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DMM/4615/13881
DOUGLAS COUNTY
NO APN
CARSON RIVER

Recording Requested by and Return To:
DIVISION OF STATE LANDS
901 S. STEWART STREET, SUITE 5003
CARSON CITY, NV 89701-5246

Doc Number: **0830599**

09/16/2013 10:13 AM

OFFICIAL RECORDS

Requested By
CALIFORNIA BROADBAND COOP

DOUGLAS COUNTY RECORDERS
Karen Ellison - Recorder

Page: 1 of 14 Fee: \$ 27.00
Bk: 0913 Pg: 2983



Deputy: ar

NON-EXCLUSIVE UTILITY EASEMENT

**CALIFORNIA BROADBAND COOPERATIVE, INC.
CARSON RIVER @ CRADLEBOUGH BRIDE
DIGITAL 395 DIRECTIONAL BORE**

This Non-Exclusive Easement is made and entered into this 10th day of September, 2013 by and between the STATE OF NEVADA, acting through the NEVADA DIVISION OF STATE LANDS, hereinafter referred to as GRANTOR, and CALIFORNIA BROADBAND COOPERATIVE, INC, hereinafter referred to as GRANTEE:

WHEREAS, Attorney General's Opinion #204 dated April 20, 1976, concluded that "The State of Nevada owns the bed and shores of Lake Tahoe and other navigable bodies of water within Nevada to the present ordinary and permanent high water mark." Through formal court proceedings the Carson River and has been determined to be a navigable body of water within Nevada; and

WHEREAS, GRANTOR, issued a Right-of-Entry Authorization on May 1, 2012 and as amended on December 13, 2012, to the GRANTEE to enter upon state land for the purpose of installing THREE (3) fiber optic lines encased in a FIVE-INCH (5") conduit TWENTY-FIVE FEET (25') below the bed of the Carson River and adjacent slough located at the Cradlebough

Bridge a distance of 900 linear feet utilizing directional drilling method to expand broadband capacity and services to underserved areas; and

WHEREAS, GRANTEE has completed construction and has made application to obtain an easement from the GRANTOR for the permanent installation of the aforementioned fiber optic line system; and

WHEREAS, NRS 322.050 and 322.060 gives the Administrator of the Division of State Lands the authority to grant easements over or upon any land owned by the State of Nevada.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, GRANTOR does hereby grant to GRANTEE a Non-Exclusive Easement for the purposes stated above, hereinafter referred to as "the Project," under, across and/or through the following described property, together with the right to enter upon the bed and banks of said land to construct, reconstruct, inspect, maintain, and repair structures and to remove bushes, undergrowth or other obstructions interfering with the location, construction and maintenance, in whole or in part, at will under, across and/or through a portion of the Carson River situate in Section 30, Township 14 North, Range 20 East, as described in the legal description attached hereto as **EXHIBIT A** and as shown on **EXHIBIT B** attached hereto and by reference made a part hereof.

IN FURTHER CONSIDERATION for the granting of this Non-Exclusive Easement, GRANTEE, its successors and assigns and/or its agents(s) and contractor(s), understands and agrees to the following specific conditions:

1. PURPOSE: The property described herein may be used by GRANTEE solely for the Project. The Project shall be executed in accordance with the 10' Underground Fiber Optic

Line System dated July 12, 2013, incorporated herein and by reference made a part hereof and shall not interfere with the navigability of Carson River.

2. JURISDICTION OF STATE: GRANTEE understands and agrees that this Non-Exclusive Easement for the Project extends only to the bed and banks of the Carson River, to the ordinary and permanent high water mark and only to the areas described in **EXHIBITS A and B**, and shall not be construed to authorize access across private lands; access to the river shall be by established public routes and/or authorized access across private lands. If GRANTEE needs to utilize other portions of the property not granted to it through this Non-Exclusive Easement, a permit, license, easement or other authorization to do so is required.

