



SPRINGVILLE CITY COUNCIL

JANUARY 02, 2018

City Council Chambers

110 South Main Street

Springville, Utah 84663

No Work/Study Meeting

OATH OF OFFICE CEREMONY FOR NEWLY ELECTED OFFICIALS 6:00 P.M.

The City Council will hold Regular Meeting at 7:00 p.m.



**REGULAR AGENDA
SPRINGVILLE CITY COUNCIL MEETING
JANUARY 02, 2018 AT 7:00 P.M.**

City Council Chambers
110 South Main Street
Springville, Utah 84663

CALL TO ORDER

INVOCATION – Councilmember Snelson

PLEDGE – Councilmember Jensen

APPROVAL OF THE MEETING’S AGENDA

MAYOR’S COMMENTS

CALENDAR

- Jan 09 – City Council Meeting 5:15 p.m.
- Jan 15 – Martin Luther King Day (City Offices Closed)
- Jan 16 – Work/Study Meeting **5:30** p.m./City Council 7:00 p.m.
- Jan 24 – ULCT 2018 Local Officials Day at the Legislature
- Feb 06 – Work/Study Meeting **5:30** p.m./City Council 7:00 p.m.

PUBLIC COMMENT

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

CONSENT AGENDA

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

1. Approval of City purchase orders required to be signed per Springville City Purchasing Code.
2. Approval of the minutes for the Work/Study meetings held December 05 and 19, 2017.

REGULAR AGENDA

3. Consideration of a Franchise Agreement and Pole Attachment Agreement with Prestige Broadband LLC – John Penrod, Assistant City Administrator/City Attorney
4. Discussion and consideration of a Resolution regarding the process to fill a vacancy on the City Council – John Penrod, Assistant City Administrator/City Attorney

5. Discussion regarding the process of a Consent Agenda and Budget Retreat – Troy Fitzgerald, City Administrator

MAYOR, COUNCIL AND ADMINISTRATIVE REPORTS

CLOSED SESSION

6. The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated Section 52-4-205.

ADJOURNMENT

CERTIFICATE OF POSTING

This meeting was noticed in compliance with Utah Code 52-4-202 on December 30, 2017. Agendas and minutes are accessible through the Springville City website at www.springville.org/agendasminutes. Council Meeting agendas are available through the Utah Public Meeting Notice website at <http://www.utah.gov/pmn/index.html>. Email subscriptions to Utah Public Meeting Notices are available through their website.

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

Meetings of the Springville City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone or other electronic means and the meeting will be conducted pursuant to Springville City Municipal Code 2-4-102(4) regarding electronic meetings.

s/s - Kim Rayburn, CMC, City Recorder



MINUTES OF THE WORK/STUDY MEETING OF THE SPRINGVILLE CITY COUNCIL HELD
ON TUESDAY, DECEMBER 05, 2017 AT 5:15 P.M. AT THE CIVIC CENTER, 110 SOUTH MAIN
STREET, SPRINGVILLE, UTAH.

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

Also present were: Public Safety Director Scott Finlayson, Power Director Leon Fredrickson,
Public Works Director Brad Stapley, Recreation Director Corey Merideth, Building and Grounds
Director Brad Neel, Community Development Director Glen Goins, Golf Pro Craig Norman, Library
Director Dan Mickelson, Museum of Art Director Rita Wright, City Engineer Jeff Anderson, Water
Reclamation and Storm Water Superintendent Juan Garrido, and Operations Manager Rod Oldroyd.

CALL TO ORDER

Mayor Clyde welcomed everyone and called the Work/Study meeting to order at 5:15 p.m.

COUNCIL BUSINESS

1) Calendar

- Dec 12 – Work/Study Meeting 5:15 p.m.
- Dec 14 – City Employee Christmas Lunch 11:30 a.m.
- Dec 19 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.
- Dec 25 – Christmas Holiday (City Offices Closed)
- Jan 01 – New Year’s Day Holiday (City Offices Closed)
- Jan 02 – Swearing in of New Mayor and New Council Members
- Jan 09 – Work/Study Meeting 5:15 p.m.

Mayor Clyde asked if there were any questions or additions to the calendar. Administrator
Fitzgerald commented the upcoming ULCT Local Officials Day at the Legislature will be held January
24, 2018.

2) Discussion on this evening’s Regular Meeting agenda items

- a) Invocation – Councilmember Conover
- b) Pledge of Allegiance – Councilmember Child
- c) Consent Agenda

- 3. Approval of City purchase orders required to be signed per Springville City Purchasing
Code.
- 4. Approval of the minutes for the September 19, 2017 regular City Council meeting and the
October 03, 2017 Work/Study meeting.

42 Administrator Fitzgerald explained an agreement with the Grindstone Home Owners Association
is scheduled for the regular meeting regarding the road through the Hobble Creek Golf Course. He
44 provided information regarding the Development from City Council minutes in the 1960's and noted an
email was sent to representatives of Grindstone with the same information prior to this meeting.

46 Administrator Fitzgerald reviewed minutes from September 5, 1972 regarding the asphalt
covering of the road through the golf course to the Grindstone Development.

48 Mayor Clyde recounted the Grindstone Development was there prior to the golf course
clubhouse being built and the agreement submitted tonight is from the current home owners association
50 for Grindstone.

Councilmember Sorensen commented because of the location of the road, water is sprinkled
52 every day and can affect the quality of the road. Administrator Fitzgerald reported it would be addressed
in the regular meeting.

54 Administrator Fitzgerald reported the road has been in-tact for over 18 years and the water is not
deteriorating the road as much. The homeowners use the road over 80% of the time. The Grindstone
56 representative received a copy of the staff report and his presentation should be brief in the regular
meeting.

58 Councilmember Creer commented the Grindstone Development created an agreement in 1960,
stating they would maintain the road and they would own the road up to the County road, it was never
60 deeded over to the City, the city just said they would pave over the road because the Golf Course was
being built. He asked if the City ever took ownership of the road. Administrator Fitzgerald explained the
62 County land record shows the city as the owner of the title, a covenant was also recorded to provide a
right-of-way. He was unable to find a document with a location of the right-of-way. Staff is
64 recommending not approving the agreement before the Council tonight and suggests getting back to the
table with discussions.

