

**FRANCHISE AGREEMENT  
HOLLADAY CITY – SYRINGA NETWORKS, LLC**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of Holladay, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 4580 S. 2300 E. Holladay, Utah 84117, and Syringa Networks, LLC, an Idaho limited liability company (hereinafter “PROVIDER”) with its principal offices at 12301 W. Explorer Drive, Boise, Idaho 83713.

**WITNESSETH:**

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY (“System”); and

WHEREAS, the CITY has enacted Title \_\_\_, Chapter \_\_\_ of the Holladay City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

**ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.**

1.1 **Agreement.** Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 **Ordinance.** The CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit “A” and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined by a court with jurisdiction to be unlawful or beyond the CITY’s authority.

**1.3 Ordinance Amendments.** Nothing herein shall prevent the CITY from amending the Telecommunications Rights-of-Way Ordinance from time to time, as its City Council may deem necessary. The CITY shall give the PROVIDER notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the PROVIDER's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern, unless, an exigency requires an amendment to the Ordinance for public health, safety or welfare, in that case, the amended Ordinance shall be controlling. The PROVIDER agrees to comply with any such amendments within 30 days, or such longer time as is necessary if 30 days is insufficient.

**1.4 Franchise Description, No Assignment.** The Telecommunications Franchise provided hereby shall confer upon the PROVIDER, subject to the CITY's receipt of monetary and services compensation as provided in this Agreement, the nonexclusive right, privilege, and franchise to construct, operate and maintain a fiber optic telecommunications network in, under, above and across the present and future Public Rights of Way in the CITY. The grant of this franchise includes the service of providing dark fiber to end users as may be authorized by the Utah Public Service Commission or federal law. The PROVIDER shall not permit the use of its fiber optic system, its duct or pathways, its pole attachments or any plant equipment on the Public Ways in any manner that would avoid or seek to avoid the need for a franchise from the CITY for the business of another person as provided herein below. PROVIDER shall not provide services directly regulated by the Utah Public Service Commission (PSC) unless authorized by the PSC. PROVIDER shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521, *et seq.*, as amended) without first having obtained a separate cable franchise from the CITY. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied. The rights granted by this Agreement may not be subdivided, assigned, or subleased to another person unless agreed to in writing by the CITY or unless to an affiliate of PROVIDER or to an entity succeeding to acquisition of substantially all of the assets of PROVIDER.

**1.5 Licenses.** The PROVIDER acknowledges that it has obtained (or will obtain before it commences construction) the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance. PROVIDER shall deliver a copy of the relevant permits to the CITY before construction is commenced.

**1.6 Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

## ARTICLE 2. DEFINITIONS

2.1 For the purposes of this Agreement, the following words and terms shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning. Unless otherwise expressly stated or clearly contrary to the context, words and terms not defined herein shall be given the meaning set forth in the City's Standard Specifications – General Conditions; if a definition is not contained therein, then the word or term shall have the meaning defined in the Revised Ordinances of Holladay City if not defined in the Revised Ordinances of Holladay City, the meaning set forth in any State energy regulatory agency orders of general applicability; and if not defined either in the Revised Ordinances of Holladay City or in a general State energy regulatory agency order, their common and ordinary meaning.

2.2 When not inconsistent with the context, words used in the present tense include the future tense and vice versa; words in the plural number include the singular number and vice versa; and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory; the word "may" is permissive. Genders and plurals are understood to refer to a corporation, partnership or other legal entity when the context so requires. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

(a) **"CITY"** shall mean the Holladay City, Utah, and its successors and assigns.

(b) **"City Property"** shall mean all properties, facilities (excluding Company Facilities, and the facilities and property of other utilities or persons), or objects currently or in the future Public Ways or other real property owned or operated by the CITY within the present and/or future corporate limits of the CITY.

(c) **"Company"** shall mean PROVIDER and its successors and/or assigns.

(d) **"Company Facilities"** or **"Facilities"** shall include, but not be limited to a network of fiber optic cables and all related property, including conduit, carrier pipe, cable fibers, repeaters, power sources, and other attachments and appurtenances necessary for the telecommunications system located within the Public Ways within the City limits, whether located above or below ground, currently or in the future owned or operated or otherwise controlled by the PROVIDER needed to provide telecommunications service.

(e) **"Construction"** or **"Construct"** shall mean, without limitation, constructing, acquiring, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using Company Facilities.

(f) **"Dark fiber"** is optical fiber infrastructure cabling and repeaters that is currently in place but in which light pulses are not being transmitted.

(g) **"Emergency"** means any unforeseen circumstance or occurrence, the

existence of which constitutes an immediate and substantial risk of personal injury or damage to property, or which causes interruption of utility or public services or an interruption of telecommunications services.

(h) **“Gross receipts from telecommunications services”** or “gross receipts derived from telecommunications services” shall have the meaning defined in Utah Code Anno. Section 10-1-402 or its replacement section for the term “gross receipts from telecommunications services” as the definition may be changed from time to time.

