NOTICE OF A MEETING OF THE
CITY OF HOLLADAY CITY COUNCIL
THURSDAY, NOVEMBER 17, 2022

5:00 p.m. **Council Dinner –** *Council members will be eating dinner. No city business will be discussed.*

5:30 p.m. **Briefing Session -** *The Council will review and discuss the agenda items; NO decisions will be made*

PUBLIC NOTICE IS HEREBY GIVEN that the Holladay City Council will hold a Council meeting **Thursday, November 17, 2022 at 6:00 pm** It is possible that a member of the Council will be participating by electronic means. The Council Chambers shall serve as the anchor location. ** Agenda items may be moved in order, sequence and time to meet the needs of the Council*

All documents which are available to the City Council are also available on the City's website or are linked in this agenda. Interested parties are encouraged to watch the **live video stream** of the meeting - http://cityofholladay.com/government/elected-officials/meetings-and-agendas/

Persons desiring to make public comments or to make comments during any public hearing may provide such comments as follows:
1. **In-person attendance**: at Holladay City Hall
2. **Email** your comments by 5:00 pm on the date of the meeting to scarlson@cityofholladay.com

AGENDA

I. ***Welcome*** – Mayor Dahle

II. ***Pledge of Allegiance***

III. ***Presentation on 2022 Helping Hands Awards***
Emily White, Senator Jani Iwamoto & Senator Patrice Arent

IV. ***Public Comments***
Any person wishing to comment on any item not otherwise on the agenda may provide their comment via email to the Council prior to 5:00 p.m. on the date of the meeting to scarlson@cityofholladay.com, with the subject line: Public Comment. Comments are subject to the Public Comment Policy set forth below

V. ***Consideration of Ordinance 2022-22 Amending Title 13.80 Off-Street Parking Requirements***
(*minimum off-street parking requirements and parking ratios by land use within the city)*

VI. ***Introduction of Salt Lake County Public Works Operations Director Crystal Hulbert and Consideration of Resolution 2022-27 Approving an Interlocal Agreement with Salt Lake County for Public Works***

VII. ***Consideration of Resolution 2022-28 Approving a Franchise Agreement with Syringa Networks, LLC***

VIII. ***City Manager Report*** - *Gina Chamness*

IX. ***Council Reports & District Issues***

X. ***Recess City Council in a Work Meeting***

a. Discussion on Proposed Text Amendment – Lot & Density Standards within the FCOZ Zone

b. Discussion on Community Renewable Energy -low-income programmatic strategies

c. Calendar

Council Meeting Dec. 8

Nov. 28- Tree Lighting

XI. ***Closed Session pursuant to Utah Code Section 52-4-204 & 205 to Discuss the Physical or Mental Health or Professional Competence of an Individual, Potential Litigation, Property Acquisition and Disposition and Deployment of Security Systems***

XII. ***Adjourn***

Public Comment Policy & Procedure: During each regular Council Meeting there will be a Public Comment Time. The purpose of the Public Comment Time is to allow citizen's access to the Council. Citizens requesting to address the Council will be asked to complete a written request form and present it to the City Recorder. In general, the Chairman will allow an individual three minutes to address the Council. A spokesman, recognized as representing a group in attendance, may be allowed up to five minutes. Comments which cannot be made within these time limits should be submitted in writing to the City Recorder prior to noon the day before the meeting so they can be copied and distributed to the Council. At the conclusion of the Citizen Comment time, the Chairman may direct staff to assist the citizen on the issue presented; direct the citizen to the proper administrative department(s); or take no action. This policy also applies to all Public Hearings.

CERTIFICATE OF POSTING

I, Stephanie N. Carlson, the City Recorder of the City of Holladay, certify that the above agenda notice was posted at City Hall, the City website www.cityofholladay.com, the Utah Public Notice website www.utah.gov/pmn, and was emailed to the Salt Lake Tribune and Desert News and others who have indicated interest.

DATE POSTED: Monday, November 14, 2022 at 10:30 am

Stephanie N. Carlson MMC,
City Recorder City of Holladay

Reasonable accommodations for individuals with disabilities or those in need of language interpretation service can be provided upon request. For assistance, please call the City Recorder's office at 272-9450 at least three days in advance. TTY/TDD number is (801)270-2425 or call Relay Utah at #7-1-1

CITY OF HOLLADAY

Helping Hands of Holladay 2022 Awards

Our 2022 Award Recipients



EMILY WHITE



SENATOR JANI IWAMOTO



SENATOR PATRICE ARENT

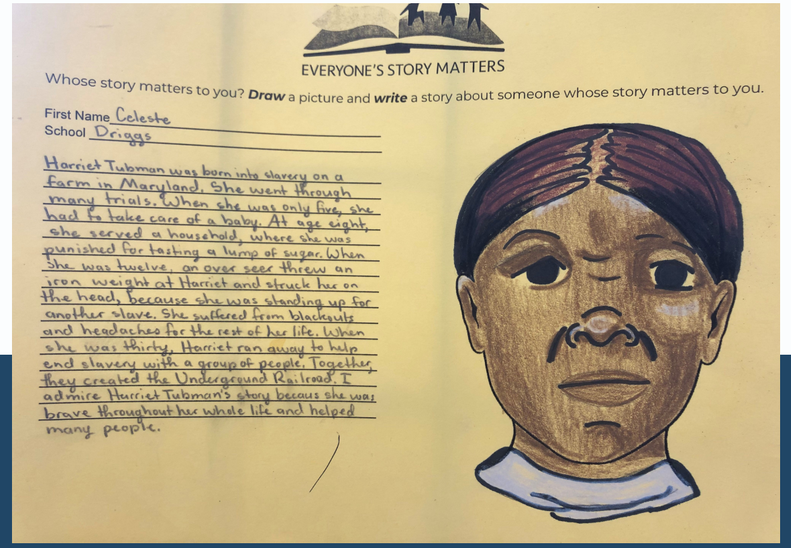
Emily White

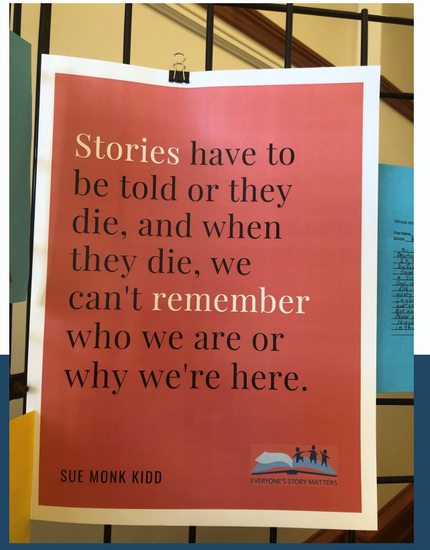
HELPING HANDS OF HOLLADAY 2022

- "One Pen Can Change the World," based on Malala Yousafzai's book about creating solutions through the use of a "magic" pencil for positive change.

- "Everyone's Story Matters" - a community art and literary collaboration between a Holladay portrait photographer and five local elementary schools.

- Catalyst behind the children's playground mural designed by artist Ann Chen.