66 Attorney Penrod commented if the Council agrees to proceed with the road a contract would not
be needed.

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3) DISCUSSIONS/PRESENTATIONS

70 a) **Water Reclamation Facility Treatment Options Due to State Regulations – Juan Garrido,
Water Reclamation and Storm Water Superintendent**

72 Superintendent Garrido provided information regarding Springville City submitting a letter to the
Utah Division of Water Quality requesting a variance from the Technology Based Phosphorus Effluent
74 Limit as specified. The request must be made by January 1, 2018; in order to delay the requirement until
a decision is made by the City on one of the options provided in the letter.

76 In February of 2015, Springville City along with other water reclamation facilities along the
Wasatch front received a letter informing the Utah Division of Water Quality adopted rule UAC R317-
78 1-3.3, Technology-based Phosphorus Effluent Limits (TBPEL), as it relates to “non-lagoon” wastewater
treatment plants. This rule establishes new regulations for the discharge of phosphorus to surface waters
80 and is self-implementing.

Superintendent Garrido explained options for removal of chemicals and the approximate cost. He
82 noted they are somewhat efficient; however the sludge disposal becomes a problem. The cost is very
high and a bond would most likely be needed, while new technology has not been proven on a large
84 scale.

86 Administrator Fitzgerald explained staff is seeking approval to propose a variance to explore the options. More information will be provided to the council on December 19, 2017

88 **b) Discussion of an amendment to the TIFA – Transportation Impact Fee Analysis – Jeff Anderson, City Engineer**

90 Engineer Anderson reported on October 16, 2016, the City Council approved the 2016 Springville Transportation Master Plan. Recently, while reviewing the City’s transportation impact fees with respect to a non-residential development, the City’s staff noticed a discrepancy with the IFA and contacted the consultants who helped develop the IFA and to re-evaluate the IFA. An amendment is recommended and a notice has been posted and will be brought back to the Council on December 19, 2017.

96 Kevin with Horrock’s Engineers reviewed the minor changes and areas not changed with the Impact Fee amendment. Fees will be revised and many reduced.

98 Councilmember Sorensen asked who did the original incorrect calculations. Kevin explained Zions did and will do the amendment without fee. Councilmember Sorensen asked if there were any rebates. Administrator Fitzgerald stated there will be some once adopted. Engineer Anderson provided information about rebates and stated funds are available to help cover the rebates.

102 **c) Discussion regarding the Canyon Road 16-inch Waterline Abandonment Contract – Jeff Anderson, City Engineer**

106 Engineer Anderson reported construction on Canyon Road was longer than expected. The contractor did a good job, however there have been problems with the sub-contractors. He explained they will finish the contract and payment is being withheld until paving and collaring is complete. Condie Construction will monitor the area through the winter and repair areas as needed. Condie will submit a new written proposal, to correct the substandard work by Kilgore paving.

110 Mayor Clyde expressed Canyon Road is a major road and should not be shut down for extended periods of time. Work should have been done on an altering schedule. A review needs to be done when construction impacts a major road.

114 **MAYOR, COUNCIL, AND ADMINISTRATIVE REPORTS**

116 Mayor Clyde asked for any other comments. There were none.

118 **4) CLOSED SESSION**

120 The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated Section 52-4-205

122 There was no Closed Session.

124 **ADJOURNMENT**

126 COUNCILMEMBER CHILD MOVED TO ADJOURN THE WORK/STUDY MEETING OF THE SPRINGVILLE CITY COUNCIL AT 6:19 P.M.

COUNCILMEMBER MILLER SECONDED THE MOTION, ALL VOTED AYE.

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This document constitutes the official minutes for the Springville City Council Work/Study meeting held on Tuesday, December 05, 2017.

I, Kim Rayburn, do hereby certify that I am the duly appointed, qualified, and acting City Recorder for Springville City, of Utah County, State of Utah. I do hereby certify that the foregoing minutes represent a true and accurate, and complete record of this meeting held on Tuesday, December 05, 2017.

Kim Rayburn, CMC
City Recorder



MINUTES OF THE WORK/STUDY MEETING OF THE SPRINGVILLE CITY COUNCIL HELD ON TUESDAY, DECEMBER 19, 2017 AT 5:15 P.M. AT THE CIVIC CENTER, 110 SOUTH MAIN STREET, SPRINGVILLE, UTAH.

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

Also present were: Lieutenant Warren Foster, Power Generation Superintendent Shawn Black, Public Works Director Brad Stapley, Recreation Director Corey Merideth, Building and Grounds Director Brad Neel, Building and Grounds Superintendent Joel Bree, Community Development Director Glen Goins, Golf Pro Craig Norman, Library Director Dan Mickelson, Museum of Art Director Rita Wright, and Operations Manager Rod Oldroyd.

CALL TO ORDER

Mayor Clyde welcomed everyone and called the Work/Study meeting to order at 5:15 p.m.

COUNCIL BUSINESS

1) Calendar

- Dec 25 – Christmas Holiday (City Offices Closed)
- Jan 01 – New Year’s Day Holiday (City Offices Closed)
- Jan 02 – Swearing in of New Mayor and New Council Members 6:00 p.m.
- Jan 09 – City Council Meeting 5:15 p.m.
- Jan 16 – Work/Study Meeting 5:30 p.m., City Council Meeting 7:00 p.m.
- Jan 24 – Local Officials Day at the Legislature

Mayor Clyde asked if there were any questions or additions to the calendar. There was none.

