



**AGENDA FOR THE WORK / STUDY MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF SPRINGVILLE, UTAH  
COUNCIL CHAMBERS, 110 SOUTH MAIN STREET  
FEBRUARY 17, 2015 – 5:15 P.M.**

**MAYOR AND COUNCIL DINNER – 4:45 P.M.**

*The Mayor and Council will meet in the Council Work Room for informal discussion and dinner. No action will be taken on any items.*

**CALL TO ORDER- 5:15 P.M.**

**COUNCIL BUSINESS**

1. Calendar
  - March 03 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.
  - March 08 – Daylight Savings
  - March 10 – Work/Study Meeting 5:15 p.m.
  - March 17 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.
2. Discussion on this evening's Regular Meeting agenda items
  - a) Invocation – Councilmember Creer
  - b) Pledge of Allegiance – Councilmember Conover
  - c) Consent Agenda
    1. Approval of all City purchase orders properly signed (Springville City Code §2-10-110(5))
    2. Approval of Minutes – January 06, 2015 Regular City Council meetings and June 03, 2014 Work Session meeting.
3. **DISCUSSIONS/PRESENTATIONS**
  - a) Bartholomew Pond Update – Alex Roylance, Building and Grounds Director
  - b) 550 West Access to 400 South Options – Jeff Anderson, City Engineer
  - c) Aquatic Activity Center Exploratory Committee Update – John Penrod, Assistant City Administrator/City Attorney
  - d) Training – John Penrod, Assistant City Administrator/City Attorney

**4. MAYOR, COUNCIL, AND ADMINISTRATIVE REPORTS**

**5. CLOSED SESSION**

*The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*

**ADJOURNMENT**

**CERTIFICATE OF POSTING**

The undersigned duly appointed City Recorder of Springville City, does hereby certify that the above notice and agenda was posted within the Springville City limits on February 13, 2015 at Springville City Hall, on the City Hall Notice Board, on the Springville City website at [www.springville.org/agendasminutes](http://www.springville.org/agendasminutes) on the Utah Public Notice Website at <http://www.utah.gov/pmn/index.html> and provided to at least one newspaper of general circulation within the geographic jurisdiction of the public body  
/s/ Kim Rayburn, City Recorder

In compliance with the Americans with Disabilities Act, the City will make reasonable accommodations to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Recorder at (801) 489-2700 at least three business days prior to the meeting.



**AGENDA FOR THE REGULAR MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF SPRINGVILLE, UTAH  
COUNCIL CHAMBERS, 110 SOUTH MAIN STREET  
FEBRUARY 17, 2015 – 7:00 P.M.**

**CALL TO ORDER  
INVOCATION AND PLEDGE  
APPROVAL OF THE MEETING'S AGENDA  
MAYOR'S COMMENTS**

**PUBLIC COMMENT:** *Audience members may bring any item not on the agenda to the Mayor and Council's attention. Please complete and submit a "Request to Speak" form. Comments will be limited to two or three minutes, at the discretion of the Mayor. State Law prohibits the Council from acting on items that do not appear on the agenda.*

**CEREMONIAL/PRESENTATION AGENDA**

1. Presentation of the Mayor's Awards – Shannon Acor, CTC Coordinator

**CONSENT AGENDA\***

1. Approval of all City purchase orders properly signed (Springville City Code §2-10-110(5))
2. Approval of Minutes – January 06, 2015 Regular City Council meetings and June 03, 2014 Work Session meeting.

**REGULAR AGENDA**

3. Consideration of an Easement Encroachment Agreement with USA for PI Phase 2D across the Federal Siphon under Hobble Creek– John Penrod, Assistant City Administrator/City Attorney
4. Consideration of an Ordinance amending Title 6, Chapter 8 of the Springville City Code – John Penrod, Assistant City Administrator/City Attorney
5. Consideration of a Franchise agreement with Syringa Network – John Penrod, Assistant City Administrator/City Attorney

**MAYOR, COUNCIL AND ADMINISTRATIVE REPORTS**

**CLOSED SESSION**

6. *The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*

**ADJOURNMENT**

This meeting was noticed in compliance with Utah Code 52-4-202 on February 13, 2015. Agendas and minutes are accessible through the Springville City website at [www.springville.org/agendasminutes](http://www.springville.org/agendasminutes). Council Meeting agendas are available through the Utah Public Meeting Notice website at <http://www.utah.gov/pmn/index.html>. Email subscriptions to Utah Public Meeting Notices are available through their website.

- Kim Rayburn, City Recorder

The next regular Council Meeting will be held on March 03, 2015 at 7:00 p.m. in the Civic Center Council Chambers, 110 South Main Street, Springville, unless otherwise noticed. In compliance with the Americans with Disabilities Act, the City will make reasonable accommodations to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Recorder at (801) 489-2700 at least three business days prior to the meeting.

\*The Consent Agenda consists of items that are administrative actions where no additional discussion is needed. When approved, the recommendations in the staff reports become the action of the Council. The Agenda provides an opportunity for public comment. If after the public comment the Council removes an item from the consent agenda for discussion, the item will keep its agenda number and will be added to the regular agenda for discussion, unless placed otherwise by the Council.



**MINUTES OF THE REGULAR MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF SPRINGVILLE, UTAH  
COUNCIL CHAMBERS, 110 SOUTH MAIN STREET  
JANUARY 06, 2015 – 7:00 P.M.**

6

The following are the minutes of the Regular Meeting of the Springville City Council.  
8 The meeting was held on **Tuesday, January 06, 2015 at 7:00 p.m.** in the Springville City Civic  
Center Council Chambers, 110 South Main Street, Springville, Utah. Adequate notice of this  
10 meeting, as required by law, was posted in the Civic Center and on the City’s website, and  
delivered to members of the Council, media, and interested citizens.