Senator Jani Iwamoto

HELPING HANDS OF HOLLADAY 2022





- Served 6 yrs on Salt Lake County Council
  - 1st Asian-American woman to hold public office in Utah





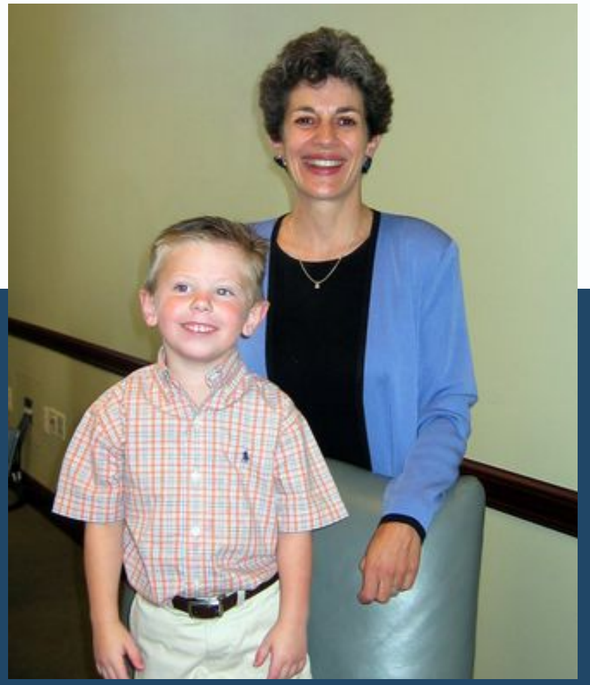


- 2-term senator for Utah fourth district
  - Served as the Assistant Minority Whip
  - Champion of criminal and social justice issues, campus safety, environmental quality, and policies surrounding vulnerable communities

Senator Patrice Arent

HELPING HANDS OF HOLLADAY 2022

- Two decades of public service
  - Former member Utah House and Senate
- 90 bills+ passed
  - Utah's Newborn Safe Haven Law
  - Air quality legislation
- Founded Utah Clean Air Caucus in 2013
- Bipartianship is her trademark
- Mentorship is her legacy













CITY OF HOLLADAY

ORDINANCE NO. 2022-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOLLADAY AMENDING PORTIONS OF TITLE 13 RELATING TO OFF STREET PARKING REQUIREMENTS

WHEREAS, City staff has recently reviewed City Code provisions relating to off street parking requirements and desires to make amendments to update land use terminology, implement modern parking theory, update current ratios and address stated goals of the General Plan, and has proposed amendments to Title 13; and

WHEREAS, the Planning Commission has held a public hearing and has recommended that the City Council adopt the proposed amendments and the City Council has held a public hearing and now desires to adopt the proposed amendments;

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Holladay, Utah as follows:

Section 1. Amendment. Chapter 13.80 Off Street Parking Requirements of the City Code of the City of Holladay is hereby amended to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall take effect upon publication or posting or thirty (30) days after passage, whichever occurs first.

PASSED AND APPROVED this 17th day of November, 2022.

By:_____
Robert Dahle, Mayor

[SEAL]

VOTING:

Ty Brewer	Yea	Nay ___
Matt Durham	Yea	Nay ___
Paul Fotheringham	Yea	Nay ___
Drew Quinn	Yea	Nay ___
Dan Gibbons	Yea	Nay ___
Robert Dahle	Yea	Nay ___

*Amendments proposed to highlighted sections only

CHAPTER 13.80: OFF STREET PARKING REQUIREMENTS

SECTION:

13.80.010: Purpose
13.80.020: Off Street Parking Required
13.80.030: Parking Design Standards
13.80.040: Number Of Spaces Required
13.80.050: Shared Parking
13.80.060: Maintenance And Development Generally
13.80.070: Surfacing
13.80.080: Screening
13.80.090: Landscaping
13.80.100: Lighting
13.80.110: Signs
13.80.120: Off Street Loading Requirements
13.80.130: Gasoline Pump Requirements
13.80.140: Drive-Up/Drive-Thru Service (Food And Non-Food Uses)

13.80.010: PURPOSE:

The purpose of this chapter is to reduce street congestion and traffic hazards in the City by incorporating adequate, attractively designed facilities for off street parking and loading as an integral part of every use of land in the City. (Ord. 2012-15, 9-20-2012)

13.80.020: OFF STREET PARKING REQUIRED:

A. Parking Required: There shall be provided at the time any building or structure is erected or enlarged or increased in capacity, or any use is established, off street parking spaces for automobiles in accordance with the requirements in this chapter.

B. Plans Required To Obtain Building Permit: All applications for a building permit shall be accompanied by a plot plan showing the required parking spaces, with ingress and egress. The plan shall be reviewed and approved by the Community and Economic Development Department.

C. Alternatives To On Site Parking: The required off street parking for any new use, structure or building which, due to the size or location of the parcel, cannot be provided on the premises may be provided on other property not more than a three hundred foot (300') distance from the building site measured along the shortest available pedestrian route of access upon a finding by the Planning Commission that the off site parking is conveniently located for such use and will not create a traffic or safety problem. (Ord. 2012-15, 9-20-2012)

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13.80.040: NUMBER OF SPACES REQUIRED:

Except as provided herein, u~~U~~nder no circumstances shall there be less parking spaces provided than actually required by the use.

A. Number Specified:

The minimum number of off street parking spaces required in all zones except the HV and R-M/U Zone, shall be as follows:

Amusement center (arcade)	1 space per 100 square feet of floor area
Apartments for elderly persons	1 space for each dwelling unit
Automobile or machinery sales and service garages	2 spaces plus 1 space for each 400 square feet of net floor area
Banks and business or professional offices	2 spaces plus 1 space for each 200 square feet of net usable floor area
Bed and breakfast	1 space for each person employed on the highest employment shift, plus 1 space for every guestroom, plus parking for all accessory uses defined in this title
Bowling alleys	5 for each alley
Churches	1 space for each 6 1/2 feet of linear pew or 3 1/2 seats in the auditorium; provided, however, that where a church building is designed or intended to be used by 2 congregations or special meetings, an additional 50% of the minimum spaces required shall be provided. ~~11/2 parking spaces shall be provided for each 31/2 seats in the auditorium. For buildings designed or intended to be used for conferences or other special meetings involving more than the regular congregations, the necessary parking shall be determined by the Planning Commission~~
Dance halls and assembly halls without fixed seats, exhibition halls, except church assembly rooms in conjunction with auditorium	3 spaces for each 100 square feet of floor area used by assembly or dancing
Daycare center for children	4 spaces plus 1 space per 500 square feet of floor area
Dormitory building	1 space for each tenant
Dwellings, multiple	2 spaces for each 3 bedroom unit, 1.5 for each 2 bedroom unit, 1 space for each 1 bedroom unit ~~dwelling unit~~
Dwellings, single-family	2 spaces for each dwelling unit
Dwellings, internal accessory dwelling unit	1 space for each dwelling unit
Funeral homes, mortuaries	1 space for each 40 square feet of floor area in assembly room
Furniture and appliance stores, household equipment or furniture repair shop	1 space for each 600 square feet of gross leasable area
Hospitals and convalescent hospitals	2 spaces per bed for the total capacity of building
Hotels and motels	1 space for each living or sleeping unit, plus parking for all accessory uses as defined in this title
Indoor firearms and/or archery range	2 spaces per shooting point
Manufacturing plants, research or testing laboratories, bottling plants	1 space for each person employed on the highest employment shift
Medical or dental clinics	6 spaces for each doctor's office plus 1 space per employee

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Nursing homes	4 spaces plus 1 space per each 5 beds
Recreation	4 spaces per court for tennis courts, 3 spaces per court for racquetball courts, 2 spaces per court for squash courts
Residential facility for elderly persons	2 spaces for the dwelling unit, plus 2 spaces for visitors, the parking spaces may be arranged 1 behind the other
Residential healthcare facility	4 spaces for facilities with 5 or less residents, the parking spaces may be arranged 1 behind the other; and 4 spaces plus 1 space per each 5 beds
Restaurant, coffee/juice bar - full service	1 space per 100 square feet of dining area or 1 space for each 4 ~~3~~ seats (whichever is greater) plus 1 stall per each shift employee. Required parking shall not include minimum spaces required in drive-thru lanes (section 13.80.140 of this chapter)
Restaurant, drive-up/drive-thru (fast food outlet with large portion of take-out and/or drive-thru service)	~~2~~ 1spaces per 100 square feet of dining area or 1 space for each ~~21/2~~ 4 seats (whichever is greater) plus 1 stall per each shift employee. Required parking shall not include minimum spaces required in drive-thru lanes (section 13.80.140 of this chapter)
Restaurants or private nonprofit clubs	1 space for each 21/2 seats or 3 spaces per 100 square feet of floor area, whichever is greater
Retail stores, shops, etc., except as provided in this subsection	1 space for each 200 square feet of retail floor space
Rooming/boarding house	1 space per bedroom
Schools	1 space for each 31/2 seats in an auditorium, plus 1 space for each administrator and faculty
Shopping centers	5 spaces for each 1,000 square feet of gross leasable area
Short term rental	2 spaces per dwelling unit plus 1 additional space for each bedroom exceeding 2 bedrooms. For buildings with 2 dwelling units or less, the third and fourth spaces, when required, can be in tandem with the first 2 spaces required
Sports arenas, auditoriums, theaters, assembly halls and meeting rooms	1 space for each 3 seats of maximum seating capacity
Trailer sales	5 spaces minimum, or 5 percent of the total site area excluding the landscaped areas, whichever is greater
Wholesale establishments, warehouses, service and maintenance centers and communication equipment buildings	1 space for each person employed during the highest employment shift

B. Adjustments to Number of Off-Street Parking Spaces Required:

1. The following percentages of the minimum stalls required may be designed, designated and maintained to accommodate “Compact” cars or motorcycles, scooters.

a. A maximum of 25% of minimum stalls required may be compact stalls

b. A maximum of 15% of minimum stalls required may be motorcycle/scooter stalls

2.Adjustments to minimum parking requirements may be allowed to account for local factors and proposed development strategies which reduce traffic demand generated by the land use.