2) Discussion on this evening’s Regular Meeting agenda items

- a) Invocation – Councilmember Child
- b) Pledge of Allegiance – Councilmember Creer
- c) Consent Agenda

- 2. Approval of City purchase orders required to be signed per Springville City Purchasing Code.
- 3. Approval of the minutes for the Regular Council meetings held on October 03, 17; November 07, 21 2017 and the Work/Study meetings held on August 15, September 19 and October 17, 2017
- 4. Approval of a Resolution adopting the 2018 Annual Meeting Schedule – Kim Rayburn, City Recorder

- 42 5. Approval of a revised lease agreement between Springville City and Nestles' for Nestles' Waste Water Treatment Plan – Brad Stapley, Public Works Director

44 **DISCUSSIONS/PRESENTATIONS**

46 a) **Presentation of the FY2017 Springville City Audit Report – Bruce Riddle, Assistant City Administrator/Finance Director**

48 Director Riddle reported last spring an RFP (Request for Proposal) for an Independent Auditor was advertised to allow for a new set of eyes on the City Finances. The RFP received 10 responses with Hansen, Bradshaw, Malmrose, and Ericson being selected. He introduced Jeff Mills who was the lead on the audit and will present the audit information to the Council.

52 Mr. Mills thanked the Mayor and Council and City Staff for giving them the opportunity to conduct the audit. Mr. Mills went on to review the audit information. The audit resulted in one finding with the Special Improvement District fund, which had a negative fund balance. He explained the State requires a minimal balance. This was discussed with the Finance Department and adjustments will be made to eliminate the deficit.

56 Mayor Clyde asked if they did anything different from other auditors the City had used. Mr. Mills stated each firm has different areas they may dig deeper into. He felt their audit was consistent with previous auditors. Director Riddle expressed in some areas this audit was more detailed and gave the Council information on how the City is doing financially. Administrator Fitzgerald agreed the detail will help the council and staff see what is actually happening.

62 Mr. Mills will have the Management Letter delivered to the City before the end of the year. He explained there were no formal written recommendations and no major recommendations for the City to implement.

64 Mayor Clyde suggested in the future any verbal recommendations be shared with the Council.

66 Director Riddle explained a recommendation was made to formalize inventory in Water Department for parts housed at the water department. Because the Department has grown it was advised to start with this.

68 Mayor Clyde asked how Springville compares to other cities financially. Mr. Mills expressed the City financials and General Fund balance are in a great place going forward and in a good growth mode.

70 b) **Review of Citizen Survey – Troy Fitzgerald, City Administrator**

72 Administrator Fitzgerald gave a review of the recent Citizens Survey distributed randomly to Springville citizens.

74 Overall citizens are feeling safe from violent crime. Property crimes are on a downturn. The survey bounces back and forth depending on how people are feeling. There has been a significant rash of vehicle burglaries. Safety in neighborhoods is showing good movement with most feeling safer than 10 years ago.

78 Traffic on Main Street, in a four year glimpse with 2013 showing positive, flipped to negative in 2017, while traffic has increased.

80 The overall rating of city services had very positive movement with a feeling of local tax dollars being spent wisely.

82 Quality in neighborhoods and access to shopping opportunities made a huge jump and sense of community. Citizens are saying there needs to be more aggressive work on weeds in yards and code enforcement. Efforts to attract new retail showed 65% in support of attracting new retail.

86 Power rates are down, below 5%. Perceptions are water rate is high when it is lower. Most liked
88 living in Springville; the top four included small town feel, safety, family and people. Suggestions to
make it a better place included more retail, restaurants, and retail business, less train whistles, high speed
internet and more bike trails.

90 Administrator Fitzgerald reported the oldest respondent was 95 years old. The top areas
suggested to spend money were to reduce drug use, high speed internet and improve traffic flow. He
noted more information will be covered on the survey in the upcoming budget retreat.

92
c) **Review of SHARPS Survey – John Penrod, Assistant City Administrator/City Attorney**

94 Attorney Penrod gave a review of the SHARPS survey (Student Health and Risk Prevention).The
SHARPS survey is conducted statewide and is administered every two years to students in grades 6, 8,
96 10 and 12. The survey was designed to assess adolescent substance use, anti-social behavior, and the
risk and protective factors that predict these adolescent problem behaviors.

98 The survey helps to show what the community can do to help the youth. Depression and suicide
and mental health was trending slightly upward indicating help is needed. Substance abuse has been a
100 concern in the community, while the Springville area is below or around the state average.

102 **MAYOR, COUNCIL, AND ADMINISTRATIVE REPORTS**

Mayor Clyde asked for any other comments.

104 Councilmember Conover thanked Director Merideth, Director Neel and Director Wright for their work
and the Arts Commission funds for the Christmas concert.

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4) **CLOSED SESSION**

108 The Springville City Council may temporarily recess the regular meeting and convene in a closed
session to discuss the character, professional competence, or physical or mental health of an
110 individual, pending or reasonably imminent litigation, and the purchase, exchange, or lease of real
property, as provided by Utah Code Annotated Section 52-4-205

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COUNCILMEMBER SORENSEN MOVED TO ADJOURN THE CITY COUNCIL
114 WORK/STUDY MEETING AT 6:29 P.M. AND CONVENE IN A CLOSED SESSION TO APPROVE
MINUTES FROM PREVIOUS CLOSED SESSIONS. COUNCILMEMBER CHILD SECONDED
116 THE MOTION. THE VOTE IS RECORDED AS FOLLOWS:

118	COUNCILMEMBER CHILD	AYE
	COUNCILMEMBER CONOVER	AYE
	COUNCILMEMBER CREER	AYE
120	COUNCILMEMBER MILLER	AYE
	COUNCILMEMBER SORENSEN	AYE

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Council reconvened the Work/Session at 6:39 p.m.

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Councilmember Sorensen asked when his access to City email would be terminated when his
126 Council term ends. Administrator Fitzgerald replied as of January 02, 2018 access will be closed and
emails will be maintained as a record.

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130 Councilmember Miller asked for an overview of the process for replacing Councilmember Child
after he is sworn in as Mayor. Attorney Penrod reported more information will be covered in the City
132 Council meeting on January 02, 2018. The applicants will be interviewed on January 09, 2018 at 5:15
p.m. at City Hall.