3. CONSIDERATION: For and in valuable consideration of the Project, the State Land Registrar has waived the fee for the issuance of this Non-Exclusive Easement in exchange for the expanded broadband capacity and services provided to the state and public safety entities for emergency management and traffic control and healthcare facilities within their respective jurisdictions.

4. INDEMNIFICATION: GRANTEE, its successors and assigns, and/or agent(s) or contractor(s) as Indemnitors agrees to indemnify, defend and hold harmless the State of Nevada and its agents from and against any and all liability for personal injuries, claims, actions, damages, expenses, or for loss of life or property resulting from, or in any way connected with the conditions or use of the premises covered herein, including any hazard, deficiency, defect, or other matter, known or unknown, or connected with the installation and maintenance of the Project. This indemnification does not exclude the State of Nevada's right to participate in its defense of a matter subject to this indemnification.

5. **LIMITED LIABILITY:** GRANTOR will not waive and intends to assert all available immunities and statutory limitations in all cases, including, without limitation, the provisions of Nevada Revised Statutes Chapter 41.

6. **INSURANCE; CONTRACTORS AND SUB-CONTRACTORS:** This provision is applicable to all Non-Governmental Entities engaged to work on the premises granted by this Non-Exclusive Easement and does not apply to any GRANTEE considered a Public Entity. GRANTEE agrees to carry and to require their contractors and sub-contractors to carry their own General Liability Insurance Policy issued by an insurance company authorized to do business in the State of Nevada and which is currently rated by A. M. Best as A-VII or better. The insurance policy is to be kept in full force and effect during the term of this Non-Exclusive Easement. Such insurance policy shall be at the minimum, in the amount of \$1,000,000 per occurrence for bodily injury and property damage and shall via an endorsement, name the *State of Nevada, its officers, employees and agents as additional insureds* for all liability arising from the use of state land. Each liability insurance policy shall also provide for a waiver of subrogation as to all additional insured's. GRANTEE agrees to provide and to require their contractors and sub-contractors to provide to the State of Nevada the Accord 25 Certificate of Insurance as proof of the insurance and an Additional Insured Endorsement, signed by an authorized insurance company representative, to evidence the endorsement of the State as additional insured. **The Certificate of Insurance and Additional Insured Endorsement shall be provided by each contractor and sub-contractor prior to their entry upon state property and be sent to:**

**Deann McKay, State Land Agent
Nevada Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, Nevada 89701**

7. PLANS AND PHOTOGRAPHS: The Project and related activities must be completed in accordance with the approved application and plans on file in the office of the Division of State Lands. The Division of State Lands must be notified if any alterations to the approved plans which would substantially affect the land are made or proposed prior to commencement of or during any work on the Project and related activities. The Division of State Lands reserves the right to prohibit said alterations. GRANTEE agrees to provide GRANTOR with a set of before and after construction photographs of the Project to be taken from established points agreed to by GRANTOR.

8. INSPECTION: GRANTOR retains the right to inspect the Project at any time. GRANTEE agrees to notify GRANTOR at least **TWO (2)** business days prior to the commencement and termination of any activities on the property to allow interested agencies the opportunity to inspect the Project.

9. EXISTING EASEMENTS: GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees to require contractors to use caution when constructing and placing the Project and supporting equipment because of the possibility of additional utility laterals not known, and to be responsible for damage caused to any other utilities located upon state land. The legally required offsets from any existing gas, electric, water and/or communication lines shall be maintained at all times.

10. HISTORIC DISCOVERIES: If prehistoric or historic remains or artifacts are discovered during any work performed within the easement area, work will be temporarily halted and the State Historic Preservation Office at (775) 684-3448 as well as the Division of

State Lands at (775) 684-2720 shall be notified. GRANTEE will heed to the responsibilities required under Section 106 of the National Historic Preservation Act of 1966, as amended.