(i) **“Maintenance,” “maintaining,” or “maintain”** shall mean, without limitation, repairing, replacing, relocating, examining, testing, and inspecting.

(j) **“Person”** shall mean any individual, person, firm, partnership, association, corporation, company, governmental entity, or organization of any kind.

(k) **“Public Rights of Way”** shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public ways court, boulevard, parks, parkway, or drive owned by the CITY for the purpose of public use, and shall include other rights of way as are now held or hereafter held by the CITY which shall, within their proper use and meaning entitle the PROVIDER to the use thereof for the purposes of installing, maintaining and operating Company Facilities.

(l) **“Service” or “Services”** shall mean all telecommunications service lawfully provided by the PROVIDER under this Agreement.

(m) **“Standard Specifications”** shall mean Holladay City Specifications and Standard Details which govern construction in the Public Ways.

### **ARTICLE 3. FRANCHISE FEE.**

3.1 **Franchise Fee.** For the Franchise granted herein, the PROVIDER shall pay to the CITY a tax in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410), less any business license fee or business license tax enacted by the CITY. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law, the PROVIDER shall pay to the CITY a tax levy or franchise fee of three and one-half percent (3.5%) of its Gross Receipts derived from telecommunications services attributed to or services provided within the CITY.

3.2 **Equal Treatment.** CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a

third party, the CITY will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, or waive collection of the fees provided for herein that are subject to such competition.

#### **ARTICLE 4. TERM AND RENEWAL.**

4.1 **Term and Renewal.** The franchise granted to PROVIDER shall be for a period of seven (7) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial seven (7) year term of this Agreement, the franchise granted herein may be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional three (3) year term, by providing to the CITY's representative designated herein written notice of the PROVIDER's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

4.2 **Rights of PROVIDER Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, the PROVIDER shall have the right to remove from the Public Rights of Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Public Rights of Way from which such System is removed to as good condition as the same was before the removal was effected.

#### **ARTICLE 5. PUBLIC USE RIGHTS.**

5.1 **City Uses of Poles and Overhead Structures.** The CITY shall have the right, without cost, to use all poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.

5.2 **Limitations on Use Rights.** Nothing in this Agreement shall be construed to require the PROVIDER to increase pole capacity, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

5.3 **Maintenance of CITY Facilities.** The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments.

## **ARTICLE 6. POLICE POWERS.**

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

## **ARTICLE 7. CHANGING CONDITIONS AND SEVERABILITY.**

7.1 **Meet to Confer.** The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, the PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

7.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction,, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's Excavation Permit Ordinance. For the PROVIDER, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the CITY's Excavation Permit Ordinance.

## **ARTICLE 8. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.**

8.1 **Grounds for Termination.** The CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The PROVIDER fails to make timely payments of the franchise fee as required under Article 3 of this Agreement and does not correct such failure within thirty (30) calendar days after written notice by the CITY of such failure;

(b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; or

(c) The PROVIDER becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the PROVIDER within sixty (60) days.

8.2 **Reserved Rights.** Nothing contained herein shall be deemed to preclude the PROVIDER or the CITY from pursuing any legal or equitable rights or remedies it may have to challenge the action of the other.

8.3 **Remedies at Law.** In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement. In the event of any controversy, claim or action being filed or instituted between the CITY and PROVIDER relating to or arising out of this Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and costs through all levels of action incurred by the prevailing party.

8.4 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

## **ARTICLE 9. PARTIES' DESIGNEES.**

9.1 **CITY designee and Address.** The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at 4580 S. 2300 E., Holladay City, UT 84117, and to the CITY Attorney at: Hayes, Godfrey, Bell P.C. 2118 E. 3900 S. #300 Holladay, UT 84124 or such other officer and address as the CITY may designate by written notice to the PROVIDER.

9.2 **PROVIDER Designee and Address.** The PROVIDER's Chief Executive Officer or his or her designee(s) shall serve as the PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's headquarter offices at 12301 W. Explorer Drive, Boise, Idaho 83713, and such other office as the PROVIDER may designate by written notice to the CITY.

9.3 **Failure of Designee.** The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppels by the CITY or PROVIDER.

## **ARTICLE 10. INSURANCE AND INDEMNIFICATION**

### **10.1 Insurance.**

(a) On or before the effective date of this Agreement, PROVIDER shall file with the City a certificate of insurance and thereafter continually maintain in full force and effect at all times for the full term of the franchise, at the expense of PROVIDER, a comprehensive general liability insurance policy, including underground property damage coverage, written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX protecting the City against liability for loss of bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the communications system by PROVIDER in the following minimum amounts:

(1) Five Million Dollars (\$5,000,000.00) combined single limit, bodily injury and for real property damage in any one occurrence.

(2) Ten Million Dollars (\$10,000,000.00) aggregate.

(b) PROVIDER shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired and leased vehicles operated by PROVIDER, with limits not less than Two Million Dollars (\$2,000,000.00) each accident, single limit, bodily injury and property damage combined.