134 **ADJOURNMENT**

136 COUNCILMEMBER CHILD MOVED TO ADJOURN THE WORK/STUDY MEETING OF
THE SPRINGVILLE CITY COUNCIL AT 6:45 P.M.

138 COUNCILMEMBER MILLER SECONDED THE MOTION, ALL VOTED AYE.

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142 *This document constitutes the official minutes for the Springville City Council Work/Study meeting held on Tuesday,
December 19, 2017.*

144 *I, Kim Rayburn, do hereby certify that I am the duly appointed, qualified, and acting City Recorder for Springville
City, of Utah County, State of Utah. I do hereby certify that the foregoing minutes represent a true and accurate, and
146 complete record of this meeting held on Tuesday, December 19, 2017.*

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Kim Rayburn, CMC
City Recorder

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STAFF REPORT

DATE: December 27, 2017

TO: The Honorable Mayor and City Council

FROM: John Penrod, City Attorney

SUBJECT: CONSIDERATION OF APPROVING A FRANCHISE AGREEMENT AND POLE ATTACHMENT AGREEMENT WITH PRESTIGE BROADBAND, LLC.

RECOMMENDED ACTION

Motion to approve a Franchise Agreement and Pole Attachment Agreement with Prestige Broadband, LLC that allows Prestige Broadband, LLC to install infrastructure in Springville's rights-of-way and attach to Springville's power poles for the purpose of providing telecommunications services.

BACKGROUND

Springville's "Telecommunications Rights-of-Way" ordinance governs telecommunications companies' use of Springville's rights-of-way. Springville's ordinance was adopted to help promote telecommunications services, protect Springville's rights-of-way, and follow the federal 1996 Telecom Act. One of the purposes of the 1996 Telecom Act is to remove barriers for telecommunications services. As part of the Act, local governments are allowed to manage their rights-of-way and require fair and reasonable compensation from telecommunications providers that use a city's rights-of-way. However, a city must be "competitively neutral and nondiscriminatory" in allowing telecommunications providers to use the city's rights-of-way.

Pursuant to Springville City's "Telecommunications Rights-of-Way" ordinance, Prestige Broadband, LLC ("Prestige") recently applied for a franchise agreement with Springville to install telecommunications infrastructure in the City's right-of-way. Prestige is a new telecommunications company, having received a certificate to provide public telecommunications services from Utah's Public Service on March 28, 2017.

Prestige currently has a small number of subscribers in Springville and wants to initially service areas in older parts of town between 900 North and 400 South and 400 West and Main Street. There are 985 structures in this area, including a mix of residences and businesses. Within the next five years, Prestige hopes to grow its network footprint to service areas as far east as 1700 East and south to 900 South.

Prestige has applied to enter into both a franchise agreement and pole attachment agreement with Springville City. The following will provide a brief description of what is included in both agreements.

Franchise Agreement

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

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

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

Franchise Fee. The franchise fees will be 3.5% of gross receipts in accordance with Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410), less any business license fee or business license tax enacted by City. This franchise fee is subject to change should any law governing franchise fees allow or require for such changes to be made. Prestige will also pay City any and all applicable administrative fees to reimburse for all costs and expenses associated with the preparation and adoption of the ordinance and agreement. Federal laws prohibit charging fees for the internet services.

Term and Renewal. The term of the agreement is 5 years with a 5-year renewal option should both parties agree. After the initial 5-year term, either party may terminate by giving the other party a 180-day termination notice.

Indemnification and Insurance. Prestige is required to indemnify City for damages Prestige causes and to provide adequate insurance.

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

Pole Attachment Agreement

The proposed pole attachment agreement gives Prestige a non-exclusive license to attach to Springville City power poles and provides the terms and conditions that govern the attachments. The following highlights some of the provisions in the proposed agreement:

Term – The term of the agreement is five years and automatically renews for successive one-year terms. At the end of the initial five-year term, either party may terminate by providing the other party with a 60-day notice of termination.

Pole Fees – During the term of the Agreement, Prestige will pay the City \$17 per pole per year. The fees may be increased by 3% per year. (The \$17 fee is in line with what other cities are charging for pole attachments. Our research shows that cities are charging fees from \$15 to \$20.)

Permit Process – Springville is not obligated to allow Prestige to attach to the City's poles. The agreement provides for an application and permit process that Prestige must follow before attaching to the City's poles. Prestige does not have to make application for current attachments. Prestige is required to remove all old service drops when new service drops are added to a pole.

Specifications – Prestige is required to follow the current National Electric Code and the National Electrical Safety Code when installing and maintaining pole attachments.

Attachments – Prestige is required, at its own expense, to install and maintain all of its pole attachments in a safe condition in compliance with the City's regulations and to relocate its infrastructure within 60 days of receiving notice of the City's intentions to replace poles. In emergency situations, the City may move Prestige's infrastructure.

Alterations – If the City makes any alterations to its poles to accommodate a Prestige attachment, Prestige is required to pay for the cost of the alteration. Should the City find attachments that were not approved through the application process, the City may charge Prestige up to three years' worth of fees for the attachment.

City's Rights and Service Responsibilities – The City has the right to operate its poles in a manner that will best enable the City to provide its electrical services to its customers. The City will not be liable for interruption of Prestige's services.

Private Rights-of-Way – In the event that a City pole is on private property, Prestige will be required to obtain all necessary permission from the owner of the property to attach to the City's poles.

Insurance – Prestige is required to maintain liability, workers compensation, and property insurance coverage. Prestige is required to name Springville as an additional insured on its coverage.

Indemnification – Prestige is required to indemnify Springville for negligent acts and damages caused as a result of Prestige's attachments on Springville's poles.

Other Users – The Agreement does not affect the City’s rights to allow other users to use the City’s poles or to enter into pole attachment agreements with other entities.

Payments – All payments required to be made under the Agreement shall be made within 45 days of receiving an invoice.

The above listed provisions are a summary of provisions in the proposed franchise and pole attachment agreements and do not highlight all of the provisions in the two agreements.

FISCAL IMPACT

Springville City will receive 3.5% of Prestige’s gross receipts for phone services within City. City will also receive applicable administrative fees to reimburse for the execution of this agreement. On the pole attachment agreement, Springville will receive \$17 per pole attachment per year.

Attachments: Proposed Franchise and Pole Attachment Agreements

**FRANCHISE AGREEMENT
SPRINGVILLE CITY – PRESTIGE BROADBAND, LLC**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into by and between Springville City, Utah (hereinafter “City”), a municipal corporation and political subdivision of the State of Utah, with principal offices at 110 South Main Street, Springville, Utah, 84663, and Prestige Broadband, LLC, a Utah limited liability company (hereinafter “Provider”), with its principal place of business at 224 South Main Street, Springville, Utah 84663.