11. DAMAGE TO STATE LAND: GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees to pay for and be responsible for all direct or indirect damages to the real property, improvements, and personal property of GRANTOR caused by GRANTEE during any construction, re-location, installation, use, operation, inspection, future maintenance, repairs, reconstruction and removal of the Project, and further agrees to return the land to its pre-project condition upon completion of the work.

12. MAINTENANCE: GRANTEE, its successors and assigns, shall be responsible for all maintenance of the Project owned by GRANTEE and within the Non-Exclusive Easement and understands and agrees that the Project must be maintained in good repair at all times.

13. ENVIRONMENTAL CONDITIONS: GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees to conduct the Project within the Nevada Division of Environmental Protection's Best Management Practices guidelines. GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees that at no time shall any chemical products, petrochemicals, excavated materials, silt, floating debris or foreign debris of any kind be discharged, deposited or allowed to enter into any storm drain or any river channel. GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees that any tractor, drill rig, backhoe, or other equipment utilized on upland banks adjacent to the Project will be washed and free of any oils, toxins, fuel, and any other foreign substance that could pollute the Carson River and harm its

ecosystem. If any component of the Project fails, creates a hazard or causes upstream or downstream impacts, the GRANTEE agrees to repair or mitigate any damage.

14. WARRANTIES: GRANTOR makes no warranty as to the condition of or the adequacy of the property for the proposed uses of GRANTEE.

15. NOTICES: All notices under this Non-Exclusive Easement shall be in writing and delivered in person or sent by certified mail, return receipt requested, to GRANTOR and to GRANTEE at their respective addresses set forth below or to such other address as may hereafter be designated by either party in writing:

GRANTOR'S ADDRESS:

Division of State Lands
901 S. Stewart St., Ste. 5003
Carson City, Nevada 89701

GRANTEE'S ADDRESS:

California Broadband Cooperative, Inc.
11001 Nimitz Avenue
Vallejo, California 94592

16. FURTHER AUTHORIZATIONS: Further authorization from the Division of State Lands is required prior to commencement of any future work or activities at locations other than that described in **EXHIBITS A & B.**

17. TERMINATION: Either party shall have the right to terminate this Non-Exclusive Easement in whole or in part any time during the term hereof, provided, however, that either party shall give NINETY (90) days written notice of election to terminate. Upon termination, the land will be returned to as near as its original condition as possible. The GRANTEE, its successors and assigns, understands and agrees that at the termination of this Non-Exclusive Easement the Project will be removed by GRANTEE, if so requested by GRANTOR, and the land restored to its pre-project condition. Any and all right or interest in state land must be quitclaimed by instrument to the GRANTOR within a reasonable time, without claim or

demand of any kind from GRANTOR. Except as might otherwise be provided for, any expenses for removal of the Project and for the restoration of the land will be borne by GRANTEE, its successors and assigns and at no expense or cost to the GRANTOR.

18. TERM AND DISCONTINUATION: This Non-Exclusive Easement shall continue so long as the same may be necessary and required for the purposes for which is was granted unless terminated sooner by another provision. If at any time the GRANTEE should discontinue said use for a period of ONE (1) year this Non-Exclusive Easement shall thereupon terminate and all right and interest in state land therein shall revert to GRANTOR, its successors and assigns.

19. COMPLIANCE TO CONDITIONS: Failure to concur with or comply with any of the conditions contained herein will cause this Non-Exclusive Easement to become invalid and shall require the removal of the Project and appurtenances. All rights and interest in the Non-Exclusive Easement shall revert to GRANTOR. GRANTEE agrees to provide a copy of this Non-Exclusive Easement to its contractors prior to entering and beginning any work on the property described herein.

20. WAIVER: The failure of GRANTOR to insist upon strict performance of any of the covenants and agreements to this Non-Exclusive Easement or to exercise any option herein conferred in anyone or more instance, shall not be construed to be a waiver or relinquishment of any such covenants and agreements.