(c) PROVIDER shall also maintain, and by its acceptance of any franchise granted hereunder, specifically agrees that it will continually maintain throughout the term of the



franchise, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars (\$500,000.00) for employer's liability.

(d) All liability insurance required pursuant to this section shall name of Holladay City and its officers, employees, board members and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by PROVIDER during the existence of the franchise and until after the removal or abandonment with the City Engineer's approval of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by PROVIDER incident to the maintenance and operation of the communications system as defined in this Agreement. Failure to obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. All policies shall be endorsed to give the City thirty (30) days written notice of the intent to amend or cancel by either PROVIDER or the insuring company.

(e) The City reserves and the PROVIDER acknowledges the right to modify the insurance requirements contained herein if required by changes in the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated.

**10.2 Indemnification.** PROVIDER hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, employees and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, reasonable attorney's fees, costs or actions of any kind and nature resulting from personal or bodily injury to any person, including employees of PROVIDER or of any contractor or subcontractor employed by PROVIDER (including bodily injury and death) or damages to any property, arising directly out of the negligent acts or omissions of PROVIDER, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this Agreement, except to the extent that such losses, claims, demands, or damages are caused by the negligent acts or omissions of the City, its officers, agents, or employees. The CITY shall promptly give written notice to the PROVIDER of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel.

This section and the following section shall survive the termination of this Agreement.

**10.3 CITY Notice of Litigation.** The PROVIDER shall immediately notify the CITY of any litigation which would affect the franchise or the CITY's rights under this Agreement.

## **ARTICLE 11. INSTALLATION**

**11.1 Coordinated Installation.** In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER shall coordinate with the CITY and other providers or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and

facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.

**11.2 Underground Installation.** Unless otherwise provided, all of PROVIDER's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement, PROVIDER expressly agrees to install and maintain all of its facilities in accordance with CITY Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

## **ARTICLE 12. GENERAL PROVISIONS**

**12.1 Binding Agreement.** The parties represent that (a) when executed by their respective representatives who sign below, this Agreement shall constitute legal and binding obligations of the parties; and that (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

**12.2 Utah Law, Litigation.** This Agreement shall be interpreted pursuant to Utah law. Any claim or lawsuit arising out of this Agreement shall be brought in the Third District Court of the State of Utah, or if the Third District Court lacks jurisdiction, then suit shall be brought in the U.S. District Court for the State of Utah located in Salt Lake County, Utah, if that court has jurisdiction. The parties waive any right to trial by jury or to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between them arising out of this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transactions related hereto.

**12.3 Meet and Discuss; Mediation.** Notwithstanding any other provision contained herein, before the City or the PROVIDER brings an action or claim before any court or regulatory body arising out of a duty or right arising under this Agreement, the PROVIDER and the CITY shall first make a good-faith effort to resolve their dispute by discussion and then, if that fails, by nonbinding mediation by a mediator acceptable to both parties, the cost of which shall be borne equally by the parties.

**12.4 Time of Essence.** Time shall be of the essence of this Agreement.

**12.5 Entire Agreement, Modification, No Waiver.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior negotiations, agreements or understandings between the parties related to the subject matter hereof. None of the provisions of this Agreement may be altered or modified except through an instrument in writing signed by both parties. No failure by any party to insist on the strict performance of any covenant, duty or condition of this Agreement or to exercise any right or remedy consequent on a

breach of this Agreement shall constitute a waiver of any such breach or of such or any other covenant, duty or condition.

12.6 **No Presumption.** Both parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

12.7 **Warranty of Authorization.** The person signing for and on behalf of PROVIDER warrants and represents that he or she is duly authorized and empowered to enter into this Agreement for and on behalf of PROVIDER, and that PROVIDER is duly organized and validly existing under the laws of the State of Idaho, and that by his or her signature, he or she does bind PROVIDER to the terms of this Agreement. The person signing below for PROVIDER warrants to the City that all necessary company approvals, authorizations and consents have been obtained, and all company procedures required to be taken by PROVIDER's certificate of organization, have been followed to enable PROVIDER to enter into this Agreement and to perform its duties hereunder.

12.8 **Effective Date.** This Agreement shall be effective on the day the following requirements have been completed: the Agreement has been signed by the City Council chairman; the Agreement has been signed by both parties; and the PROVIDER has filed with the City the certificates of insurance required in Section 10.1 above.

SIGNED AND ENTERED INTO this \_\_\_\_ day of \_\_\_\_\_, 2014

“CITY”  
HOLLADAY CITY

By: \_\_\_\_\_  
Randy Fitts, City Manager

ATTEST:

\_\_\_\_\_  
Stephanie Carlson, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Todd J. Godfrey

City Attorney

“PROVIDER”

Syringa Networks, LLC, an Idaho limited liability company

By: \_\_\_\_\_  
Greg Lowe, Chief Executive Officer

**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
:ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared before me Greg Lowe, who being by me duly sworn did say that he is the Chief Executive Officer of Syringa Networks, LLC, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors and/or its company documents; and he acknowledged to me that said company executed the same.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**  
**Telecommunications; Use of Rights-of-Way Ordinance**