WITNESSETH:

WHEREAS, Provider desires to provide telecommunication and data services within City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of City; and

WHEREAS, City has enacted Title 13 of the Springville City Municipal Code (hereinafter the “Telecommunication Rights-of-Way Ordinance”) which governs the application and review process for Telecommunication Franchises in Springville City; and

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

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

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 Ordinance. City has adopted the Telecommunications Rights-of-Way Ordinance. Provider acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance, as it is or may be amended in accordance with Section 1.3 of this Agreement. The definitions in the Telecommunications Rights-of-Way Ordinance shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require Provider to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined, by a court of law, to be unlawful or beyond City’s authority.

1.3 Ordinance Amendments. City reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time, as its City Council deems necessary. Provider agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in City contingent upon Provider meeting all City regulations, rules, laws, and policies and Provider obtaining all necessary permits. Provider shall not provide services directly regulated by the Utah Public Service Commission (“PSC”) unless authorized by the PSC. The franchise does not grant to Provider the right, privilege or authority to engage in community antenna television, cable television or other video system service business or any other service that is not considered a telecommunications service. Provider shall not operate a cable system as defined in Cable Communications Policy Act of 1984 without first having obtained a separate cable franchise from City. Although, nothing contained herein shall preclude Provider from: (1) permitting those with a cable franchise with City who are lawfully engaged in such business to utilize Provider’s System within Springville City for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied. The rights granted by this Agreement may not be subdivided, assigned, or subleased to another person or entity, except a wholly owned subsidiary of Provider, unless agreed to in writing by City.

1.5 Facilities. “Facilities” shall include, but not be limited to, a network of fiber optic cables and all property and equipment, including, without limitation, conduit, carrier pipe, cable fibers, repeaters, power sources, and other attachments and appurtenances necessary for the telecommunications system located within City Rights-of-Way, whether located above or below ground, currently or in the future owned or operated or otherwise controlled by Provider to provide telecommunications services.

1.6 Licenses. Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance. Provider shall deliver a copy of the relevant approvals, licenses or permits to City before construction is commenced.

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

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, Provider shall pay to City a tax of 3.5% of gross receipts in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to 10-1-410) for any and all services provided utilizing Provider’s

facilities. Changes in the rate shall follow the requirements of the Telecommunication License Tax Act. All payments shall be made to the Utah State Tax Commission, and sent as follows:

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

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

If the Municipal Telecommunication License Tax may no longer be lawfully collected, then to the extent allowed by law, Provider shall pay to City a tax levy or franchise fee of three and one-half percent (3.5%) of its gross receipts from telecommunication services attributed to or services provided within City for which City may lawfully collect a tax levy or franchise fee.

Notwithstanding all other provisions in this Section 2.1, City reserves the right to adjust this franchise fee if the laws governing such fees allow for future fee changes, including, but not limited to, City's ability to charge Provider franchise fees and/or taxes for providing internet services.

2.2 Administrative Fees. Provider shall pay to City any and all applicable administrative fees to reimburse City for all costs and expenses associated with the preparation and approval of this Agreement. The administrative fees shall be paid to City within sixty (60) days of the approval of this Agreement.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to Provider shall be for a period of five (5) 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 five (5) year term of this Agreement, this franchise agreement will automatically renew for an additional five (5) year. After the initial five (5) year term, either party may terminate this Agreement at any time by providing a one hundred eighty (180) day written notice of termination to the other party.

3.2 Rights of Provider Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between Provider and City, or by revocation or forfeiture, Provider shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of Provider, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected. Provider, with the written consent of City, which shall not be unreasonably withheld, conditioned, or delayed, may abandon any underground facilities in place, subject to the reasonable requirements of City. In such an event, the abandoned facilities shall become the property of City.

ARTICLE 4. POLICE POWERS.

City expressly reserves, and Provider expressly recognizes, City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules

and regulations as City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 5. CHANGING CONDITIONS AND SEVERABILITY.

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

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

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

6.1 Grounds for Termination. City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) Provider fails to make timely payments of the Municipal Telecommunications License Tax or franchise fee as required under Article 2 of this Agreement and does not correct such failure within thirty (30) calendar days after written notice by City of such failure;

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

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

6.2 Remedies at Law. In the event Provider or City fails to fulfill any of its respective obligations under this Agreement, City or Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.

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

ARTICLE 7. PARTIES' DESIGNEES.

7.1 City designee and Address. City Administrator or his or her designee(s) shall serve as City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from Provider to City pursuant to or concerning this Agreement, shall be delivered to City's representative at 110 South Main Street, Springville, Utah 84663, or such other officer and address as City may designate by written notice to Provider.

7.2 Provider Designee and Address. Provider's _____ or his or her designee(s) shall serve as Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices

from City to Provider pursuant to or concerning this Agreement, shall be delivered to Provider's headquarter offices at 224 South Main Street, Utah 84663, and such other office as Provider may designate by written notice to City.

7.3 Failure of Designee. The failure or omission of City's or Provider's representative to act shall not constitute any waiver or estoppels by City or Provider.

ARTICLE 8. INSURANCE AND INDEMNIFICATION

8.1 Insurance. Prior to commencing operations in City pursuant to this Agreement, Provider shall furnish to City evidence that it has adequate general liability and property damage insurance. Any and all insurance shall be in a form and in an amount and of a scope of coverage acceptable to City. At a minimum, Provider's insurance shall 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 City as additional insured, and in their capacity as such, City's officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) per aggregate. 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 Provider in full force and effect during the entire term of this Agreement. 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 Provider 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.

8.2 Indemnification. Provider agrees to indemnify, defend and hold harmless City, and City's officials, employees, and agents from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from Provider's facilities within City's Rights-of-Way or Provider's acts or omissions related to Provider's facilities or to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by City in defense of such claims. City will give written notice to Provider of any claim, demand, lien, liability, or damage, with respect to which City seeks indemnification and, unless in City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, City shall permit Provider to assume the defense of such with counsel of Provider's choosing, unless City reasonably objects to such counsel.