21. SURVIVAL: This Non-Exclusive Easement, and all of the terms hereof, shall inure to the benefit of, and be binding upon, the heirs, assigns and successors of the parties hereto, and the rights and obligations of the GRANTEE are, and shall continue to be, joint and several.

22. ENTIRE AGREEMENT: This Non-Exclusive Easement and conditions incorporated herein contain all of the agreements between the parties with respect to the matters contained herein. No prior agreement, understanding or verbal statement made by any party is a part hereof. No provisions of the Non-Exclusive Easement may be amended or modified in any manner whatsoever unless incorporated in writing and executed by both parties. When executed by the GRANTOR and GRANTEE, this Non-Exclusive Easement shall be binding upon GRANTOR and GRANTEE, their successors and assigns.

23. AMENDMENT OR MODIFICATION: This Non-Exclusive Easement may be amended or modified at anytime with the mutual consent of the parties hereto, which amendment or modification must be in writing, executed and dated by the parties hereto.

24. SEVERABILITY: If any term or provision of this Non-Exclusive Easement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Non-Exclusive Easement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and each term and provision of this Non-Exclusive Easement shall be valid and shall be enforced to the fullest extent permitted by law.

25. GOVERNING LAW: This Non-Exclusive Easement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

26. VENUE: Any lawsuit brought to resolve a dispute arising from this Non-Exclusive Easement must be brought either in the location of the Project or in Carson City, Nevada.

EXHIBIT "A"
PRAXIS ASSOCIATES, INC.
UNDERGROUND FIBER OPTIC LINE SYSTEM
LEGAL DESCRIPTION

July 12, 2013

A strip of land 10 feet wide for underground fiber optic line system easement purposes within a portion of the West 1/2, Section 30, Township 14 North, Range 20 East, MDM, Douglas County, Nevada, being 10 feet in width adjacent to and parallel with the easterly side of the following described line:

Segment 1:

BEGINNING at a point at Engineer's "S" centerline Station 364+24, 80.00 feet left, as shown on State of Nevada, Department of Transportation Right-of-Way plans, Project No. F-395-1(3), sheet 26 of 46 sheets, dated August, 1985, Douglas County, Nevada, which bears S. 34°34'46" E., 3,946.01 feet from the northwest corner of said Section 30 (calculated), said point also being a point on the westerly right-of-way line of U.S. Highway 395;

thence N. 00°37'25" E., 223.04 feet to the intersection of said westerly right-of-way line with the southerly mean high water line of the Carson River;
(Containing 2,230 Square Feet, more or less.)

Segment 2:

thence continuing along said westerly right-of-way line, N. 00°37'25" E., 131.69 feet to the intersection of said westerly right-of-way line with the northerly mean high water line of the Carson River;
(Containing 1,317 Square Feet, more or less.)

Segment 3:

thence continuing along said westerly right-of-way line, N. 00°37'25" E., 308.06 feet to the intersection of said westerly right-of-way line with the southerly mean high water line of the Cradlebaugh Slough;
(Containing 3,081 Square Feet, more or less.)

Segment 4:

thence continuing along said westerly right-of-way line, N. 00°37'25" E., 53.04 feet to the intersection of said westerly right-of-way line with the northerly mean high water line of the Cradlebaugh Slough;

(Containing 530 Square Feet, more or less.)

Segment 5:

thence continuing along said westerly right-of-way line, N. 00°37'25" E., 150.17 feet to the POINT OF TERMINATION, said point also being a point at Engineer's "S" centerline Station 372+90, 80.00 feet left, from whence said northwest corner of Section 30 bears N 43°21'41"W 3,278.67 feet distant.

(Containing 1,502 Square Feet, more or less.)

Total area for all segments containing 8,660 Square Feet, more or less.

Basis of Bearing:

West right-of-way line of U.S. Highway 395 as shown on aforementioned NDOT Right-of-Way plans. (N. 00°37'25" E.)

PREPARED BY:

Richard B. Robinson, P.L.S. # 18833
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(775) 883-1600