Upon application to the Planning Commission, as per section 13.08 of this Title, a property owner may petition to adjust the required minimum parking by selecting from the following table of allowable strategies. Reductions selected shall not exceed 30% of the minimums required.

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Strategy	Description	Reduction	Traffic Reduction
Shared Parking	Have each parking space serve multiple users and destinations.	10-30%	
Parking Restrictions	Regulations that favor reserved areas for higher-value uses such as service vehicles, deliveries, customers, quick errands, and people with special needs.	10-30%	
More Accurate and Flexible Standards	Via a targeted parking study, adjustment of parking standards to more accurately reflect demand in a particular situation.	10-30%	
Smart Growth/Transit Oriented Development	Proposal of a compact, mixed, multi-modal development designed to shared parking lots and effectively use alternative modes of transportation within .25 mile radius.	10-30%	X
Walking and cycling Improvements	Install or improve walking and cycling conditions within .25 miles of the project, to expand the service by a parking facility.	5-15%	X
Increase Capacity of Existing Facilities	Increase parking supply by using otherwise wasted space, smaller stalls, car stackers and valet parking, without impacting existing or reducing required landscaping.	5-15%	
Mobility Management	Mandated efficient travel patterns, including changes in mode, timing, destination and vehicle trip frequency of staff, employees.	10-30%	X
Parking Pricing	Charge motorists directly and efficiently for using parking facilities.	10-30%	X
Financial Incentives	Provide financial incentives to staff, employees to shift mode.	10-30%	X
Bicycle Facilities	Provide bicycle storage and changing facilities.	5-15%	X
Improve User Information and Marketing	Provide convenient and accurate information on parking availability and price, using maps, signs, brochures and electronic communication.	5-15%	X

B. Development In the R-M/U zone;

1. Minimum Number Of Parking Spaces: All developments within the R-M/U Zone shall provide the minimum number of parking standards as adopted in the Site Development Master Plan,as per 13.65.060.

~~B.~~C. Developments In The HV Zone:

1. Minimum Number Of Parking Spaces: All developments within the HV Zone shall provide a minimum number of off street parking spaces in the amount specified on chart 13.80.1 in this section. In no case shall the parking provided be less than that required by the use(s) allowed within the structure except as specifically allowed by the Planning Commission upon request per subsection B4 of this section. Notwithstanding the foregoing, when shared parking is furnished as provided in section 13.80.050 of this chapter, the total number of required parking spaces may be reduced as authorized in that section.

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CHART 13.80.1

Use	Required Spaces
Bed and breakfast	1 space per bedroom plus 1 space
Daycare/preschool	3 spaces plus 1 space for each employee on the premises at the same time
General business and professional office (except medical and dental office)	2.5 spaces per 1,000 square feet of net leasable area
General retail	2.5 spaces per 1,000 square feet of net leasable area
Medical and dental office	6 spaces for each doctor's office plus 1 for each employee working at the same time
Neighborhood market	3.5 spaces per 1,000 square feet of net leasable area
Personal services	2.5 spaces per 1,000 square feet of net leasable area
Public and quasi-public use	As provided in this section for most similar use
Residential[1]	1 space for each 1 bedroom unit
	1.5 spaces for each 2 bedroom unit
	2 spaces for each 3 bedroom unit
Restaurant	1 space for each 4 seats

Note:

1. When a dwelling unit has over 4 bedrooms, the Community Development Director shall designate the number of required spaces.

2. Existing Surface Parking Lots: The use of existing surface parking lots within the HV Zone may be continued so long as upon expansion or remodeling of the associated structures (see section 13.71.060 of this title), the parking lot is improved, where reasonably possible, to meet the requirements of this section. Exceptions may be granted by the Community Development Director using alternative parking located within two hundred feet (200') from the project site.

3. Maximum Number Of Spaces: In the HV Zone, the maximum number of surface lot parking spaces shall be no more than one hundred twenty five percent (125%) of the required minimum number of spaces as required in chart 13.80.1 of this section.

4. Abutting Public Parking: The Planning Commission may allow for fifty percent (50%) of immediately abutting parking stalls in the public right-of-way to be counted toward the minimum required number of stalls for a use in the HV Zone as per chart 13.80.1 of this section, if:

a. The use can demonstrate that the abutting parking stalls will be used by the customers of that use as the primary parking location within the village, and

b. The use can demonstrate that the reduced number of on site parking stalls in conjunction with the abutting stalls in the right of way will be adequate to accommodate the general business activity on the site, and

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c. The approval of abutting stalls in the public right of way will not detrimentally impact overall parking capacity of the Holladay Village area and does not represent a violation of the spirit and intent of this title, and

d. The abutting on street stalls will not be marked, signed or implied by the use that any stall is reserved for exclusive use by the business. (Ord. 2016-25, 11-3-2016)

~~C~~D.. Number Of Parking Spaces For Uses Not Specified: For any use of building not specified in this section, the off street parking requirement shall be determined by the community development director being guided, where appropriate, by the requirements set forth in this section for uses or buildings which, in the opinion of the community development director, are similar to the use or building under consideration.

~~D~~E.. Gross Floor Area Defined: "Gross floor area" means the total floor area designed for public access, including basements, mezzanines and upper floors. (Ord. 2013-26, 10-10-2013; amd. Ord. 2021-24, 9-9-2021)

13.80.050: SHARED PARKING:

A. Permitted: Notwithstanding any other parking requirements provided in this chapter, when nonresidential land uses occupy the same or abutting lots in the R-M, C-1, C-2, HV, or the O-R-D zone, the total number of off street parking spaces required for each use (section 13.80.040 of this chapter) may be combined and shared upon approval as provided herein. A proposal for sharing of off street parking shall be presented to the planning commission for site plan review and conditional use approval. (Ord. 2015-02, 2-5-2015)

B. Application Information: An application for shared parking shall contain the following:

1. The location and type of each use that will share the parking facility;
2. The total parking requirements for each use as provided in section 13.80.040 of this chapter or other applicable provision of this title;
3. The proposed hours of operation of each use;
4. Documentation that shows the uses sharing a parking lot are unlikely to produce a substantial demand for parking at the same time;
5. The number and size of proposed parking spaces. All spaces shall meet the size requirements in subsection 13.80.030A of this chapter, size of spaces;
6. A site plan that demonstrates that the proposed shared parking facility will comply with all the standards required by this code for parking lot development;
7. Proof of ownership of shared parking facility; and
8. A landscaping plan meeting the requirements in subsection 13.80.090.

C. Approval Conditions: Shared parking shall only be approved if:

1. The shared parking facility is located on land in the same ownership as the use, which ownership is established by deed, easement or lease;

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2. Ownership as established in subsection C1 of this section is maintained for the duration of the shared parking permit;

3. A sufficient number of spaces are provided to meet the maximum parking demand of the participating uses;

4. Satisfactory evidence establishes that the participating uses are unlikely to produce a substantial demand for parking at the same time;

5. A disclosure statement is recorded with the city recorder's office stating that the use on the property is contingent on the existence of a shared parking approval;

6. Additional landscaping is provided, as required by the planning commission; and

7. There is a finding by the planning commission that the shared parking facility is conveniently located for such use, readily used, and will not create a traffic or safety problem.