ARTICLE 9. INSTALLATION

9.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within City Rights-of-Way, Provider shall coordinate with City and other Providers or users of City Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within City Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within City Rights-of-Way.

9.2 Underground Installation. Unless otherwise authorized by the City, all of Provider's facilities within City shall be constructed underground. Provider expressly agrees to install and maintain all of its facilities in accordance with City Ordinances, regulations, and standards and specifications, and with industry standards regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Provider agrees to obtain the proper excavation permit from City and pay applicable fee prior to excavating. The scope of this agreement does not allow for Provider to attach to and use City utility or power poles. If Provider should desire to do so, a separate pole attachment agreement must be approved by City.

9.3 Provider Duty to Relocate; Subordination to City Use. Whenever City shall, for any purpose, require the inspection, maintenance, repair, relocation or reinstallation of any Provider Facility within a Public Way, the Provider shall, upon not less than 60 days prior notice, promptly commence and diligently complete such work to remove and relocate or reinstall such Provider Facility as may be necessary to meet the requirements of the City. Any such relocation, removal or reinstallation by Provider shall be at no cost to the City. The Provider may ask for a meeting with the City to discuss the relocation, and alignment for the relocated Provider Facilities. If a City project is funded by federal or State monies that specifically includes an amount allocated to defray the expenses of relocation of Provider Facilities, the City shall reimburse the Provider up to the extent of such specified amount for any actual relocation costs mandated by the project to the extent that the City actually receives such federal or State funds earmarked for that purpose. The requirements of this Section 9.3 shall not be construed to be in derogation of any right or cause of action for reimbursement the Provider may have against a developer or other private interest which causes the need to move its lines or Facilities. Such right or cause of action, however, shall not be used as an excuse to delay or avoid its obligations under this section.

9.4 Emergency Relocate. Notwithstanding the foregoing requirement, the Provider shall relocate its facilities upon 45 days prior written notice from the City when requested by the City due to an emergency, or as the parties may otherwise agree. However, if it becomes necessary, in the judgment of City personnel, to cut, move, remove, or damage any of the cables, appliances, fixtures or other property of Provider because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of Provider, and the repairs rendered necessary shall be made by Provider, without charge to City. Should City take actions pursuant to this section, Provider shall indemnify, defend, and hold City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to Provider's property and/or (b) interruptions of all public services provided by the use of or through Provider's property (including, but not limited to, internet services provided by the Provider to Provider's customers), whether such claims, demands, liens, or liability arise from or are brought by Provider, its insurers, Provider's customers, or third parties.

9.5 Location to Minimize Interference. All underground lines, pipes, conduits, equipment, property, structures, and assets of Provider 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.

9.6 Repair of Damage. If during the course of work on its facilities, Provider causes damage to or alters any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, Provider (at its own cost and expense and in a manner approved by City) shall promptly and completely restore such street, alley, right-of-way, sidewalk, utility, public improvement or other public property to its previous condition. The City shall have the right to inspect all repair work. All repair work done by the Provider shall be performed in a timely and expeditious way in conformity with the applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of City. Except in case of emergency, Provider, 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 City. Provider shall abide by all reasonable regulations and requirements of the City for such work.

9.7 Guarantee of Work. For work on any street, alley, right-of-way, sidewalk, utility, public improvement, or other public property, Provider shall be required, pursuant to City ordinances, policies, and regulations, to obtain an excavation/encroachment permit and post a bond in a form approved by City to guarantee that the such is restored to its condition prior to Provider's work. In addition, Provider may be required to post a bond to guarantee that, for a period of one year following completion of the work performed, that said streets, alleys, rights-of-way, or public property continue to meet City standards.

9.8 Safety Standards. Provider'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.

9.9 Supervision by City.

- a. Provider shall construct, operate, and maintain Provider's services within the City in strict compliance with all laws, ordinances, rules, and regulations of City and any other agency having jurisdiction over the operations of Provider.
- b. Provider's services and all parts thereof within the City shall be subject to the right of periodic inspection by City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to Provider.

9.10 Provider's Duty to Remove Its Network.

- a. Unless abandoned in place as permitted herein, Provider shall promptly remove, at its own cost and expense, from any public property within City, all or any part of Provider's facilities when one or more of the following conditions occur:

- (1) Provider ceases to operate Provider's services for a continuous period of twelve (12) months, and does not respond to written notice from 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) Provider fails to construct Provider's services as herein provided and does not respond to written notice from City within thirty (30) days after receiving such notice following any such failure.
 - (3) This Agreement is terminated or revoked pursuant to notice as provided herein.
 - (4) This Agreement expires.
- b. The removal of any or all of Provider's facilities that requires trenching or other opening of the City's streets shall be done only after Provider obtains prior written notice and approval from the City.
 - c. Provider shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 9.10 (a) above and shall have ninety (90) calendar days from the date upon which said notice is received, weather permitting, to remove or abandon such facilities.

9.11 Notice of Closure of Streets. Except in cases of emergency, Provider shall notify City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow. 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.

9.12 Agreement to Abide by Construction and Technical Requirements. In addition to the provisions of this Article 9, Provider expressly agrees to comply with all other provisions of City ordinances, regulations, and standards governing the construction of the Provider's facilities in any public street, alley, right-of-way, sidewalk, utility, public improvement, or other public property.

ARTICLE 10. GENERAL PROVISIONS

10.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

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

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

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

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

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

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

SIGNED AND ENTERED INTO this ____ day of _____, 2018.

SPRINGVILLE City

By: _____
Richard J. Child, Mayor

ATTEST:

Kim Rayburn, City Recorder

PRESTIGE BROADBAND, LLC

By: _____

POLE ATTACHMENT LICENSE AGREEMENT

THIS AGREEMENT (this “Agreement”), made and entered into this ___ day of January, 2018 (“Effective Date”) by and between SPRINGVILLE CITY, a municipality, which operates its own electric utility, with offices located at 110 South Main, Springville City, Utah 84663 (hereinafter referred to as “LICENSOR”), and PRESTIGE BROADBAND, LLC, with offices located at 224 South Main Street, Suite 535, Springville, Utah 84663 (hereinafter referred to as “LICENSEE”).