12  
14 Mayor Wilford W. Clyde presided. In addition to Mayor Clyde, the following were  
present: Councilmember Rick Child, Councilmember Dean Olsen, Councilmember Chris  
Sorensen, City Administrator Troy Fitzgerald, Assistant City Administrator/City Attorney John  
16 Penrod, Assistant City Administrator/Finance Director Bruce Riddle and City Recorder Kim  
Rayburn.

18 Also present were: Public Safety Director Scott Finlayson, Administrative Services  
Manager Rod Oldroyd, Public Works Director Brad Stapley, Recreation Director Charles Keeler,  
20 Power Director Leon Fredrickson, Museum of Art Director Dr. Rita Wright and Library Director  
Pam Vaughn. Excused from the meeting; Councilmember Craig Conover and Councilmember  
22 Christopher Creer.

24 **CALL TO ORDER**

Mayor Clyde welcomed everyone and called the meeting to order at 7:03 p.m.

26 **INVOCATION AND PLEDGE**

28 Councilmember Sorensen offered the invocation, and Scout Jared Hershey led the Pledge  
of Allegiance.

30 **APPROVAL OF THE MEETING’S AGENDA**

32 COUNCILMEMBER OLSEN MOVED TO APPROVE THE MEETING’S AGENDA  
34 AS WRITTEN. COUNCILMEMBER CHLD SECONDED THE MOTION, AND ALL VOTED  
AYE.

36 **MAYOR’S COMMENTS**

38 Mayor Clyde welcomed the Council, staff and audience. He observed scouts in the  
audience and asked them to stand and introduce themselves. Scouts from Troop #62 were  
40 recognized.

42

## PUBLIC COMMENT

44 Mayor Clyde introduced the Public Comment section of the agenda. He asked if there were any requests.

46 Jezni Widdison, Miss Springville/Mapleton introduced her annual service project, Shoes for Love. Ms. Widdison asked the Council if the City offices could be a drop off point for the community to donate any size, shape or condition of shoes. Councilmember Sorensen asked for how long. Ms. Widdison replied until March 1, 2015. Council was in agreement stating because it is a Miss Springville/Mapleton platform and the City currently has a contract with the Miss Springville/Mapleton pageant.

52

## CONSENT AGENDA

- 54 1. Approval of all City purchase orders properly signed (Springville City Code §2-10-110(5))
- 56 2. Approval of Minutes – July 15, 2014; August 05, 2014; August 19, 2014 Regular City Council Meetings, August 22, 2014 Mid-Year Retreat
- 58 3. Approval of a **Resolution #2015-01** adopting the 2015 Annual Meeting Schedule – Kim Rayburn, City Recorder
- 60 4. Approval of a **Resolution #2015-02** adopting the Aquatic Activity Center Ad Hoc Committee
- 62 5. Approval of the appointments to the Aquatic Activity Center Ad Hoc Committee – Alan Bird, Devin Bird, Mark Brewer, Kathryn Crandall, Jack Daybell, Marcie Harris, Jose’ Inclan, Ben Jolley, Julie Park, Mike Stansfield, Colleen Tingey, Jane Thorpe and Lorinne Morris.

66

COUNCILMEMBER SORENSEN MOVED TO APPROVE THE CONSENT AGENDA AS WRITTEN.

68 COUNCILMEMBER OLSEN SECONDED THE MOTION. THE VOTE IS RECORDED AS FOLLOWS: COUNCILMEMBER SORENSEN –AYE, COUNCILMEMBER CHILD –AYE AND COUNCILMEMBER OLSEN –AYE; THE MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER CONOVER AND COUNCILMEMBER CREER -ABSENT

74

## REGULAR AGENDA

- 76 6. **Consideration of an Easement Dedication from David D. and Jan C. Harrison; PI Pipeline Phase 2B** – Brad Stapley, Public Works

78 Director Stapley reported on December 16, 2014 the City Council awarded a contract to VanCon, Inc. for the construction of Phase 2B of the City’s thirty (30) inch diameter pressurized irrigation transmission pipeline within 700 South between 950 West and 100 East.

80

82 Director Stapley stated the pipeline route will pass through the northerly boundary of the  
property owner’s parcel, hence the need for a Public Utilities easement (PUE) and a Temporary  
Construction easement (TCE).

84 Director Stapley reported the City is currently in negotiations with David D. and Jan C.  
Harrison for an easement on their property at approximately 950 West and expect to have it  
86 completed soon.

88 COUNCILMEMBER SORENSEN MOVED TO AUTHORIZE PAYMENT TO DAVID  
D. & JAN C. HARRISON FOR A PUBLIC UTILITY AND A TEMPORARY  
90 CONSTRUCTION EASEMENT TO SPRINGVILLE CITY AS OUTLINED IN EXHIBIT “A”  
IN AN AMOUNT TO BE APPROVED BY THE CITY ADMINISTRATOR.

92 COUNCILMEMBER CHILD SECONDED THE MOTION. THE MOTION PASSED  
UNANIMOUSLY.

94

7. **Consideration of an Easement Dedication from Rulon S. and Geraldine Y. Francis;  
96 PI Pipeline Phase 2B** – Brad Stapley, Public Works

Director Stapley reported Rulon S. and Geraldine Y. Francis have completed and signed  
98 documents for the easement of their property and have donated the easements to the City.

100 COUNCILMEMBER CHILD MOVED TO AUTHORIZE THE GRANTING OF A  
PUBLIC UTILITY AND A TEMPORARY CONSTRUCTION EASEMENT TO  
102 SPRINGVILLE CITY BY RULON S. & GERALDINE Y. FRANCIS AT NO COST TO THE  
CITY AS SHOWN IN EXHIBIT “A.”