D. Changes: Any subsequent change in use, occupancy, hours of operation, or to a structure shall require review by the community development director to ensure that any such change complies with the provisions of this chapter. Failure to comply may result in the revocation of the conditional use permit. (Ord. 2012-15, 9-20-2012)

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CITY OF HOLLADAY

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLADAY APPROVING THE INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR PUBLIC WORKS SERVICES.

WHEREAS, the City and Salt Lake County have previously entered into an Interlocal Agreement for the provision of public works services by the County to the City; and

WHEREAS, consistent with the terms of that Agreement, the parties now desire to enter a new Agreement to extend the term and to make appropriate changes to the term and cost of providing service within the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Holladay as follows:

Section 1. Approval. The City Council of the City of Holladay hereby approves that certain Interlocal Agreement for Public Works Services between Salt Lake County and the City of Holladay, attached hereto and incorporated herein by reference. The Mayor of the City of Holladay is hereby authorized to sign the Agreement for and in behalf of the City.

Section 2. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall become effective immediately upon its approval by the City Council.

PASSED AND APPROVED this 17th day of November, 2022.

HOLLADAY CITY COUNCIL

By:_____
Robert Dahle, Mayor

[SEAL]

VOTING:

Ty Brewer	Yea	Nay ___
Matt Durham	Yea	Nay ___
Paul Fotheringham	Yea	Nay ___
Drew Quinn	Yea	Nay ___
Dan Gibbons	Yea	Nay ___
Robert Dahle	Yea	Nay ___

Contract No. _____
D.A. No. _____

INTERLOCAL COOPERATION AGREEMENT
FOR
PUBLIC WORKS SERVICES

THIS AGREEMENT (this "Agreement") is made pursuant to the Utah Interlocal Cooperation Act, by and between SALT LAKE COUNTY (the "COUNTY"), a body corporate and politic of the State of Utah; and CITY OF HOLLADAY (the "CITY"), a municipal corporation created under the laws of the State of Utah.

WITNESSETH:

WHEREAS, the CITY desires to contract with the COUNTY for the public works services described in Exhibit "A" and "Exhibit B," attached hereto and incorporated herewith, and

WHEREAS, the parties are local governmental units and are therefore authorized under the Utah Interlocal Cooperation Act, Section 11-13-101, et seq., U.C.A. 1953, as amended, to enter into agreements with each other which enable them to make the most efficient use of their powers.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. PURPOSE.

The COUNTY, through its Public Works Department, Operations Division, will provide the CITY with the services described in Exhibit "A" and Exhibit "B," which are incorporated into this Agreement. Upon the CITY requesting the services, the Parties will determine a schedule for said services to be performed. Said services shall be performed to the same standards and in the same manner as those performed within unincorporated Salt Lake County.

///

2. DURATION.

The term of this Agreement shall begin on July 1, 2022, and end on June 30, 2027. This Agreement will automatically renew for up to two five-year terms thereafter, unless either Party notifies the other of its intent to terminate the Agreement pursuant to Section 6, below. The Parties agree to meet and confer annually regarding amendments to this Agreement as necessary.

3. FINANCING AND PAYMENT.

The CITY shall pay to the COUNTY for the services rendered in the amounts that are contained in the Exhibits for the respective services provided. Upon completion of the services each month, the COUNTY shall send the CITY an invoice for the services which the CITY agrees to pay within thirty (30) days.

4. LIABILITY AND INDEMNIFICATION.

The CITY and the COUNTY are governmental entities under the Utah Governmental Immunity Act. Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officers or employees. Neither party waives any defenses otherwise available under the Act, nor does any party waive any limits of liability currently provided by the Act. The parties agree to indemnify each other and hold each other harmless from any damages or claims for damages occurring to persons or property as a result of the negligence or fault of their own officers, employees or agents involved in the matter pertaining to this Agreement.

5. ADMINISTRATION.

No separate entity is created by this Agreement; however, to the extent that any administration of this Agreement becomes necessary, then the public works directors of each party, or their designees, shall constitute a joint board for such purpose.

6. TERMINATION.

This Agreement may be terminated (with or without cause) by either party upon at least 180 days prior written notice to the other party. Payment shall be made for all work performed prior to termination.

7. ENTIRE AGREEMENT AND AMENDMENT.

This Agreement constitutes the entire agreement between the parties, and no other promises or understandings, express or implied, shall be binding upon the parties. No amendment to this Agreement shall be effective unless made in writing and signed by the parties.

8. NON-FUNDING.

The Parties acknowledge that funds are not presently available for the performance of this contract beyond the end of their respective fiscal years, which is December 31st for the COUNTY. Each Party's obligation beyond that date is contingent upon funds being appropriated for payment due for services. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this contract, then this contract shall create no obligation on the COUNTY as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated or in the event of reduction in appropriation, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this contract and said termination shall be without penalty, additional payment, or other charges of any kind whatsoever to the parties, and no right or action or damages or other relief shall accrue to the benefit of the other Party as to this contract, or any portion

thereof, which may so terminate and become null and void.

9. INTERLOCAL COOPERATION ACT.

The parties acknowledge that this Agreement is subject to the provisions and procedures contained in the Interlocal Cooperation Act and they agree to process, approve, manage, and archive this Agreement in accordance with the provisions of that Act.

[Signatures on following page]

Exhibit A

Scope of Services

DEFINITIONS

Snow Removal – The cost of labor, equipment and materials to remove snow. Except for an extraordinary snow storm, snow should be plowed from arterial roads within 24 hours from end of storm. All other roads should have one pass within 48 hours from the end of the storm. Priority will be to staff day crews (1 a.m. to 3 p.m.). Any cuts will be taken from night crews which could impact snow plowing during the time period of 3 p.m. to 1 a.m. Sidewalk snow removal is secondary to road snow removal.

General Road Maintenance - The County shall perform general road maintenance as needed or as reasonably directed by the City and agreed upon by the County. General road maintenance to be performed by the County includes pothole patching, crack sealing, hand patching.

Street Sweeping - The County shall sweep the roadways at least once each year, and shall respond as needed to spills, accident sites or other areas as directed by the City. At the request of the City, the County will provide reports on sweeping activities for storm water compliance.

Vactor Trucks – The County shall clean out storm drain boxes once every two years and will clean storm drain pipes as needed. Some pipes are cleaned at least once annually. Most are checked when the boxes are cleaned. At the request of the City, the County will provide reports on vactoring activities for storm water compliance.

Traffic Analysis – The County shall provide dynamic feedback signs and traffic counts as requested by the City and agreed upon by the County.

Road Striping - The County shall provide the personnel, equipment and supplies necessary to provide adequate and reasonable reflective striping on the Roadways within the City Limits. The County shall stripe Roadways as directed by the City and agreed upon by the County. The striping to be performed by the County shall include all road striping and pavement markings including, but not limited to, school legends, crosswalks, turn arrows and stop bars.

School Flashers - The County shall install new school flashers as directed by the City and shall maintain and repair all school flashers located within the City Limits which fall under the jurisdiction of the City. The County shall respond within one business day to repair or replace any school flasher after notice from Public Works dispatch or the City.

Sign Maintenance - The County shall provide the personnel, equipment and supplies necessary to provide and maintain regulatory signs, directional signs, street signs and other signs. The County shall inspect and inventory all regulatory traffic signs located within the City Limits annually, and shall repair or install new traffic signs as needed or as reasonably directed by the City and agreed upon by the County. The County shall respond within one hour to repair or replace any "STOP" or "YIELD" sign and within five business days to repair or replace any other sign after notice from Public Works dispatch or

the City.

Milling and Overlay – The cost of labor, equipment and materials to mill (if necessary) and overlay a road. Milling consists of removing up to 2" of existing asphalt. A typical overlay consists of laying up to 2" of new asphalt.