WITNESSETH THAT:

WHEREAS, LICENSEE is a broadband communications services provider providing broadband communications services and other lawful services with a non-exclusive franchise to provide such services within Springville City, Utah; and

WHEREAS, LICENSEE desires to place its cables, appliances, equipment and facilities, (hereinafter collectively called “Attachments”) on LICENSOR’s distribution and transmission utility poles (hereinafter collectively called “Poles”); and

WHEREAS, LICENSOR is willing to permit the Attachments to its Poles for the purpose of permitting LICENSEE to provide broadband communications services, and such other lawful services as LICENSEE is authorized to provide under applicable law, where such Attachments will not interfere with LICENSOR’s use or other user’s service requirements, subject to the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE 1 SCOPE OF AGREEMENT

(a) Subject to compliance with the terms of this Agreement, LICENSOR hereby grants to LICENSEE a revocable, non-exclusive license authorizing LICENSEE to place its Attachments on LICENSOR’s Poles. The license includes the right for the continued placement and maintenance of LICENSEE’s Attachments previously attached to LICENSOR’s Poles.

(b) No use of LICENSOR’s Poles or payment of any fees or charges required under the Agreement shall vest in LICENSEE any property rights in said Poles, but LICENSEE shall have a mere license to place its Attachments on the Poles. LICENSOR is not required to construct, retain, extend, place or maintain any Poles or other facilities not needed for its own service requirements.

ARTICLE 2 TERM OF AGREEMENT

(a) This Agreement shall be effective as of the date stated above and, subject to the provisions of Article 14, shall continue in effect for a term of five (5) years. Either party may terminate this Agreement at the end of the initial term by giving the other party at least six (6) months written notice of its intent not to renew this Agreement. If this agreement is not terminated after the initial five (5) year term, the term of the Agreement shall renew for

successive one (1) year periods. Either party may terminate this agreement at any time after the initial five (5) year term by providing the other party with a sixty (60) day written notice.

(b) Upon termination of this Agreement in accordance with any of its terms, LICENSEE shall promptly remove its Attachments from all Poles of LICENSOR. If not removed within one hundred eighty (180) days of the termination date, such Attachments shall be deemed to be abandoned by LICENSEE, which may be removed by LICENSOR, at the expense of LICENSEE, and LICENSOR shall be released from any liability for removing and disposing of said Attachments.

ARTICLE 3 FEES AND CHARGES

LICENSEE shall pay to LICENSOR the sum of seventeen dollars (\$17.00) per Pole per year for use of the Poles. Annual rental payments shall be based on the number of Poles on which there exists an Attachment of LICENSEE's as of December 31st of the preceding calendar year. LICENSOR will notify LICENSEE of such amount due for any year that this Agreement is in effect on or before February 1st. LICENSEE shall pay the annual rental fee not later than forty-five (45) days after receipt of the invoice reflecting the number of Poles to which LICENSEE is attached. The above rental rate may be revised by LICENSOR upon written notice to LICENSEE at least six (6) months in advance of the date the next rental payment is due, provided, however, that any adjustment to the rental rate shall not exceed more than a three percent (3%) increase per year. The revised rate will apply to all Attachments existing on December 31st of the year in which notice is given and will continue to apply to all existing and future Attachments, unless further revised.

In addition, LICENSEE shall pay the amounts due in accordance with all other Articles of this Agreement.

ARTICLE 4 APPLICATION FOR PERMIT AND NOTIFICATION OF ATTACHMENTS

(a) Before making attachment to any of LICENSOR's Poles, LICENSEE shall make application to LICENSOR, specifying the location of each Pole on the form attached hereto as Exhibit A. Within thirty (30) days after receipt of the application, LICENSOR shall return to LICENSEE said application indicating thereon whether or not it is willing to permit the joint use of Poles, and if so, under what condition(s). Notwithstanding the foregoing, LICENSEE shall not be required to make application for Poles upon which LICENSEE is currently attached and for customer service drops. When LICENSEE installs service drops, LICENSEE must follow all procedures applicable to Attachments generally, except for filing applications and payment of fees, and shall submit notification of service drops to LICENSOR on a quarterly basis.

(b) LICENSOR shall have the sole right to determine the availability of such Poles for joint use and shall be under no obligation to grant permission for LICENSEE's use of the Poles. LICENSEE shall have the right to occupy the space allotted by LICENSOR under the conditions and in accordance with the terms of this Agreement. LICENSEE shall remit initial payment upon receipt of LICENSOR's approval for the Attachment. The initial payment shall be the

applicable annual per Pole sum calculated under Article 3 above.

(c) Subject to the other terms and conditions of this Agreement, after making attachment to Poles of LICENSOR, LICENSEE shall notify LICENSOR of the location and date of each Attachment, as set forth on the Notification of Attachment by LICENSEE Form attached hereto as Exhibit B.

ARTICLE 5 SPECIFICATIONS

LICENSEE's Attachments on LICENSOR's Poles shall be placed and maintained in accordance with provisions of the latest available edition of the National Electric Code and the National Electrical Safety Code, and all subsequent amendments or revisions of said codes, shall meet LICENSOR's construction standards, and be in compliance with any applicable rules, orders, regulations, ordinances and laws now in effect or that hereafter may be lawfully adopted or enacted by LICENSOR's municipal legislative body, any Federal, State, local or other governmental agency, or other authority having jurisdiction, and the reasonable rules and practices of LICENSOR set forth in this Agreement. In the event the two national codes conflict, LICENSOR shall have the right to designate which standards shall be met. If LICENSEE's Attachments are not placed and maintained in accordance with the requirements and specifications of this Article 5, upon written notice from LICENSOR, LICENSEE shall timely perform at its expense, all work necessary to correct any conditions of LICENSEE's nonconformance, unless LICENSOR determines that such noncompliance creates an immediate threat to safety, interferes with the performance of LICENSOR's service obligations, or creates an immediate threat to the integrity of LICENSOR's Poles or equipment. In such event, LICENSOR may perform or authorize such work or take such action that it deems necessary without first giving notice to LICENSEE and without subjecting itself to any liability, except to the extent of LICENSOR's gross negligence or willful misconduct, and LICENSEE shall, on demand, reimburse LICENSOR for the reasonable expenses so incurred.