104 COUNCILMEMBER OLSEN SECONDED THE MOTION. THE MOTION PASSED  
UNANIMOUSLY.

106

8. **Consideration of Public Utilities Easements for the Meadowbrook Elementary  
108 School** – John Penrod, Assistant City Administrator/City Attorney

Attorney Penrod explained Nebo School District has received site plan approval to move  
110 forward with the construction of the Meadow Brook Elementary School that will be located at  
approximately 750 South 950 West in Springville. In order to move forward with the project, the  
112 District needs to obtain easements for offsite sewer and storm drain lines.

Attorney Penrod noted Property Reserve Inc. (PRI) and Suburban Land Reserve Inc.  
114 (SLR) own property around the Meadowbrook Elementary property. The City has been working  
with the School District, PRI and SLR over several months to obtain the needed easements.  
116 Attorney Penrod explained the consideration agreements allow the PRI and SLR to connect  
certain stub-outs to the infrastructure and require the City to pay for crop loss.

118 Councilmember Sorensen asked about crop loss and if the owner is not using can a lease  
be considered. Attorney Penrod replied the agreement includes a possible lease.

120 Mayor Clyde asked for an explanation of the map showing the location. Attorney Penrod  
identified the boundary lines. Mayor Clyde asked if the easements will damage any future

122 building on 400 South. Attorney Penrod remarked it has been put into the alignment of 1250  
124 West.

126 COUNCILMEMBER OLSEN MOVED TO APPROVE THE EXECUTION OF ONE  
128 PERMANENT DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENT  
130 AGREEMENT, TWO PERMANENT SEWER AND TEMPORARY CONSTRUCTION  
132 EASEMENT AGREEMENTS, ONE TEMPORARY CONSTRUCTION EASEMENT  
134 AGREEMENT, TWO CONSIDERATION AGREEMENTS, AND A DEDICATION  
136 QUITCLAIM DEED WITH PROPERTY RESERVE, INC. OR SUBURBAN LAND  
138 RESERVE, INC. FOR THE INSTALLATION OF PUBLIC IMPROVEMENTS FOR THE  
MEADOW BROOK ELEMENTARY SCHOOL, CONTINGENT UPON THE CITY  
ATTORNEY'S FINAL REVIEW OF THE DOCUMENTS AND NEBO SCHOOL DISTRICT  
ENTERING INTO A DEVELOPMENT AGREEMENT WITH SPRINGVILLE CITY  
WHEREIN THE SCHOOL DISTRICT WILL ASSUME ALL OF THE CITY'S  
RESPONSIBILITIES AND LIABILITIES ASSOCIATED WITH THE EASEMENTS AND  
IMPROVEMENTS UNTIL THE IMPROVEMENTS ARE ACCEPTED BY THE CITY.

138 COUNCILMEMBER CHILD SECONDED THE MOTION. THE MOTION PASSED  
UNANIMOUSLY.

140  
142 **9. Consideration of a Development Agreement with Nebo School District for the  
Meadowbrook Elementary School Project** – John Penrod, Assistant City  
Administrator/City Attorney

144 Attorney Penrod reviewed the Development Agreement for the Meadow Brook  
Elementary School.

146  
148 COUNCILMEMBER SORENSEN MOVED TO APPROVE THE EXECUTION OF A  
150 DEVELOPMENT AGREEMENT FOR THE MEADOW BROOK ELEMENTARY SCHOOL,  
152 CONTINGENT UPON THE CITY ATTORNEY'S FINAL REVIEW OF THE AGREEMENT  
AND THE CITY ADMINISTRATOR'S FINAL APPROVAL OF THE AMOUNT OF  
ELECTRICAL EXTENSION FEES TO BE PAID BY THE DISTRICT AND IMPACT FEE  
REIMBURSEMENT COSTS TO BE PAID BY SPRINGVILLE CITY.

154 COUNCILMEMBER CHILD SECONDED THE MOTION. THE MOTION PASSED  
UNANIMOUSLY.

156  
**MAYOR, COUNCIL AND ADMINISTRATIVE REPORTS**

158 Attorney Penrod updated the Council regarding Camp Jeramiah owned by the Boy  
160 Scouts. He explained the scouting group is in trouble with the County for doing work without  
162 permits. The group filed for permits today and was given approval on behalf of the City. If  
needed Attorney Penrod said he could bring this item back to the Council, and explained they  
needed to file today in order to avoid delay for a month.

164

166 **CLOSED SESSION**

168 10. *The Springville City Council may temporarily recess the regular meeting and convene in*  
168 *a closed session to discuss pending or reasonably imminent litigation, and the purchase,*  
170 *exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*

170 There was no closed session.

172 **ADJOURNMENT**

174 COUNCILMEMBER CHILD MOVED TO ADJOURN THE CITY COUNCIL  
174 MEETING AT 7:31 P.M. COUNCILMEMBER SORENSEN SECONDED THE MOTION,  
176 AND ALL VOTED AYE.



**MINUTES OF THE WORK / STUDY MEETING  
OF THE CITY COUNCIL  
OF THE CITY OF SPRINGVILLE, UTAH  
COUNCIL CHAMBERS, 110 SOUTH MAIN STREET  
JUNE 3, 2014 – 5:15 P.M.**

6

8 The following are the minutes of the Work/Study Meeting of the Springville City  
Council. The meeting was held on **Tuesday, June 3, 2014 at 5:15 p.m.** in the Springville City  
Civic Center Council Chambers, 110 South Main Street, Springville, Utah. Adequate notice of  
10 this meeting, as required by law, was posted in the Civic Center and on the City's website, and  
delivered to members of the Council, media, and interested citizens.