Street Light Maintenance – Cost of labor, equipment and materials to do maintenance on street lights within the city limits and not maintained by another agency. Maintenance includes replacing the bulb or LED module, the glass light fixture and the photo cell. The County shall respond within five business days to repair any street light after notice from Public Works dispatch or the City. Damage due to accident, vandalism, acts of God will be repaired and billed separately

Traffic Signal Construction and Maintenance - The County shall provide the personnel, equipment and supplies necessary to provide adequate and reasonable maintenance of all traffic signals located within the City Limits which fall under the jurisdiction of the City. The County shall inspect and shall provide preventative maintenance of all traffic signals once annually. In addition, the County shall respond within one hour to repair any non-functioning red signal indication or traffic signal in flash or blacked out modes, and the within one next business day for any other traffic signal problem after notice from Public Works dispatch or the City, and shall adopt the City's reasonable direction regarding the timing and synchronization of traffic signals on Roadways within the City limits. The County provides construction of new traffic signals as agreed upon between all entities involved.

Pavement Management –The County shall employ a pavement management system that includes an adequate pavement management software program and physical and visual inventories of all the Roadways once every three years. The County shall provide the City a copy of the Overall Condition Index (OCI) and recommendations as requested by the City. The County will also provide maps, cost estimates, and historical databases for all pavement maintenance activities.

Concrete Maintenance – If funded The County shall provide the personnel, equipment and supplies necessary to perform concrete maintenance. Concrete maintenance includes ADA ramps, sidewalks, and curb and gutter, waterways, etc.

Landscaping - The County shall provide the personnel, equipment and supplies necessary to provide landscaping activities including sprinkler start-up and shut-down, mowing and weed control. These activities will be performed at the direction of the City and as agreed upon by the County.

Emergency Response - The County shall provide the direct personnel, equipment and supplies necessary to assist with Emergency Response, in coordination with the County EOC and under the direction of the City. Emergencies include natural and man-made events such as floods, windstorms, snow events, earthquakes, terrorist attacks, riots, etc.

Other Miscellaneous Activities – These activities include but are not limited to debris removal, setting up barriers for community events, hanging banners, graffiti removal, etc. These activities will be performed at the direction of the City and as agreed upon by the County.

*All service levels above are reflective of the scheduled work that was performed in the FY19-20. Any cuts either to budget or to personnel will reduce the amount of work that the County can perform or the timelines in which the County can complete the request.

Exhibit B

Cost of Services

2022-2023

	Holladay Metrics	Holladay Units	Holladay Costs
Direct Employees	8.00	FTEs	
Shared Employees	1.82	FTEs	
Employee Costs	14,695.00	Hours	848,744
Snow Plow Cost			418,542
Shared Equipment			370,067
Salt	3,537.00	Tons	77,931
Overlay	234,895.52	SqFt	236,070
Chip Seal	-	SqFt	-
Concrete			-
Crack Seal			34,115
Patching			25,000
Other Materials			35,000
Slurry Seal			60,677
Other Sub Contracts			-
Street Lighting Maintenance	218.00	Lights	16,350
Street Lighting Construction			-
Traffic Signal Preventative Maintenance	19.00	Signals	27,075
Traffic Signal Non Preventative Maintenance	19.00	Signals	16,341
Traffic Signal Construction			-
Administration			358,665
Total Contract			2,524,577

CITY OF HOLLADAY

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLADAY APPROVING A FRANCHISE AGREEMENT WITH SYRINGA NETWORKS, LLC, GOVERNING THE USE OF THE RIGHTS OF WAY OF THE CITY OF HOLLADAY.

WHEREAS, the City and Syringa Networks, LLC, have previously entered into a franchise agreement governing the use of the rights of way within the City;

WHEREAS, the above mentioned agreement has since lapsed and the parties desire to enter into a new Franchise Agreement to set forth their understandings and commitments;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Holladay as follows:

Section 1. **Franchise Agreement Approved**. The City of Holladay hereby approves that certain Franchise Agreement with Syringa attached hereto as Exhibit A, and incorporated herein by reference. Mayor of the City of Holladay is hereby authorized to execute the Agreement on behalf of the City.

Section 2. **Severability**. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. **Effective Date**. This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 17th day of November, 2022.

HOLLADAY CITY COUNCIL

By:_____
Robert Dahle, Mayor

[SEAL]

VOTING:

Ty Brewer	Yea	Nay ___
Matt Durham	Yea	Nay ___
Paul Fotheringham	Yea	Nay ___
Drew Quinn	Yea	Nay ___
Dan Gibbons	Yea	Nay ___
Robert Dahle	Yea	Nay ___

FRANCHISE AGREEMENT
City OF HOLLADAY – 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 "Company") with its principal offices at 12301 W. Explorer Drive, Boise, Idaho 83713.

W I T N E S S E T H:

WHEREAS, the Company 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 14, Chapter 18 of the City of Holladay Municipal Code (hereinafter the "Franchise 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 Company 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 Company 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 Company.

1.2 **Ordinance.** The City has adopted the Franchise Rights-of-Way Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. The Company acknowledges that it has had an opportunity to read and become familiar with the Franchise Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Franchise 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 Franchise Rights-of-Way Ordinance. The definitions in the Franchise Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the Company to comply with any provision of the Franchise 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 Franchise Rights-of-Way Ordinance from time to time, as its City Council may deem necessary. The City shall give the Company notice and an opportunity to be heard concerning any proposed amendment. If there is any inconsistency between the Company's rights and obligations under the Franchise 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 which case, the amended Ordinance shall be controlling. The Company 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 Franchise provided hereby shall confer upon the Company, 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 Company 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. Company shall not provide services directly regulated by the Utah Public Service Commission (PSC) unless authorized by the PSC. Company 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 Company the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the Company from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Company'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 Company or to an entity succeeding to acquisition of substantially all of the assets of Company.

1.5 **Licenses.** The Company 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 Franchise Rights-of-Way Ordinance. Company 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 City of Holladay if not defined in the Revised Ordinances of City of Holladay, the meaning set forth in any State energy regulatory agency orders of general applicability; and if not defined either in the Revised Ordinances of City of Holladay 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 City of Holladay, 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 Company 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 Company 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 Company 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 Company under this Agreement.

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

ARTICLE 3. FRANCHISE FEE.

3.1 **Franchise Fee.** For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Rights-of-Way, the Company agrees:

(a) To pay to the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended, and imposed and levied pursuant to City of Holladay Municipal Code, Title 3, Chapter 12 (collectively the "Municipal Telecommunications Tax Laws"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Laws, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and

provisions of the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.

(b) Notwithstanding the provisions of Section 3.1(a) above, the Franchise Fee shall be calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in the Municipal Telecommunications Tax Laws, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

3.2 **Reconciliation.** Within thirty (30) calendar days after the filing of any report or the making of any payment, or within such reasonable additional time as the City may request, the City shall examine such report or payment, determine the accuracy thereof, and, if the City finds any errors, report such errors to the Company for correction. If the Franchise Fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the Franchise Fee as paid shall be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest pending the resolution of the dispute between the parties or through the courts. Neither payment of the Franchise Fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. No acceptance of any payment by the City shall be construed as a release of, or an accord or satisfaction of, any claim the City might have for further or additional sums payable under the terms of this Agreement for the performance of any other obligation of the Company hereunder.

3.3 **Extensions Not Statute of Limitation or Repose.** The aforesaid 30-day notice period is not intended and shall not act as a statute of limitation or repose, which limitation periods shall be governed by Utah Law.

3.4 **Delinquency.** Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the payment. Failure to make any payment and penalty charges within thirty (30) calendar days of the applicable payment date shall constitute breach of the terms of this Agreement and constitute just cause for termination, and such unpaid amount shall bear interest until paid at the rate of an additional ten percent (10%) per annum until paid.

3.5 **Revenue Report Following Termination.** In the event this Agreement or the Franchise should be terminated, forfeited, or determined to be void or invalid by any order or decree by a court of competent jurisdiction, the Company, not later than thirty (30) calendar days following such termination, forfeiture, or determination, shall submit to the City a report prepared as before required, showing the Gross Revenues of the Company in the City for the time elapsed since the last period for which the Company has paid the Franchise Fee. Coincidental with the submission of the report, the Company shall pay to the City the Franchise Fee due and owing to the City for such period.

