

29 WHEN RECORDED PLEASE RETURN TO:

W-PL

State of Utah School & Institutional
Trust Lands Administration
ATTN: Alexa Wilson
675 E 500 S, Suite 500
Salt Lake City, UT 84102

EASEMENT AGREEMENT

**Fund: School
Easement No. 1075-A**

This EASEMENT AGREEMENT NO. 1075-A (the "Agreement") is entered into effective the 31st day of January, 2007 (the "Effective Date") by and between the State of Utah, School and Institutional Trust Lands Administration, an independent agency of the State of Utah, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102, GRANTOR, and Washington City, a municipal corporation of the State of Utah, 111 North 100 East, Washington, Utah 84780, GRANTEE, for the purpose hereinafter described.

Recitals

A. The GRANTOR is the beneficial owner of certain real property located in the Sienna Hills area of the City of Washington, Utah. The GRANTOR intends to develop the property for residential and commercial purposes within the next five to ten years. Such development will include the construction of roadways and the installation of infrastructure to service the area.

B. The GRANTEE desires an easement to operate and maintain an overhead power transmission line having a voltage of 138/69 kV including a 12.5 kV distribution circuit (the "Power Line") upon a portion of said property (the "Easement Property") and the GRANTOR desires to issue such easement under the terms and conditions hereof; provided, however, the GRANTEE acknowledges the GRANTOR has an ongoing interest in the design and placement of the overhead power transmission lines and the associated poles.

C. Pursuant to that certain Power Line Improvements Agreement of April 21, 2006 (the "Improvements Agreement"), GRANTOR granted a non-exclusive temporary construction easement (the "Temporary Easement") to GRANTEE, which authorized the GRANTEE to construct the Power Line on the Easement Property. The Temporary Easement will automatically expire on the earlier of January 31, 2007 or at such time as the construction related to the Temporary Easement is complete

D. The purpose of this Agreement is to grant to GRANTEE a non-exclusive easement for a perpetual term (the "Perpetual Easement"). Pursuant to the Improvements Agreement, GRANTEE'S construction of the Power Line is a condition precedent to the execution of this Agreement. GRANTORS and GRANTEE agree construction on the Power Line is complete as required by the Improvements Agreement such that execution of this Easement Agreement is necessary and proper.

NOW THEREFORE, GRANTOR, in consideration of the mutual covenants and promises set forth herein, grants to GRANTEE, the non-exclusive Perpetual Easement subject to the condition subsequent of compliance with the terms of this Agreement on



DOC # 20070031417
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Easements
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BY UTAH STATE SCHOOL & TRUST LANDS

state trust lands as defined and set forth herein. Said grants shall be subject to the following terms and conditions and any valid and existing rights or until GRANTEE, its successors and assigns shall breach any conditions hereof. The Perpetual Easement is granted only for the purpose described above as far as it is consistent with the principles and obligations in the Enabling Act of Utah (Act of July 16, 1894, Ch. 138, 28 Stat. 107) and the Constitution of the State of Utah.

1. GRANTOR hereby grants subject to the conditions subsequent contained herein to GRANTEE the Perpetual Easement as described with particularity in **Exhibit "A"** and depicted in **Exhibit "B"**, attached hereto and incorporated by reference. The Perpetual Easement shall be used for the purpose of maintaining, repairing, upgrading and operating the Power Line.

2. Pursuant to the Improvements Agreement, GRANTEE agreed to locate the Power Line poles upon the Easement Property within five (5) feet of the centerline described on Exhibit "A." GRANTEE further agreed to coordinate the vertical placement of the Power Line poles with GRANTOR'S roadway right-of-way plans and to construct the Power Line with wood and weathered steel poles. GRANTOR had final approval over the placement and vertical alignment of the Power Line poles, which approval was given in writing. GRANTEE shall cause the construction of the Power Line no later than January 31, 2007 within the Easement Property.

3. GRANTEE shall pay for all cost and expense in connection with the design, engineering, construction, operation, repair, replacement, and maintenance of said Power Line across the Easement Property and hold GRANTOR harmless from any and all liability (including expenses for attorneys' fees) which may arise from the construction, operation, and maintenance of said Power Line and the exercise of GRANTEE'S rights under this Agreement.

4. GRANTOR reserves to itself, and any and all successors or assigns, the right to install, maintain and operate fiber optics within the Easement Property, subject to Washington City's review and approval, which approval shall not be unreasonably withheld. Nothing herein shall act as a waiver of appropriate and applicable franchise fees for communication facilities otherwise imposed by city ordinance. Nothing herein is intended or shall be construed to create any exclusive right to provide communication services within any developed land serviced by such potential fiber optics reservation.