12

14 Mayor Wilford W. Clyde presided. In addition to Mayor Clyde, the following were  
present: Councilmember Richard Child, Councilmember Christopher Creer, Councilmember  
Dean Olsen, Councilmember Craig Conover, Councilmember Chris Sorensen, City  
16 Administrator Troy Fitzgerald, Assistant City Administrator/Finance Director Bruce Riddle,  
Assistant City Administrator/City Attorney John Penrod, and City Recorder Kim Rayburn.

18 Also present were: Public Works Director Brad Stapley, Public Safety Director Scott  
Finlayson, Power Director Leon Fredrickson, Power Distribution Superintendent Matt Hancock,  
20 Building and Grounds Director Alex Roylance, Recreation Director Charles Keeler,  
Administrative Services Manager Rod Oldroyd, and Museum of Art Director Dr. Rita Wright.

22

**MAYOR AND COUNCIL DINNER – 4:45 P.M.**

24 *The Mayor and Council will meet in the Council Work Room for informal discussion and  
dinner. No action will be taken on any items.*

26

**CALL TO ORDER**

28 Mayor Clyde welcomed the Council, staff, and audience as he called the meeting to order  
at 5:15 p.m.

30

**COUNCIL BUSINESS**

32

1. Calendar

- June 7-14 – Art City Days
- 34 • June 10 – Work/Study Meeting 5:15 p.m.
- June 14 – Grand Parade 10:00 a.m.
- 36 • June 14 – Flag Day
- June 15 – Father's Day
- 38 • June 17 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.

40 Mayor Clyde asked if there were any comments about the calendar. Councilmember  
Sorensen asked about the date for the mid-year retreat. Administrator Fitzgerald replied they are  
42 looking at late August early September.

44 Councilmember Conover welcomed Barbara Christiansen with the Daily Herald to the  
meeting.

46 2. Discussion on this evening's Regular Meeting agenda items

- 48 a) Invocation – Councilmember Sorensen
- 48 b) Pledge of Allegiance – Councilmember Olsen
- 50 c) Consent Agenda
- 50 2. Approval of all City purchase orders properly signed (Springville City Code §2-  
10-110(5))
- 52 3. Approval of Minutes – Work/Study Meeting, March 11, 2014 and May 20, 2014;  
Regular Meeting, March 19, 2014 and May 20, 2014  
54 March 19 – vote consent agenda vote is Chris Creer Nay, not Sorensen
- 56 4. Resolution Extending the Military Waiver for Utilities – Kim Rayburn, City  
Recorder
- 58 5. Approval of re-numbering Resolution #2014-04 Ad Hoc Committee Sign  
Ordinance to Resolution #2014-04A
- 60 6. Approval of the establishment of a Fireworks Restriction Zone in Springville –  
Hank Clinton, Fire and Rescue Chief
- 62 7. Approval of payment to Rivers HOA in the amount of \$3100.00 for the Rivers  
Subdivision Detention Basin Perpetual Easement – Brad Stapley, Public Works  
Director
- 64 8. Consideration of an Agreement with the UV Rays for Use of the Springville Pool  
– Charles Keeler, Recreation Director
- 66 9. Approval of an Agreement with the Hobble Creek Riding Club for the Art City  
Days Rodeo – Charles Keeler, Recreation Director
- 68 10. Approval of Appointment to the Parks and Recreation Board; David Goodman  
and Marc Penrod

70  
72 Mayor Clyde asked if there were any questions regarding the consent agenda. There  
were none.

74 3. **DISCUSSIONS/PRESENTATIONS**

- 76 a) **Folkfest Report** – Donna Breckinridge, Committee Chair

76 Donna Breckinridge Committee Chair for the Folkfest addressed the Mayor and Council.  
She announced the dates for the Folkfest this year as July 28 – Aug 2, 2014 and invited all the  
78 Councilmembers to attend. She explained there would be eleven countries participating this year  
and passed out a DVD from last year's Folkfest and a pin from the Netherlands to the Council. In  
80 closing she invited all to attend.

82           b) **UAMPS Overview** – Leon Fredrickson, Power Director

84           Leon Fredrickson introduced Jackie Coombs with UAMPS Member Relations. Ms.  
86 Coombs gave a presentation about how UAMPS partnerships with its members and reviewed the  
88 City’s peak power usage. She described how the power pool project works for UAMPS  
90 members. UAMPS acts as an agent for members to; scheduling, load balancing, marketing,  
92 wheeling and ancillary services. Resources are allocated, based on Member’s resource priority  
94 list, to Member’s load. Each member receives its entitlement share of the projects energy on an  
96 hourly basis, then in turn is billed those energy costs, including transmission and scheduling. If  
98 the member’s resource does not match their load, the additional resource deficits are provided by  
the Pool or any surplus resources are purchased by the Pool.

          Councilmember Sorensen asked if members can buy in at a later date. Ms. Coombs  
replied there are possibilities, each contract has different terms and conditions. Ms. Coombs  
stated Director Fredrickson is very proactive and is always looking out for the City. She noted  
“in house” generation is a great resource to use when needed. Administrator Fitzgerald  
explained each cities use is different and Springville is working to best serve Springville City  
customers.

98           c) **Presentation on a Plan to Replace the Springville City Pool** – City Administrator  
100           Troy Fitzgerald

          Administrator Fitzgerald reviewed discussions from the last budget retreat about possible  
102 solutions for the community pool and Bartholomew Pond. Funding sources were discussed with  
104 various options; one-time utilization of reserves/transfers, land sales, Nebo School District  
106 commitment, closing the current pool in advance and save money, donations, ongoing transfers,  
108 Rec/Park Tax and general obligation bonding. Councilmember Conover questioned if there is  
consideration of what Nebo School District would request. Administrator Fitzgerald stated it  
would be addressed and explained the old Junior High option for facility use is not looking like  
an option at this point.