3.6 **Audits.** For the purpose of verifying the correct amount of the Franchise Fee, the books and records of Company pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, but not more than once a year, upon giving reasonable notice of the intention to inspect or audit said books and records. The Company agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Company has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Company herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

ARTICLE 4. TERM AND RENEWAL.

4.1 **Term and Renewal**. The franchise granted to Company 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 Company 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 Company's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

4.2 **Rights of City Upon Expiration or Revocation.** Upon expiration of the term of this Franchise, forfeiture, or lawful revocation of this Franchise, and if no renewal or extension thereof is agreed upon, Company may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Franchise. Alternatively, the removal, or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

ARTICLE 5. PUBLIC USE RIGHTS.

5.1 **Franchise Rights to Use the Public Right-of-Way.** The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Title 14, Chapter 18 the City of Holladay Municipal Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.

5.2 **Company Duty to Relocate; Subordination to City Use.** Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than ninety (90) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. In the event the City has required the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

5.3 **Duty to Obtain Approval to Move Company Property; Emergency.** Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Manager, City Engineer, Fire Chief, Police Chief, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

ARTICLE 6. PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF Company FACILITIES.

6.1 **Coordination of Construction and Joint Use.** On or before February 28, May 31, August 31, and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will meet (the "Quarterly Coordination Meeting") for the purpose of exchanging information and documents regarding future construction of Company's facilities within the City, with a view toward coordinating their respective activities. Documents and information to be exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, the City Engineer, and the Community Development Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Quarterly Coordination Meeting shall only be commenced upon approval of the City Manager and the Community Development Director. Upon request, information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

6.2 **Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.**

(a) Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of

Company's Network, but shall use the existing poles and facilities of the City Energy Department and other telecommunication Companies under such terms as the Company negotiates with City and these other entities in separate "joint facilities" agreements. City shall cooperate with Company in its negotiating with other telecommunication Companies.

(b) The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

(c) No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and reviewed for approval or disapproval within a reasonable time in writing. Such approval shall not be unreasonably withheld. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

(d) If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

(e) The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company

attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

(f) The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than forty-eight (48) hours advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

6.3 **Duty to Underground.** The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground lines. In addition, the Company shall comply with rules and regulations adopted by the City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

6.4 **Company Duty to Comply with Rules and Regulations.** Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may issue. The Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community, and from time to time, must be done under circumstances that may make prior acquisition of a permit infeasible.

6.5 **Compliance with Pollution Laws.** Company shall ensure that its facilities within the City meet the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

6.6 **Compliance with Applicable Laws.** All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable present and

future federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

6.7 **Location to Minimize Interference.** All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of-Way, or public property.

6.8 **Repair of Damage.** If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public or private property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of-Way, sidewalk, utility, Public Improvement or other public or private property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

6.9 **Guarantee of Repairs.** For a period of one year following the completion of the repair work performed pursuant to Section 6.8, the Company shall maintain, repair, and keep in good condition those portions of said streets, alleys, Rights-of-Way, or public and private property restored, repaired, or replaced to the satisfaction of the City.

6.10 **Safety Standards.** The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations, or standards imposed by law including, but not limited to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

6.11 **Supervision by the City.**

(a) The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

(b) The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

6.12 **Company's Duty to Remove Its Network.**

(a) The Company shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the Network when one or more of the following conditions occur:

(1) The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster;

(2) The Company fails to construct said Network as herein provided and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such failure;

(3) The Franchise is terminated or revoked pursuant to notice as provided herein; or

(4) The Franchise expires pursuant to this Agreement.

(b) The Company's removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.

(c) The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 6.12(a) above and shall have ninety (90) calendar days from the date upon which said notice is received to remove or abandon such facilities.

6.13 **Notice of Closure of Streets.** Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street or lane closure. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 6.10, above.

ARTICLE 7. POLICE POWER.

7.1 **Reservation of Police Power.** The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the 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.

7.2 **Other Regulatory Approval.** The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide, including all lawful and reasonable rules, regulations, policies, resolutions and ordinances now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

ARTICLE 8. City REPRESENTATIVES

8.1 **City Manager's Duties and Responsibilities.** The City Manager is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The City Manager may delegate to others, including but not limited to, the City Attorney, City Engineer, and City Finance Director, the various duties and responsibilities of City Representative. The failure or omission of the Manager or the Manager's designee(s) as City Representative to act shall not constitute any waiver or estoppel.

8.2 **Company Duty to Cooperate.** In order to facilitate such duties of the City Representative, the Company agrees to allow the City Representative reasonable access to any part of the Company's Network within the City's public Rights-of-Way.

8.3 **City Financial Review.** With regard to financially related matters, the Manager or the Manager's designee, as City Representative may undertake a financial review of Company's payment of its Franchise fees and other fees and obligations under this agreement. The failure or omission to conduct a financial review shall not constitute any waiver or estoppel.

8.4 **No Waiver or Estoppel.** Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any of such terms and conditions.

ARTICLE 9. TRANSFER OF FRANCHISE

9.1 **Written Approval Required.** The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed. Any

attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law. Notwithstanding anything to the contrary herein, so long as Company is in full compliance with this Agreement, this Agreement, without any approval or consent of City, may be sold, assigned or transferred by the Company to the Company's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Company's assets in the market defined by the FCC in which the Network is located by reason of a merger, acquisition or other business reorganization.

9.2 **Procedure for Obtaining Approval for Transfer.** At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:

(a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);

(b) qualifications of proposed assignee or transferee;

(c) legal integrity of proposed assignee or transferee;

(d) financial ability and stability of the proposed assignee or transferee;

(e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and

(f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.

9.3 **Certification of Assignee.** Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.

9.4 **Effect of Approval.** In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement until the assignment actually takes place, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.

9.5 **Transfer Upon Revocation by City.** Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole

discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

9.6 **Abandonment of Facilities by Company.** The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

ARTICLE 10. ACCEPTANCE BY THE COMPANY OF FRANCHISE

10.1 **Company Duty to Approve Franchise Agreement.** The Company shall, within sixty (60) calendar days after the approval of this Agreement, execute this Agreement and file an unqualified acceptance of the Agreement acknowledging the provisions of Title 9 Chapter 4 of the City's Ordinances in writing with the City Recorder of the City in a form approved by the City Attorney; otherwise, this Agreement and all rights granted hereunder shall be null and void.

ARTICLE 11. EXTENSION OF CITY LIMITS

11.1 **Annexations.** Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

ARTICLE 12. EARLY TERMINATION OR REVOCATION OF FRANCHISE

12.1 **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 Company fails to make timely payments of the Franchise Fee as required under Article III of this Agreement and does not correct such failure within thirty (30) business days after receipt of written notice by the City of such failure;

(b) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company'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 Company notice of such determination, the Company, within thirty (30) 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 ninety-day period and failure to correct such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company 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 ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;

(c) The Company 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 Company within thirty (30) calendar days; or

(d) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

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

ARTICLE XIII INSURANCE AND INDEMNIFICATION

13.1 **No City Liability.** Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.

13.2 **Company Indemnification of City.** The Company shall indemnify, hold harmless, and at the City's option defend and hold the City, and the officers, agents, boards, and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind (including accidental death) on account of, or arising from, the exercise by the Company of the rights related to this Agreement, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement. The City shall give the Company written notice of its obligation to indemnify

the City within a reasonable time of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Company shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City. In no event shall the City be liable to the Company for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with, this agreement, including but not limited to loss of profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of data, incurred or suffered by the Company.

13.3 **Notice of Indemnification.** The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. Company must acknowledge in writing its obligation to indemnify the City for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the City other than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

13.4 **Insurance.** Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars ($2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.

13.5 **City's Right to Intervene.** In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide

its own defense in connection with the same. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.

13.6 **No Creation of a Private Cause of Action.** The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under these indemnity provisions and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

ARTICLE XIV REMEDIES

14.1 **Duty to Perform.** The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

14.2 **Remedies at Law.** In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided 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.

14.3 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. 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).

