch



Site B located at: 39.9748556, -111.7583083

General Description of Site B: A 25 ft wide access on the Santaquin property to a non penetrating array of antennae on top of the city's water tank. Access and utilization of this site includes only surface access and improvements. No penetrations, mechanical mountings, adhesions, etc. are allowed into or on the concrete water tank. The array area on top of the water tank will be a 25'x25' area consisting of antennae, metal frame array and antennae support structure with minimal ballasts for maintaining the array position, solar panels, a Storage Chest, batteries and incidental equipment for operation of any antennae. All storage will be self-contained and will not leak. Solar panels would be attached to a non-penetrating ballast behind the radio equipment.

Legal Description of Site B access easement and equipment pad area:

Access Easement. A 24 foot wide access easement (12 feet either side of centerline) following the center line, which is described as the following and traveling through Utah County Parcel numbers 32:040:0066 and 32:040:0060.

Beginning at a point located due East 1447.93 feet and due South 839.35 feet from the west 1/4 corner of section 6, Township 10 South, Range 2 East, Salt Lake Base and Meridian, Utah County, Utah; thence South 76°50'09" East 220.42 feet; thence along a curve to the left 84.05 feet with a radius of 54.87 feet (Chord North 71°51'48" East 76.07 feet); Thence North 9°48'18" East 67.78 feet; Thence along a curve to the right 89.53 feet with a radius of 75.34

feet (Chord North 20°08'46" East 77.61 Feet); Thence North 52°26'45" East 69.73 Feet; Thence along a curve to the left 102.29 feet with a radius of 57.02 feet (chord North 5°52'08" West 89.12 feet); Thence North 69°48'45" West 41.54 Feet; Thence along a curve to the right 107.86 feet with a radius of 76.79 feet (Chord North 28°55'51" West 99.21 feet); Thence North 2°44'47" West 177.50 Feet; Thence along a curve to the right 135.19 feet with a radius of 80.13 feet (chord North 45°47'16" East 119.71 feet); Thence due East 341.18 feet; Thence North 87°49'06" East; 271.75 feet; Thence South 73°01'17" East 89.1 feet.

Equipment Pad Area. A 25 foot by 25 foot communication utility equipment easement located on top of an existing Santaquin City water tank, which is described below:

Beginning at a point located due East 2516.18 feet and due south 239.75 feet from the west ¼ corner of section 6, Township 10 South, Range 2 East, Salt Lake Base and Meridian, Utah County, Utah; thence South 46°25'47" East 25 feet; thence South 43°34'13" West 25 feet; thence North 43°25'47" West 25 feet, thence North 43°34'13" East 25 feet to the point of beginning.