          Administrator Fitzgerald discussed with the Council possibilities of a new bond issue and  
110 options of paying for a new pool as well as risks involved. Councilmember Sorensen asked about  
112 proposing a RAP tax and Bond. Administrator Fitzgerald replied there would be a need for  
citizen buy-in regarding a RAP tax.

          Councilmember Child expressed there are needs for both the pool and the pond, but  
114 paying for it is a concern. He would like to see the park completed and not have two projects  
only half done. Administrator Fitzgerald explained work will be done with grants and budgeted  
116 funds and there will be areas that will not be done because of funding.

          Councilmember Olsen asked how much would be needed to finish Bartholomew Park.  
118 Administrator Fitzgerald brought the question to the Council about what uses the City wants at  
the pond and is revenue generation an option or not.

120           Councilmember Sorensen and Councilmember Creer stated they would like a week to  
discuss it further. Councilmember Child stated not more than week to make a decision.

122 Councilmember Conover stated there is a need to inform citizens and get their buy in soon.  
123 Councilmember Olsen asked if it is possible to have a consultant at the meeting. Administrator  
124 Fitzgerald replied he would get more information on the cost of a consultant and stated there is a  
need for some good solid discussion.

126

**d) Training – John Penrod, Assistant City Administrator/City Attorney**

128 There was none.

130 **4. MAYOR, COUNCIL, AND ADMINISTRATIVE REPORTS**

There was none.

132

**5. CLOSED SESSION**

134 *The Springville City Council may temporarily recess the regular meeting and convene in*  
135 *a closed session to discuss pending or reasonably imminent litigation, and the purchase,*  
136 *exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205*

There was none.

138

**ADJOURNMENT**

140 COUNCILMEMBER CREER MOVED TO ADJOURN THE WORK/STUDY  
MEETING OF THE SPRINGVILLE CITY COUNCIL AT 6:41 P.M. COUNCILMEMBER  
142 CONOVER SECONDED THE MOTION, ALL VOTED AYE.



## STAFF REPORT

**DATE:** February 12, 2015

**TO:** The Honorable Mayor and City Council

**FROM:** John Penrod, City Attorney

**SUBJECT: CONSIDERATION OF APPROVING AN EASEMENT  
ENCROACHMENT AGREEMENT BETWEEN SPRINGVILLE CITY  
AND THE UNITED STATES.**

### RECOMMENDED ACTION

Motion to Approve the execution of an Easement Encroachment Agreement between the United States of America and Springville City contingent upon the City Attorney's final review of the Agreement.

### BACKGROUND

Springville City is currently in the process of installing a 36-inch pressurized irrigation pipeline that runs from the Bartholomew Pond west down 1100 South and eventually to the west side of the City. As part of the installation of the pressurized irrigation pipeline, the pipeline will cross over a United States easement at the approximate location of 2500 East 1100 South, which easement contains the pressurized water line known as the Springville/Mapleton Lateral. In order to cross the United States easement, the City must enter into the proposed Easement Encroachment Agreement.

The proposed Agreement also allows Springville to install a 16-inch waterline across the United States easement.

The proposed Agreement contains many standard provisions for an agreement of this type. The one concern that staff has with the agreement is with the indemnification provision. The Agreement requires the City to indemnify the United States for any damages that arise out of the existence of the City's infrastructure, which adds more liability to the City than a negligence standard. The United States to base the indemnification on a negligence standard. However, they are willing to include language that provides the City its protections under the Government Immunity Act. The language that includes the Government Immunity Act has been accepted by the United States, but we have not received the revised agreement with the new language. The recommended motion is contingent upon the City Attorney's final review to ensure that the new language is in the agreement before it is executed by the City.

### FISCAL IMPACT

Springville City will not incur any costs or pay any fees for the encroachment.

Attachments: Proposed Agreement

**CITY COUNCIL AGENDA**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
CENTRAL UTAH PROJECT COMPLETION ACT  
UTAH LAKE DRAINAGE BASIN WATER DELIVERY SYSTEM  
MAPLETON SPRINGVILLE PIPELINE, PHASE 2

EASEMENT ENCROACHMENT AGREEMENT  
BETWEEN THE  
UNITED STATES OF AMERICA  
AND  
SPRINGVILLE CITY CORPORATION

This Easement Encroachment Agreement made this \_\_\_\_ day of \_\_\_\_\_ 2014, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation Laws, among the UNITED STATES OF AMERICA and its assigns, hereinafter referred to as the United States, and SPRINGVILLE CITY CORPORATION, hereinafter referred to as the City.

WITNESSETH THAT:

WHEREAS, the United States is the Grantee of those certain easements granted by various individuals, which easements are recorded in the official records of Utah County, State of Utah, hereinafter referred to as the Easement of the United States; and

WHEREAS, the City has requested permission to encroach upon the Easement of the United States in a manner more particularly specified hereinafter; and

WHEREAS, the United States is willing to agree to said encroachment, upon conditions more particularly specified hereinafter;

NOW, THEREFORE, the United States hereby agrees to encroachment upon the Easement of the United States by the City only to the extent and for the purposes set forth below:

The City will install, operate, and maintain a 36-inch PVC C-905 pressurized irrigation pipeline and a 16-inch Ductile Iron (DI) culinary water pipeline. The 36-inch irrigation pipeline will cross under the existing Mapleton-Springville Lateral (MSL) and will connect to the MSL with a 36-inch PVC C-905 pipe at the existing turnout facility. The 16-inch culinary water pipeline will cross over the existing MSL pipelines parallel to the 36-inch irrigation line. The 36-inch irrigation line will also connect to an existing 36-inch DI conduit crossing 400 East through 800 South in Springville. Both pipelines are located in Section 2,

Township 8 South, Range 3 East, Salt Lake Base and Meridian, as shown on Exhibits B through F, attached hereto and by this reference made a part thereof. The City will maintain a vertical separation of 12 inches between their pipelines and the MSL.