14.4 **Force Majeure.** The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

ARTICLE XV NOTICES

15.1 **City and Company Designees and Addresses.** Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:

City of Holladay
Attn: City Manager
4580 S 2300 E
Holladay, UT 84117

With copies to (which shall not constitute notice):

City of Holladay Attorney's Office
2118 E. 3900. S #300
Holladay, UT 84124
Attention: Todd Godfrey

Company:

Syringa Networks, LLC
Attn:
12301 W. Explorer Drive
Boise, Idaho 83713

With a copy to (except for invoices) (which copy will not constitute notice):
Syringa Networks, LLC

ARTICLE XVI CHANGING CONDITIONS

16.1 **Meet to Confer.** The Company and the City recognize that many aspects of the telecommunications 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 Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on 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.

ARTICLE XVII AMENDMENT AND GENERAL PROVISIONS

17.1 **Duty to Negotiate.** At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s).

17.2 **Written Approval to Amend Agreement Required.** No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company, and an ordinance or resolution approving such amendments is approved by the City Council.

17.3 **Entire Agreement.** This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.

17.4 **Governing Law.** This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.

17.5 **Joint Drafting.** The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

ARTICLE XVII SEVERABILITY

18.1 **Conditions.** If any section, sentence, paragraph, term, or provision of this Agreement or the 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 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 hereof or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

18.2 **Conflicts.** In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.

18.3 **Fee Article Non-Severable.** Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid,

unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.

17.4 **Waiver of Non-Severability.** Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.

18.5 **Lease Terms Upon Termination.** In the event this Agreement is terminated pursuant to Section 17.3 hereof, the City grants to the Company a license for the location of facilities according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article III hereof and be bound by all other terms and conditions contained herein; provided, however, that in no event shall the Company be obligated to pay a higher percentage of Gross Revenues as rent or otherwise derived from the sale of telecommunications services within the City than is paid by other telecommunication companies serving within the City.

SIGNED AND ENTERED INTO this ____ day of _____, 2022.

"City"
CITY OF HOLLADAY

By:_____
Gina Chamness, City Manager

ATTEST:

_____
Stephanie Carlson, City Recorder

APPROVED AS TO FORM:

_____
Todd J. Godfrey
City Attorney

"Company"

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 _____, 2022, 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"
Franchise; Use of Rights-of-Way Ordinance

HOLLADAY CITY COUNCIL SUMMARY REPORT

MEETING DATE: November 3, 2022

AGENDA ITEM:

REQUEST: Ordinance Amendment to 13.72; FCOZ Minimum Lot Size - Legislative action

SUBMITTED BY: Connie and Robert Jensen

ACTION NEEDED:
Review proposed amendment to Title 13 Section 72; Minimum Lot size for new lots in the FCOZ Overlay Zone

RECOMMENDATION:
Review proposed amendments to the City of Holladay land use ordinance by the applicant. Hold the required public hearing and, prior to a motion, consider a recommendation (DENY 4-1) provided by the Planning Commission from their meeting held October 4th 2022.

BACKGROUND:
The overall intent of this amendment is to provide for the subdividing of land within the FCOZ zone, in particular the applicant's **1.9 acre lot**. The applications property, though located within Holladay's half-acre zone (R-1-21), the property is currently limited by an overlay zone which overrules the underlying zone and lot sizes by requiring new lots created to be a one-acre, minimum lot size. This provision prevents a subdivision of the applicant's property. As proposed this amendment, will apply to all newly created properties within the FCOZ overlay zone and would not create any non-conforming use situations.

First enacted in the 1997 by Salt Lake County, the Foothills and Canyons Overlay Zone (FCOZ) governs development in the Wasatch Mountains. Additional development standards supplement the underlying zone district by addressing issues such as slope angle, density, watershed and construction, FCOZ sets strict guidelines for any sort of new construction or project. Developed with an eye toward preserving the mountains and water that feed Salt Lake City, FCOZ covers areas like Little and Big Cottonwood Canyons, Millcreek, Emigration Canyon and the mountainous zones of Unincorporated Salt Lake City

In application to this proposal, FCOZ requires newly proposed lots to be a minimum of one-acre or greater. The overlay was created, while being cognizant of private property rights, to preserve the natural character of the foothills and canyons by establishing standards for foothill and canyon development. Limiting new lots to a once ace or larger, is effective at addressing and accomplishing the following:

- Preserve the visual and aesthetic qualities of the foothills and canyons,
- Encourage development designed to reduce risks associated with natural hazards and to provide maximum safety for inhabitants;
- Provide adequate and safe vehicular and pedestrian circulation;
- Encourage development that fits the natural slope of the land in order to minimize the scarring and erosion effects of cutting, filling, and grading related to construction on hillsides and steep slopes;
- Prohibit activities and uses that would result in degradation of fragile soils, steep slopes, and water quality;
- Provide for preservation of environmentally sensitive areas and open space by encouraging clustering or other design techniques to preserve the natural terrain, minimize disturbance to existing trees and vegetation, preserve wildlife habitat, and protect aquifer recharge areas;

GENERAL PLAN COMPLIANCE
The General Plan encourages appropriate development standards for all uses and zoning categories within Holladay. This code amendment is guided by Chapter 2: Land Use, and Chapter 8: Natural Resources and Sustainability.

Chapter 2: Land Use
Residential-Foothills (R-F) This district is intended to accommodate residential developments within the Foothills and Canyons Overlay Zone on properties that require special review for potential slope stabilization, residential structure placement and natural hazards mitigation.

Chapter 8: Natural Resources and Sustainability
Implementation Measures: #4 Protect the hillside and slopes from undesirable development.

AMENDMENT ANALYSIS:
Below is a simplified comparison chart of the current (codified) code and what is proposed

Ordinance	Topic	Current Language	Proposed Changes
13.72.030	*Minimum Lot Size for new development*	The current ordinance maintains new development to a one-acre or larger lot size, regardless of the underlying zone	Proposal to match minimum lot sized to the underlying zone by eliminating the overlay's one acre minimum
			Implementation strategy: the amendment applies to **un-development** property only

STAFF RECOMMENDATION:
Staff recommends that the Council hold the required public hearing and moderate a discussion with the applicant of the proposal.

The question here for the Council could be summarized as: does loosening a minimum lot size requirement for undeveloped land cause undue conflict with the purpose statements of the FCOZ Overlay zone?

For the past 20 years, the FCOZ ordinance requires that private landowners adhere to certain standards of development in order to protect water quality and curb aesthetic intrusions on the natural landscape. Some – but not all - private landowners find this ordinance burdensome. However, as written the strong FCOZ regulations are arguably an effective line of defense for slowing development in the Wasatch. The ordinance's protections are also the reason that the development we do see in the canyons isn't more egregious.

