

RESOLUTION No. 02-01-2017

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MOBILITIE, LLC. FOR DEPLOYMENT OF TELECOMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the governing body of the City of Santaquin, Utah, desires to improve the communications and information systems available to its current and future citizens, businesses and visitors;

**WHEREAS**, the City recognizes, through its general plan goals and policies, the need to work with utility and communications companies to plan for buildout conditions and extension of services necessary to increase the economic viability of the Santaquin area; and

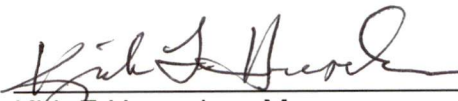
**WHEREAS**, Mobilitie, LLC is proposing to install facilities which will enhance voice, data or video transmission services within the community and to surrounding areas;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of Santaquin, Utah, that pursuant to the provisions of the Utah Protection of Highways Act and Utah Municipal Code, the Mayor and City Recorder are authorized to execute an agreement between Santaquin City and Mobilitie, LLC., which agreement shall be in substantially the form that is attached hereto as Exhibit A.

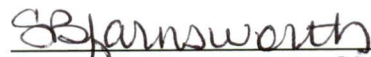
ADOPTED AND PASSED by the City Council of Santaquin City, Utah, this 15<sup>th</sup> day of February, 2017.

SANTAQUIN CITY



  
Kirk F Hunsaker, Mayor

Attest

  
Susan B. Farnsworth, City Recorder

## RIGHT-OF-WAY AND POLE ATTACHMENT AGREEMENT

This Rights-of-Way and Pole Attachment Agreement ("Agreement") is entered into between the City of Santaquin, Utah ("City") and Mobilitie, LLC ("Mobilitie") and its successors and assigns.

WHEREAS, Mobilitie wishes to access certain portions of the public rights-of-way within the City's territorial boundaries ("Rights-of-Way") to provide communications services; and

WHEREAS, the City wishes to enable Mobilitie to provide those services to benefit its residents;

NOW, THEREFORE, the parties agree as follows:

1. Mobilitie may use the Rights-of-Way to install, maintain, operate, repair, modify, replace, and/or remove from time to time certain communications facilities ("Facilities") to be located at specific sites indicated in Exhibit A, to this Agreement ("Site(s)"). Additional Sites may be administratively added to the approved Site list so long as they are in accordance with City development review procedures and this Agreement. Facilities may include antennas, radios, wireless microwave and other backhaul equipment, fiber optic cables, conduit, ducts, control boxes, vaults, poles, cables, power sources, and/or other equipment, structures, appurtenances, and improvements used for the purpose of providing communications services, so long as no Facilities, or any portion thereof, shall unreasonably interfere with, or reasonably be expected to interfere with any existing use of the Rights-of-Way.
2. Mobilitie's use of the Rights-of-Way will be consistent with the City's rights-of-way management and telecommunications regulations and all other applicable local, state and federal laws and regulations pertaining to right-of-way use and development standards in the City.
3. Mobilitie shall pay all applicable City fees for site development, including but not limited to plan reviews, building permits, and road excavation permit fees. Mobilitie shall not be obligated to pay any other permit fees not generally applicable within the City.
4. In addition, the parties hereby agree that because the exact costs that the City will incur as a result of Mobilitie's use of the Rights-of-Way cannot be accurately determined, except as provided in **Paragraph 5** hereof, Mobilitie shall pay to the City an annual use fee in the amount of \$1,250.00 for each Site located within the Rights-of-Way upon which Facilities are located ("**Use Fees**"). Mobilitie's obligation to pay Use Fees will commence on the first day of the month following the date Mobilitie obtains all approved permits necessary to install Mobilitie's Facilities. The initial payment thereof will be made payable to the City within thirty (30) days after installation. Each subsequent payment will be made upon each anniversary of the installation date, until such time that the applicable Facilities are removed in accordance with this Agreement or this Agreement is otherwise terminated as further provided herein. The Use Fees shall be payable in the form of a money transfer or check to the City. All Use Fees paid prior to the expiration or earlier termination of this Agreement or removal of the applicable Facilities by Mobilitie shall be retained by the City. Other than as required pursuant to **Paragraph 6** hereof, Mobilitie shall not be obligated to pay any other annual or recurring fees that are not otherwise generally applicable to other Rights-of-Way users.
5. Should Mobilitie seek to attach Facilities to a pole in the Rights-of-Way which is owned by a third party ("**Third-Party Pole**"), Mobilitie shall obtain all authorizations and approvals from such third party prior to the installation or operation of those Facilities. Mobilitie shall pay the City reduced Use Fees in the amount of \$600.00 per Third-Party Pole commencing on the first day of the month following the date Mobilitie obtains all approved permits necessary to install Mobilitie's Facilities on each Third-Party Pole.