1. The federal agency is the Department of the Interior, Bureau of Reclamation, represented by the officer executing this Agreement, his duly appointed successor, or his duly authorized representative.

2. The United States guidelines for agreeing to such encroachment upon the Easement of the United States are shown on Exhibit "A," attached hereto and by this reference made a part hereof.

3. The City or its Contractor shall perform all work within the encroachment area in accordance with the plans, drawings, guidelines, and maps attached hereto, and in a manner satisfactory to the United States, Central Utah Water Conservancy District, hereinafter called the District.

4. SEVERABILITY: Each provision of this use authorization shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this use authorization shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the use authorization as a whole.

5. ILLEGAL USE: Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

6. TERMINATION OF AGREEMENT: This agreement will terminate and all rights of the City hereunder will cease, and the City will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted after failure of the City to observe any of the conditions of this agreement, and on the tenth day following service of written notice on the City of termination because of failure to observe such condition.

7. HOLD HARMLESS: The City hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the City activities under this agreement.

(a) In consideration of the United States agreeing to encroachment upon the Easement of the United States by the City, the City hereby agrees to indemnify and hold the United States, the District, and the Association, their agents, employees, and assigns, harmless from any and all claims whatsoever for personal injuries or damages to property when such injuries or damages directly or indirectly arise out of the existence, construction, maintenance, repair, condition, use or presence of the encroachment upon the Easement of the United States, regardless of the cause of said injuries or damages; provided, however, that nothing in this agreement shall be construed as releasing the United States, or the District and the Association from responsibility for their

own negligence. Nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 989 (28 U.S.C. §1346(b), 2671 et seq.) or other applicable law.

(b) In consideration of the United States agreeing to the City encroaching upon the Easement of the United States, the City agrees that the United States shall not be responsible for any damage caused to facilities, equipment, structures, or other property if damaged by reason of encroachment upon the Easement of the United States by the City. The City hereby releases the United States, the District and the Association, their officers, employees, agents, or assigns, from liability for any and all loss or damage of every description or kind whatsoever which may result to the City from the construction, operation, and maintenance of Project works upon said lands; provided that nothing in this Agreement shall be construed as releasing the United States or the District and the Association from liability for their own negligence.

(c) If the maintenance or repair of any or all structures and facilities of the United States located on the easement area should be made more expensive by reason of the existence of the encroachment improvements or works of the City or its Contractor, the City and or its Contractor will promptly pay to the United States or the District, and the Association, their agents or assigns, responsible for operation and maintenance of said structures or facilities, the full amount of such additional expense upon receipt of an itemized bill.

8. PROTECTION OF UNITED STATES INTERESTS: The City shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any Federal, state, or local governmental body having jurisdiction over the encroachment.

9. UNRESTRICTED ACCESS: The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever.

10. COVENANT AGAINST CONTINGENT FEES: The City warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to require City to pay the full amount of such commission, percentage, brokerage, or contingent fee.

11. OFFICIALS NOT TO BENEFIT: No member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

12. SUCCESSORS IN INTEREST OBLIGATED: The provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto; provided, however, that no such heir, executor, administrator, personal representative, successor or assign of the City shall

have the right to use, alter, or modify the encroachment in a manner which will increase the burden of the encroachment of the Easement of the United States.

13. This agreement makes no finding as to the right, title, or validity of the City or the encroaching interest, but merely defines the conditions under which the encroachment will not be deemed unreasonable by the United States.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Wayne G. Pullan  
Manager, Provo Area Office

CITY:  
SPRINGVILLE CITY CORPORTION

By: \_\_\_\_\_  
Title:

CONCUR:

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By: \_\_\_\_\_  
Title:

ACKNOWLEDGMENT OF THE UNITED STATES

State of        UT)  
                  ) ss.  
County of     UT)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the Provo Area Office, Bureau of Reclamation, Upper Colorado Region, United States Department of Interior, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of the United States of America pursuant to authority delegated to him.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF SPRINGVILLE CITY CORPORATION

State of        )  
                  ) ss.  
County of     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me \_\_\_\_\_, to be known to be the \_\_\_\_\_ of Springville City Corporation, the signer of the above instrument, who duly acknowledged to me that he/she executed the same on behalf of Springville City Corporation, pursuant to authority delegated to him/her.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF CENTRAL UTAH WATER CONSERVANCY DISTRICT

State of        UT    )  
                                  ) ss.  
County of     UT    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared before me \_\_\_\_\_, to be known to be the \_\_\_\_\_ of Central Utah Water Conservancy District, the signer of the above instrument, who duly acknowledged to me that he/she executed the same on behalf of Central Utah Water Conservancy District, pursuant to authority delegated to him/her

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

ENCROACHMENT GUIDELINES FOR  
MAPLETON-SPRINGVILLE LATERAL PIPELINE

PROTECTION CRITERIA

A. Surface structures that generally will be allowed to be constructed within United States rights-of-way include asphalt roadways, with no utilities within roadway, non-reinforced parking lots, curbs, gutters and sidewalks, walkways, driveways. However, where United States system pipe has specific maximum and minimum cover designation the special requirements for roadways, parking lots and driveways crossing over the pipe shall be obtained from the United States for the maximum allowable external loading or minimum cover. **HOWEVER, IT IS UNDERSTOOD THAT ALL SURFACE STRUCTURES SHALL BE ANALYZED AND CONSIDERED ON AN INDIVIDUAL BASIS.**

B. Structures that may not be constructed in, on, or along United States rights-of-way include but are not limited to, permanent structures such as fences, retaining walls, block walls, buildings, garages, decks, carports, trailers, and swimming pools as designated by the United States.