5. GRANTEE agrees that, for good cause shown, at any time during the life of the Perpetual Easement, GRANTOR may require that the amount of an existing bond be increased or if a bond has not been previously required, GRANTOR may require GRANTEE to post with GRANTOR a bond with an approved corporate surety company authorized to transact business in the State of Utah, or such other surety as may be acceptable to GRANTOR, in a sum to be determined by GRANTOR, said bond to be conditioned upon full compliance with all terms and conditions of this Agreement and the

rules relating hereto. The amount of this bond shall not be deemed to limit any liability of GRANTEE.

6. GRANTEE shall indemnify, release, defend (with counsel reasonably approved by GRANTOR), and save harmless the GRANTOR and GRANTOR'S successors and assigns, for, from, and against any and all claims, demands, suits, actions, proceedings, losses, costs, damages, fines, and penalties of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought, made against, or incurred by GRANTOR on account of any damage to any property and for any injury to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reason of any alleged act, omission, fault, mistake, or negligence of GRANTEE or its representatives or its contractors, in any way connected with or incident to the Perpetual Easement or the Temporary Easement, or by reason of any use, non-use, or condition of the Perpetual Easement created by, attributable to, or contributed to by GRANTEE'S use or manner of use of the Perpetual Easement or Temporary Easement; provided, however, this indemnification shall not extend to events caused by the negligence or willful misconduct of the GRANTORS.

7. The operative and contractual provisions of this Agreement shall be governed by the laws of Utah and any actions brought hereunder shall be brought in the Fifth District Court, State of Utah. Any provisions hereof not enforceable under the laws of the State of Utah shall not affect the validity of other provisions hereof.

8. The acquisition or assumption by another party under an agreement with GRANTEE of any right or obligation of GRANTEE under this Agreement shall be ineffective as to GRANTOR unless and until GRANTOR shall have been notified of such agreement and shall have recognized and approved the same in writing, which approval shall not be unreasonably withheld, and in no case shall such recognition or approval: (i) operate to relieve GRANTEE of the responsibilities or liabilities assumed by GRANTEE hereunder; or (ii) be given unless such other party is acceptable to GRANTOR as a grantee, and assumes in writing all of the obligations of GRANTEE under the terms of this Agreement as to the balance of the term thereof, or acquires the rights in trust as security and subject to such conditions as GRANTOR deem necessary.

9. GRANTEE, in exercising the privileges granted by this Agreement, shall comply with the provisions of all valid Federal, State, County, and Municipal laws, ordinances, and regulations which are applicable to the Easement Property and operations covered by this Agreement, including, without limitation, all environmental laws applicable to the desert tortoise habitat. GRANTEE shall neither commit nor permit any waste on the Easement Property. GRANTEE shall take reasonable precautions to prevent pollution or deterioration of lands or waters which may result from the exercise of the privileges granted pursuant to this Agreement.

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10. GRANTOR herein reserves the right to utilize said Easement Property for access to and from the lands owned by GRANTOR on both sides of said Easement Property.

11. It is expressly understood and agreed that the right herein granted is non-exclusive and GRANTOR hereby reserves the right to issue other non-exclusive easements, leases, or permits on or across the Easement Property where such uses are appropriate and compatible or to dispose of the Easement Property by sale or exchange, excepting that it shall not cause permanent buildings or other structures to be installed upon the Easement Property.

12. GRANTOR expressly reserves the right to lease the Easement Property for the exploration, development and production of oil, gas and all other minerals, together with the right of ingress and egress across said Easement Property; provided that no drilling of oil and/or gas wells shall be conducted, nor will mining shafts be located within the boundaries of said Easement Property without compensation to GRANTEE by any such mineral lessee for any resulting damage to GRANTEE's improvements authorized pursuant to this Agreement and further provided that such use does not unreasonably interfere with GRANTEE's primary operations on the Easement Property.

13. GRANTEE agrees that the removal of ordinary sand and gravel or similar materials from the Easement Property is not permitted except when GRANTEE has applied for and received a materials permit from GRANTOR, excepting that GRANTEE may undertake grading, excavation, contouring, and the like, on the Easement Property which is reasonably necessary to construct, operate and maintain the Power Line.

14. GRANTEE agrees that no trees may be cut or removed from the Easement Property except when GRANTEE has applied for and received a small forest products permit or timber contract from GRANTOR, excepting that GRANTEE may undertake tree, shrub, plant and debris removal and trimming, and the like, on the Easement Property which is reasonably necessary to construct, operate and maintain the Power Line.