6. Mobilitie will obtain any other permits, pay any other fees applicable to Mobilitie's use of the Rights-of-Way, and provide such guarantees only as required under the City's rights-of-way management regulations and/or any other applicable local, state or federal regulation, including, without limitation, those designed to protect structures in the Rights-of-Way, to ensure the proper restoration of the Rights-of-Way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the Rights-of-Way.
7. In accordance with the City's regulations, Mobilitie will submit to the City design drawings and specifications of the Facilities and their proposed locations within the Rights-of-Way (whether installed subsurface and/or attached to poles or other structures owned by the City, Mobilitie, or a third party).
8. Mobilitie may remove or modify one or more Facilities from time to time during the term, in which event Mobilitie shall notify the City at least 15 days before removal or modification, unless a modification or removal is required immediately, in which case Mobilitie shall provide notice to City not more than 15 days after the modification or removal is complete.
9. If Mobilitie ceases use of a City pole, it shall remove its Facilities and any related hardware at its own expense. Mobilitie shall be solely responsible for the repair of any penetrations, alterations or impacts to the Site associated with Mobilitie's Facilities on the pole, up to and including replacing such pole if reasonably deemed necessary by the City. Mobilitie shall be responsible for all use fees until it completely removes Facilities from the Site and repairs and/or replaces all City property damaged as a result of the installation, operation, maintenance, repair or replacement of the Facilities.
10. Facilities shall not physically interfere with or cause harmful radio frequency interference in violation of applicable federal regulations to any existing communication facilities located on City poles. The City shall not physically interfere with or cause harmful radio frequency interference in violation of applicable federal regulations to Facilities installed by Mobilitie. Mobilitie shall coordinate with the City on any maintenance of its Facilities located on City poles so as not to obstruct or impede the City's performance of maintaining its own poles. The City may contact the Mobilitie Network Operations Center at (877)244-7889, at any time during the term of this Agreement, to request Mobilitie's coordination pursuant to this paragraph.
11. The term of this Agreement shall be for ten (10) years commencing on the date hereof, and shall automatically renew for four (4) additional five (5) year periods thereafter, unless at least ninety (90) days prior to the end of the then current term one of the parties notifies the other party in writing of its intent not to renew this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement in the event a party materially breaches a provision herein, and the breach is not cured within sixty (60) days after receipt of written notice thereof from the non-breaching party. If the nature of the breach reasonably requires more than sixty (60) days to cure, the breaching party will not be in default hereunder if such party promptly commences such cure and is diligently pursuing the same.
12. Mobilitie shall indemnify, defend, and hold harmless, the City and its elected officials, employees, officers, and directors ("Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage, made upon or incurred by the City and arising out of a third-party claim to the extent that such third-party claim is caused by any act(s) or omission(s) of Mobilitie while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting or arising from the negligence of the City or an Indemnitee. The City shall give prompt written notice to Mobilitie of any claim for which



the City seeks indemnification. Mobilitie shall have the right to investigate, defend, and compromise these claims with prompt notice to the City's attorney.

13. Neither party shall be liable for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption or loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.
14. Mobilitie shall obtain and maintain in full force and effect for the duration of this Agreement, Commercial General Liability insurance and Commercial Automobile Liability insurance covering Mobilitie against any and all claims, injury or damage to persons or property, both real and personal, caused by the design, construction, erection, operation, repair, replacement, or maintenance of the Facilities, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability; statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) or the greater of the amount specified within the State of Utah Government Immunity Act limits for the above liabilities. The insurance policies shall name the City, its officers, officials, employees, agents and elected representatives as additional insureds, with the exception of the workers' compensation policy. Mobilitie shall furnish copies of the required certificate of insurance to the City. Mobilitie will provide the City with thirty (30) days' prior written notice of cancellation.
15. If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the effective date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such Laws.
16. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

If to City:

City of Santaquin  
275 West Main Street  
Santaquin, UT 84655  
Attn: Susan Farnsworth

With a copy to:

City of Santaquin  
275 West Main Street  
Santaquin, UT 84655  
Attn: City Attorney

If to Mobilitie:

Mobilitie, LLC  
2220 University Drive  
Newport Beach, CA 92660  
Attn: Asset Management

With a copy to:

Mobilitie, LLC  
2220 University Drive  
Newport Beach, CA 92660  
Attn: Legal Department

17. The provisions of this Agreement shall be construed under, and in accordance with, the laws of the State of Utah, without regard to its conflict-of-laws principles, and all obligations of the parties created hereunder shall be performed in the County in which the City is located. Therefore, in the

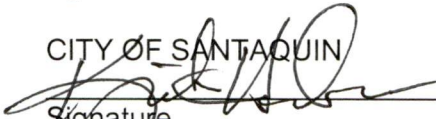
event any court action is brought directly or indirectly by reason of this letter, the courts of such County shall have jurisdiction over the dispute and venue shall be in such County.

18. If any law, ordinance, regulation, or court decision renders any provision of this Agreement invalid, the remaining provisions shall remain in full force and effect. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. This Agreement is the complete and exclusive statement of the parties' agreement with respect to the subject matter and supersedes all other oral and written agreements or communications between the parties prior to the execution of this Agreement relating to this subject matter. This Agreement will not be deemed to provide third parties with any remedy, claim, right of action or other right. This Agreement may be executed and delivered in multiple counterparts, each of which is an original.


19. This Agreement shall take effect on the date that is the later of the dates on which each of the parties have executed this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement as of the dates below.


CITY OF SANTAQUIN

  
\_\_\_\_\_  
Signature  
Kirk Hunsaker  
\_\_\_\_\_  
Name  
Mayor  
\_\_\_\_\_  
Title  
3/8/17  
\_\_\_\_\_  
Date

MOBILITIE, LLC

  
\_\_\_\_\_  
Signature  
CHRISTOPHER GLASS  
\_\_\_\_\_  
Name  
CVP. GENERAL COUNSEL  
\_\_\_\_\_  
Title  
4/3/17  
\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Susan B. Farnsworth, City Recorder