C. No trees or vines will be allowed within the rights-of-way of the United States.

D. All temporary or permanent changes in ground surfaces within United States rights-of-way are to be considered to be encroaching structures and must be handled as such. Earthfills and cuts on adjacent property shall not encroach onto United States rights-of-way without prior approval by the United States.

E. Existing gravity drainage of the United States rights-of-way must be maintained. No new concentration of surface or subsurface drainage may be directed onto or under the United States rights-of-way without adequate provision for removal of drainage water or adequate protection of the United States rights-of-way.

F. Prior to construction of any structure that encroaches within United States rights-of-way, an excavation must be made to determine the location of existing United States facilities. The excavation must be made by or in the presence of water users or the United States.

G. Any contractor or individual constructing improvements in, on, or along United States rights-of-way must limit his construction to the encroaching structure previously approved and construct the improvements strictly in accordance with plans or specifications.

H. The ground surfaces within United States rights-of-way must be restored to a condition equal to that which existed before the encroachment work began or as shown on the approved plans or specifications

I. The owner of newly constructed facilities that encroach on United States rights-of-way shall notify the United States and/or the District upon completion of construction and shall provide the District with one copy and the United States with two copies of as-built drawings showing actual improvements in, on, or along the rights-of-way.

J. Except in case of ordinary maintenance and emergency repairs, an owner of encroaching facilities shall give the District at least 10 days' notice in writing before entering upon United States rights-of-way for the purpose of reconstructing, repairing, or removing the encroaching structure or performing any work on or in connection with the operation of the encroaching structure.

K. If unusual conditions are proposed for the encroaching structure or unusual field conditions within United States rights-of-way are encountered, the United States reserves the right to impose more stringent criteria than those prescribed herein.

L. All backfill material within United States rights-of-way shall be compacted to 90 percent of maximum density unless otherwise shown. Mechanical compaction shall not be allowed within 6 inches of the projects works whenever possible. In no case will mechanical compaction using heavy equipment be allowed over the project works or within 18 inches horizontally of the projects works.

M. That the backfilling of any excavation or around any structure within the United States rights-of-way shall be compacted in layers not exceeding 6 inches thick to the following requirements: (1) cohesive soils to 90 percent maximum density specified by ASTM Part 19, D-698, method A; (2) noncohesive soils to 70 percent relative density specified by ANSI/ASTM Part 19, d-2049, par. 7.1.2, wet method.

N. Any nonmetallic encroaching structure below ground level shall be accompanied with a metallic strip within the United States rights-of-way.

O. Owners of encroaching facilities shall notify the United States at (801) 379-1000, and/or the District at (801) 226-7100, at least forty-eight (48) hours in advance of commencing construction to permit inspection by the United States and/or the District.

P. No use of United States lands or rights-of-way shall be permitted that involve the storage of hazardous material.



## STAFF REPORT

**DATE:** February 12, 2015

**TO:** The Honorable Mayor and City Council

**FROM:** John Penrod, City Attorney

**SUBJECT: CONSIDERATION OF AMENDING TITLE 6, CHAPTER 8 OF THE SPRINGVILLE CITY CODE.**

### RECOMMENDED ACTION

Motion to Approve Ordinance No. \_\_\_\_ that amends Title 6, Chapter 8 of the Springville City Code.

### BACKGROUND

The Utah Municipal Telecommunications License Tax Act sets the amount of tax that the City may levy. The Act was amended in 2007, which amendment reduced the amount of tax that a City could levy from 4% to 3.5% of all gross receipts from telecommunications service provided within the City.

Prior to 2007, the City's ordinance levied a 4% telecommunications license tax on telecommunications service provided within the City. In 2007, the City and the tax commission reduced the amount of the levy to 3.5% in accordance with the 2007 Utah Code amendment. The proposed ordinance cleans up the City's ordinance.

### FISCAL IMPACT

None.

Attachments: Proposed Ordinance

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING TITLE 6, CHAPTER 8 OF THE SPRINGVILLE CITY CODE.**

**NOW THEREFORE**, be it ordained by the Springville City Council of Springville City, Utah, as follows:

**SECTION 1.** Title 6, Chapter 8 of the Springville City Code is hereby amended as follows:

**6-8-100 Definitions.**

As used in this ordinance terms are defined as in the Utah State Code Section 10-1-402.

**6-8-101 Levy of Tax.**

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to ~~this~~ municipality in accordance with Utah Code Section 10-1-407.

**6-8-102 Rate.**

The rate of tax levy shall be 43.5% of the telecommunications provider's gross receipts from telecommunications service that are attributed to the municipality. ~~If the location of the transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of~~ subject to the requirements of Utah Code Section 10-1-407.

**6-8-103 Rate Limitation and Exemption Therefrom.**

This rate of this levy shall not exceed 43.5% of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:

- (a) a municipal general election; or
- (b) a regular general election; ~~or~~
- ~~(c) a local special election.~~

**6-8-104 Effective Date of Tax Levy.**

This tax shall be levied beginning July 1, 20047.

**6-8-105 Changes in Rate or Repeal of the Tax.**

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This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403.

**6-8-106 Interlocal Agreement for Collection of the Tax.**

On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

**6-8-107 Procedures for Taxes Erroneously Recovered from Customers.**

Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from a customer the municipal telecommunications license tax unless the customer meets the same requirements that a purchaser is required to meet to bring a cause of action against a seller for a refund or credit as provided in Utah Code Subsection 59-12-110.1(3), except as provided in Utah Code Section 10-1-408.

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**SECTION 2. EFFECTIVE DATE:** This ordinance shall become effective immediately upon passage and posting.