15. It is hereby understood and agreed that all treasure-trove, all articles of antiquity and critical paleontological resources in or upon the Easement Property are and shall remain the property of GRANTOR. GRANTEE agrees that all costs associated with archeological and paleontological investigations on the Easement Property that may be required by GRANTOR will be borne by GRANTEE. GRANTEE further agrees to cease all activity on the Easement Property and immediately notify GRANTORS if any discovery of human remains or a "site" or "specimen," as defined in Section 9-8-302 or 63-73-1 Utah Code Annotated (1953), as amended, is made on the Easement Property, and continue to cease all construction or maintenance therein until such time as the human remains, "site" or "specimen" in question has been treated to the satisfaction of GRANTOR.

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16. GRANTOR claims title in fee simple, but does not warrant to GRANTEE the validity of title to these premises. GRANTEE shall have no claim for damages or refund against GRANTOR for any claimed failure or deficiency of GRANTOR'S title to Easement Property or for interference by any third party.

17. GRANTOR reserves the right to inspect the Easement Property at any time and recall GRANTEE for correction of any violations of stipulations contained herein. If GRANTEE fails to correct such violations within a reasonable time GRANTOR may, after thirty (30) days' written notice, re-enter and terminate this Easement Agreement.

18. The Perpetual Easement granted herein is subject to the provisions of all applicable laws and subject to the rules of the departments and agencies of the State of Utah presently in effect and to such laws and rules as may be hereafter promulgated by the State.

19. Any notice contemplated herein to be served upon GRANTEE or GRANTOR shall be in writing and shall be deemed sufficient if deposited in the United States mail, postage prepaid and certified or registered, and addressed as follows:

To GRANTEE

City of Washington
111 North 100 East
Washington, Utah 84780

To GRANTOR

State of Utah School and Institutional
Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, Utah 84102
Attn: Development Department

or at any such other address as GRANTEE or GRANTOR may from time to time designate by written notice to either party.

20. This Agreement shall be interpreted and governed by the laws of the State of Utah and the Rules governing the management and use of the School and Institutional Trust Lands Administration and the provisions hereof shall inure to and be binding upon the successors and assigns of GRANTEE and GRANTOR.

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21. No waiver of conditions by GRANTOR of any default of GRANTEE or failure of GRANTOR to timely enforce any provisions of this Agreement shall constitute a waiver of or constitute a bar to subsequent enforcement of the same or other provisions of this Agreement. No provision in this Agreement shall be construed to prevent GRANTOR or GRANTEE from exercising any legal or equitable remedy they may otherwise have.

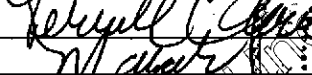
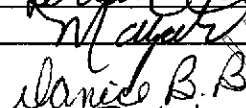
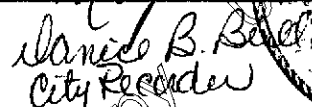
IN WITNESS WHEREOF, the State of Utah, by and through the School and Institutional Trust Lands Administration, has caused these presents to be executed this 13th day of June, 2007 by the Director.

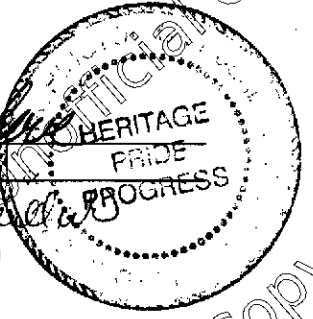
GRANTOR:
STATE OF UTAH
School and Institutional
Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, Utah 84102-2818

GRANTEE:
City of Washington
111 North 100 East,
Washington, Utah 84780



Kevin S. Carter, Director

By: 
Its: 
Attest: 
City Recorder



Director's Initial Review: _____

APPROVED AS TO FORM
MARK L. SHURTLEFF
ATTORNEY GENERAL

By: 

Special Assistant Attorney General

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Exhibit A
To
Washington City Easement Agreement

A Strip of land 60.00 feet in width, being 30 feet left and right of the described centerline, to be used as an overhead power line easement, located within Section 13, Township 42 South, Range 15 West, and Section 18, Township 42 South, Range 14 West, Salt Lake Base & Meridian, Washington County, State of Utah, Centerline being more particularly described as follows:

Beginning N 00°54'06" E 2034.65 feet along the Quarter Section Line from the South Quarter Corner of Section 13, Township 42 South, Range 15 West, Salt Lake Base and Meridian; running thence N 85°22'06" E 420.63 feet; thence N 85°44'03" E 716.98 feet; thence N 45°21'42" E 764.59 feet to the Quarter Section Line; thence N 45°21'42" E 1403.66 feet to the Range Line; thence N 45°21'42" E 28.00 feet; thence N 63°52'35" E 1534.82 feet to a point on the Boundary Line between the Sienna Hills Development and the Coral Canyon Community, said point being the point of terminus.

The total length of the Overhead Power Line Easement for the SIENNA HILLS DEVELOPMENT, as described above is 4,868.68 feet or 0.92 miles, more or less, in length.