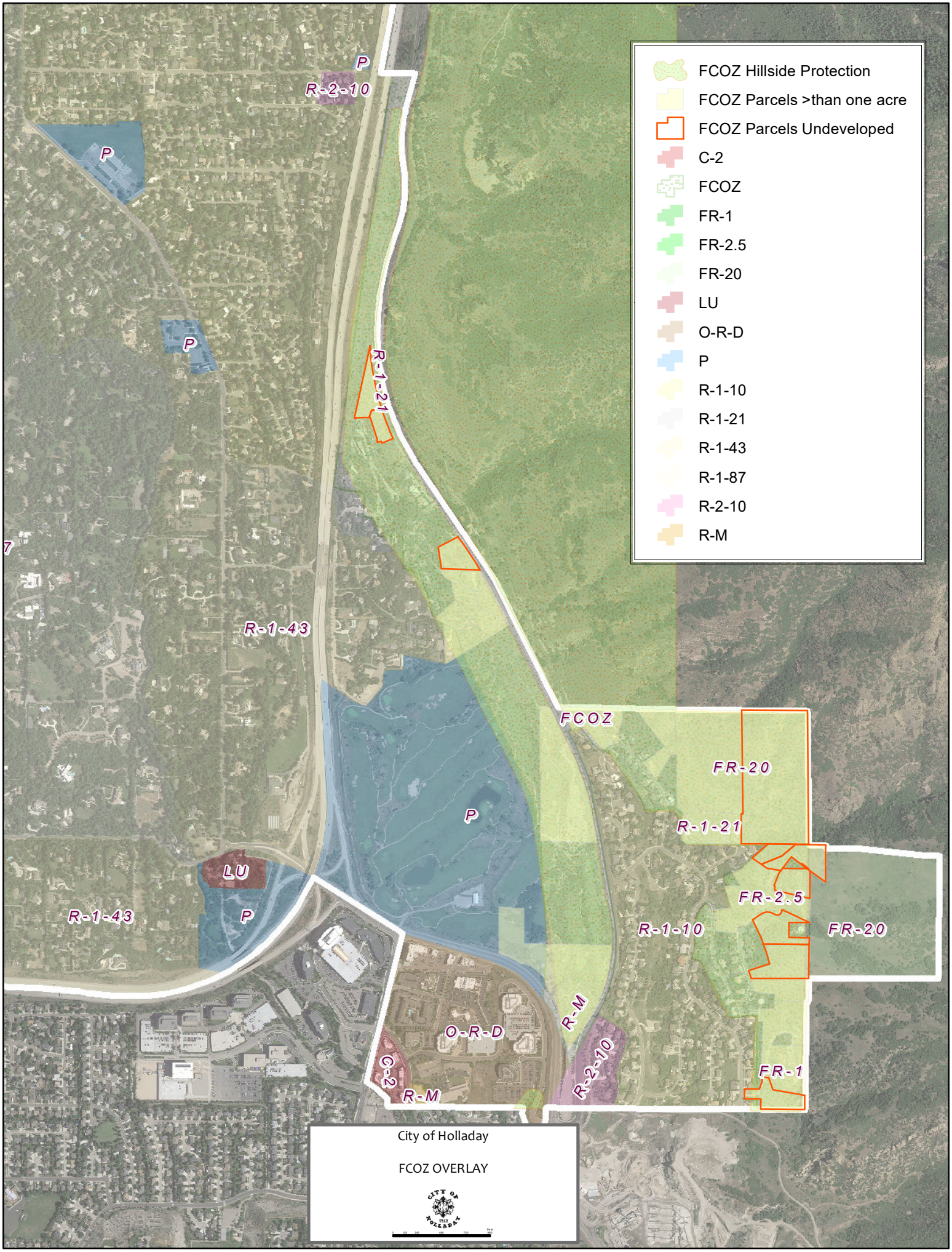
FCOZ is comprehensive, governing everything from potential development near the wetlands and streams at the canyons' bottoms, to building on the ridge lines at the canyons' tops. While considering its scope, there are a few key points critical to FCOZ's intent from a conservation perspective. These are: prohibiting development on slopes above 30 degrees (with some rare exceptions), increasing minimum lot sizes to one acre or larger, limiting development near streams and wetlands, and wildlife protections.

FCOZ application is broad. The overlay spans the Salt Lake County foothills and reaches up each of the main canyons of the Wasatch Front. While the bulk of the ordinance applies to canyon, resort or cabin subdivision development, many of the regulations are neither scalable to smaller development nor geographically specific in scope. Therein lies the frustration of a residential property owner has when faced with large, canyon-scaled development standards when struggling to improve their smaller-scale private property for personal uses. On the other hand, when reviewing the intent of protections described in the purpose statements; sensitive lands are sensitive lands and water quality is water quality. Many of the provisions regulate impact regardless of the scale.

ATTACHMENTS:
Draft amendments, Applicant Narrative, Lot Size Analysis map (Applicable properties),

FISCAL IMPACT: n/a

SUGGESTED MOTION: Motion to continue for discussion


FCOZ Hillside Protection
FCOZ Parcels >than one acre
FCOZ Parcels Undeveloped
C-2
FCOZ
FR-1
FR-2.5
FR-20
LU
O-R-D
P
R-1-10
R-1-21
R-1-43
R-1-87
R-2-10
R-M
P
R-2-10
P
R-1-21
R-1-43
FCOZ
FR-20
R-1-21
P
LU
P
R-1-43
FR-2.5
R-1-10
FR-20
R-M
O-R-D
R-2-10
C-2
R-M
FR-1
City of Holladay
FCOZ OVERLAY


R-2-10
P
P
P
R-1-10
P
R-2-10
P
R-1-43
P
R-1-21
R-1-87
R-1-43
FR-20
FCOZ
R-1-21
P
LU
R-1-43
P
FR-2.5
FR-20
R-M
R-1-10
O-R-D
C-2
R-M
R-2-10
FR-1
City of Holladay
FCOZ OVERLAY

13.72.030: DEVELOPMENT STANDARDS (FCOZ):

A. Lot And Density Requirements:

1. General Rule: All newly proposed subdivision(s) on undeveloped property ~~development~~ in the foothills and canyons overlay zone shall comply with the standards for minimum lot size, minimum lot width, and maximum density required in the underlying zone.

~~2. Exception To General Rule; When Underlying Zone Permits Smaller Than One Acre Lots:~~

~~a. Lots Created After The Effective Date Hereof: If the underlying zone permits a minimum lot size of smaller than one acre, then the minimum lot size for development in this overlay zone shall be one acre.~~

~~b. Lots Of Record That Meet Underlying Zone's Minimum Lot Size Requirement: If the underlying zone permits a minimum lot size of smaller than one acre, then a lot of record approved prior to the effective date hereof that meets the minimum lot size requirement set forth in the underlying zone district shall have a minimum lot size of one-half (1/2) acre.~~

~~3~~2.. Exception To General Rule; Lots Of Record That Do Not Meet The Underlying Zone's Minimum Lot Requirements: If a lot of record subject to this chapter:

a. Was approved prior to the effective date of said ordinance; and

b. Does not meet the minimum lot size or lot width requirements set forth in the underlying zone district; and

c. Is not subject to the substandard lot consolidation provisions set forth in subsection A4 of this section;

then the minimum lot size or lot width requirements shall be waived and development may proceed on said lot of record subject to compliance with all other applicable development standards set forth in this chapter and in the underlying zone.

~~4~~3. Consolidation Of Substandard Lots:

a. General Rule; Consolidation Required: Two (2) or more lots or parcels located in the foothills and canyons overlay zone shall be considered to be a single, undivided lot or parcel for the purposes of this chapter, if all the following factors apply:

(1) The lots or parcels are contiguous;

(2) The lots or parcels are in single and common ownership and are of record on the effective date of said ordinance;

(3) No structures are located on the lots or parcels;

(4) All or part of the lots or parcels do not meet the minimum lot area or lot width requirements set forth in this section; and

(5) Such lots have not been improved with individual and separate connections to municipal water or sewer systems.

No portion of such lots or parcels subject to this consolidation provision shall be used or sold in a manner that renders compliance with the lot width and lot area requirements set forth in this section less feasible.

b. Exception To General Rule: Notwithstanding the general rule for consolidation set forth in subsection A4a of this section, if a lot or parcel that would otherwise be subject to the general consolidation rule meets the minimum lot area or lot width requirements set forth in the underlying zone district, then consolidation shall not be required.

DRAFT

Strategy	Identified Pros or Benefits	Identified Cons or Limitations
Termination Fee Waiver	● Would prevent financial penalty for qualifying individuals electing to leave the Program.	● Revenue impact must be accounted for in Program Design
Enhanced Monthly Bill Credit	● If Program rates are higher than “standard offer” rates, this strategy would help offset the Program-related bill increase expected for the average residential customer.	● If Program costs are determined by kWh usage, a flat rate monthly bill credit may not fully offset Program costs for households with high monthly kWh usage ● Will increase the Program rate for participants who are not enrolled in Schedule 3–likely in the range of 2 cents to 57 cents per month.
Program Donation Facilitation	● Donations made to our Program from participating customers could help fund the Enhanced Monthly Bill Credit	● This strategy may need to be put on hold until the utility has updated its billing platform to allow for online donations
Automatic Opt-Out	● If Program rates are higher than “standard offer” rates, this strategy would prevent any increase to bills for low-income households	● Qualifying individuals may feel stigmatized over their enrollment choices being handled differently than other utility customers ● Will likely decrease overall participation ● Public communication during Program launch is complicated by having two separate notices (one which states customers will be automatically opted in, and another which states customers will be automatically opted out)