**PASSED, ADOPTED AND ORDERED POSTED** by the Council of Springville City, Utah this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR WILFORD W. CLYDE

**ATTEST:**

\_\_\_\_\_  
KIM RAYBURN  
CITY RECORDER



## STAFF REPORT

**DATE:** February 12, 2015

**TO:** The Honorable Mayor and City Council

**FROM:** John Penrod, City Attorney

**SUBJECT: CONSIDERATION OF APPROVING A FRANCHISE AGREEMENT WITH SYRINGA NETWORKS, LLC.**

### RECOMMENDED ACTION

Motion to Approve the execution of a Franchise Agreement with Syringa Networks, LLC.

### BACKGROUND

Pursuant to Springville City Code Title 13, Syringa Networks, LLC has applied for a Franchise Agreement with Springville to install telecommunications infrastructure in the City's right-of-way. Syringa Networks is privately held Idaho corporation headquartered in Boise, Idaho with an office in Salt Lake City. Over the past few years, Syringa Networks has been expanding its business into Utah, working its way from northern Utah to southern Utah.

In Utah, Syringa Networks has acted as a broadband service provider. Syringe provides services to high end bandwidth users, usually cellular companies or those who re-sell bandwidth.

The franchise agreement meets the requirements of Springville's Telecommunications Rights-of-Way ordinance found in Title 13 of Springville's City Code. The agreement includes the following provisions.

**Ordinance.** Syringa will be required to follow the City's Telecommunications Rights-of-Way ordinance. If the City amends the ordinance and there is a conflict between the ordinance and the agreement, the agreement will govern, unless the ordinance is for public health, safety or welfare, in which case the amendment will govern.

**Franchise Description.** The agreement confers on Syringa the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the City's rights-of-way. The franchise does not grant Syringa the right, privilege or authority to engage in community antenna (or cable) television business. However, Syringa will have the right to permit businesses with cable franchises to utilize Syringa's system. The franchise rights may not be assigned to another entity.

**Franchise Fee.** The franchise fees shall be 3.5% of gross receipts in accordance with 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.

### CITY COUNCIL AGENDA

**Term and Renewal.** The term of the agreement is 10 years with a 5 year renewal option should both parties agree. This is in line with Springville's ordinance.

**Indemnification and Insurance.** Syringa is required to indemnify the City for damages Syringa causes and to provide adequate insurance.

**Installation.** Syringa is required to follow all of the City's excavation and other pertinent ordinances, policies, and standards and specifications in installing its infrastructure.

### **FISCAL IMPACT**

Springville City will receive 3.5% of Syringa's gross proceeds within the City.

Attachments: Proposed Agreement

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

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between Springville City, Utah (hereinafter “CITY”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 110 South Main Street, Springville, Utah, 84663, 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; and

WHEREAS, the CITY has enacted Title 13 of the Springville 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 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, as it is or may be amended in accordance with Section 1.3 of this Agreement. 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 of law, to be unlawful or beyond the CITY’s authority.

1.3 Ordinance Amendments. The CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time, as its City Council deems 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 during its term, unless an exigency requires an amendment to the Ordinance for public health, safety or welfare, in that case, the amended Ordinance shall be controlling. Otherwise, the PROVIDER agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. PROVIDER shall not provide services directly regulated by the Utah Public Service Commission ("PSC") unless authorized by the PSC. 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 or entity, except a wholly owned subsidiary of PROVIDER, unless agreed to in writing by the CITY.

1.5 Licenses. The PROVIDER acknowledges that it has obtained 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 approvals, licenses or 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. FRANCHISE FEE.**

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a tax of 3.5% of gross receipts in accordance with the Municipal Telecommunications 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

Payments are due to the Utah State Tax Commission within forty-five (45) days after the close of each calendar month. Interest will accrue on late payments at the rate charged for delinquent state taxes.

If the Municipal Telecommunications 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.

2.2 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.

### **ARTICLE 3. TERM AND RENEWAL.**

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of ten (10) 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 ten (10) year term of this Agreement, the parties may renew the franchise granted herein for an additional five (5) year term by mutually agreeing in writing to the same terms and conditions as contained in this Agreement not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 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 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 Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

### **ARTICLE 4. 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 5. CHANGING CONDITIONS AND SEVERABILITY.**

6.1 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.

6.2 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 ordinances, regulations, and standards and specifications for excavation permits. 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 ordinances, regulations, and standards and specifications for excavation permits.

## **ARTICLE 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.**

6.1 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 2 of this Agreement and does not correct such failure within sixty (60) 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.

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

6.3 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.

6.4 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 7. PARTIES' DESIGNEES.**

7.1 CITY designee and Address. The City Administrator 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 110 South Main Street, Springville, Utah 84663, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

7.2 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.

7.3 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 8. INSURANCE AND INDEMNIFICATION**

8.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.

8.2 Indemnification. The PROVIDER agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the PROVIDER's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. 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. Notwithstanding any provision of this Section to the contrary, the PROVIDER shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

## **ARTICLE 9. INSTALLATION**

9.1 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.

9.2 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, regulations, policies, and standards and specifications 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. PROVIDER agrees to obtain the proper excavation permit from CITY and pay applicable fees prior to excavating.

**ARTICLE 10. GENERAL PROVISIONS**

10.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (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.

10.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

10.3 Time of Essence. Time shall be of the essence of this Agreement.

10.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 No Presumption. All 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.

10.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

10.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this \_\_\_\_ day of \_\_\_\_\_, 2015

“CITY”  
SPRINGVILLE CITY

By: \_\_\_\_\_  
Wilford W. Clyde, Mayor

ATTEST:

\_\_\_\_\_  
Kim Rayburn, City Recorder

APPROVED AS TO FORM:

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John Penrod  
City Attorney

“PROVIDER”

Syringa Networks, LLC, an Idaho limited liability company

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



**EXHIBIT "A"**  
**Telecommunications Rights-of-Way Ordinance**