ARTICLE 6 PLACING AND MAINTAINING ATTACHMENTS

(a) LICENSEE shall, at its own expense, place and maintain its Attachments in a safe condition and thorough repair, and in a manner as required by this Agreement so as not to conflict with the use of Poles by LICENSOR or other users who attached prior to the date of LICENSEE's Attachments, or interfere with the construction, operation, maintenance, or removal of facilities thereon. LICENSEE shall take all necessary precautions, by the installation of protective equipment or other means, to protect all persons and property against injury or damages occurring by reason of LICENSEE's Attachments on LICENSOR's Poles.

(b) LICENSEE shall, within sixty (60) days, at its own expense, upon written notice from LICENSOR, relocate, replace, or renew its Attachments placed on the Poles, and transfer them to substitute poles, or perform any other work in connection with the facilities that may be reasonably required by LICENSOR in accordance with the terms of this Agreement. In the case of an emergency, LICENSOR may arrange to relocate, replace or renew the Attachments placed on the Poles by LICENSEE, transfer them to substitute poles, or perform other work in

connection with the Attachments that may be required for the maintenance, removal, replacement, or relocation of its Poles, the Attachments to the Poles, or the service needs of LICENSOR. LICENSEE shall, on demand, reimburse LICENSOR for the reasonable expenses so incurred.

(c) LICENSEE shall not place any additional equipment, with the exception of customer service drops, or change the position of any of its Attachments upon any Pole used by it hereunder without first making application therefore and receiving LICENSOR's approval so to do, all as prescribed in Article 4 hereof.

ARTICLE 7 ALTERATIONS FOR LICENSEE'S ATTACHMENTS

(a) In the event that any Pole of LICENSOR to which LICENSEE desires to make Attachments, in the judgment of LICENSOR, requires rearrangement to support, or accommodate the additional attachments of LICENSEE, LICENSOR shall indicate, using the form on Exhibit A, the changes it believes are necessary to provide adequate pole space and the estimated costs to LICENSEE, and the estimated completion date for such work. If LICENSEE is willing to bear the cost of such changes, LICENSEE shall indicate its acceptance using the form and return it to LICENSOR. LICENSOR shall use commercially reasonable efforts to complete the work within one hundred twenty (120) days from receiving a deposit payment from LICENSEE for the work. LICENSEE agrees to pay LICENSOR the cost of replacing any Pole that is inadequate to accommodate LICENSEE's Attachments, as well as the cost of transferring LICENSOR's attachments from the old to the replacement Poles. LICENSEE also agrees to pay LICENSOR the cost of rearranging attachments on an existing Pole to accommodate LICENSEE's Attachments, including, but not limited to, the cost of strengthening or guying. LICENSEE also agrees to pay the owner or owners of other attachments on said Poles the cost of transferring or rearranging such attachments to accommodate LICENSEE's Attachments. LICENSEE shall agree with other owners of facilities attached to said Poles as to the reasonable payment to be made to such owners.

(b) In the event LICENSOR installs a new Pole in order to provide space, height or strength to accommodate LICENSEE's Attachments, the difference in the cost of the initial new Pole and the cost of providing a Pole of extra height or strength shall be borne by LICENSEE. Such cost also shall include the difference between the cost of installing the new Pole and the cost of installing a Pole LICENSOR considers adequate for LICENSOR's attachments and of its other licensees. If a Pole replacement under this Article 7(b) benefits LICENSEE and other pole attachers, the cost shall be pro-rated among all benefiting attachers. The new Pole shall be the property of LICENSOR regardless of any payments by LICENSEE toward its costs and LICENSEE shall acquire no right, title or interest in such Pole. Notwithstanding the foregoing language in this Article 7(b), the LICENSOR shall not be required to increase the space, height or strength of any pole or remove any newly installed pole in order to accommodate LICENSEE's attachments.

(c) Because LICENSOR provides an essential service to the public, it reserves the right to make periodic inspections of LICENSEE's Attachments to make certain that there is no impairment to its ability to provide electricity to its customers and LICENSEE shall pay to

LICENSOR LICENSEE's pro rata portion of the reasonable costs of such inspections, provided that LICENSOR shall not make such inspections more often than once every three (3) years and shall provide written notice to LICENSEE of the periodic inspection unless, in LICENSOR's reasonable judgment, such inspections are required for reasons involving safety, maintenance of service, or where LICENSOR reasonably believes LICENSEE is violating the terms of this Agreement. The making of such inspections, or the failure to do so, shall not relieve LICENSEE of any responsibility, obligation, or liability assumed under this Agreement.

(d) If LICENSEE's Attachments are found on a Pole for which no permit has been obtained, LICENSOR may impose a charge as a condition to such Attachments remaining on the Pole. If LICENSEE fails to pay the charge, LICENSOR may remove the Attachments and the expense of removal shall be borne by LICENSEE. For the purpose of determining the charge, an unauthorized Attachment shall be treated as having existed for a period that is the lesser of the period of the most recent inspection or three (3) years prior to its discovery; and the charge, computed at the applicable yearly rate per Pole at the time of discovery, shall be due and payable within forty-five (45) days of LICENSEE's receipt of an invoice for such unauthorized Attachments (unless LICENSEE provides proof of lawful attachment). Any such charge imposed by LICENSOR shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. Notwithstanding the above, LICENSEE shall not be responsible for payment of any unauthorized Attachments unless the total number of LICENSOR's Poles with LICENSEE's Attachments found during a periodic inspection exceed in the number of such Poles indicated in Article 4(b). If the total number of LICENSOR's Poles with LICENSEE's Attachments changes from the number of such Poles indicated in Article 4(b), there shall be an adjustment in the next annual rental payment owed LICENSOR for the use of its Poles.

ARTICLE 8 LICENSOR'S RIGHTS AND SERVICE RESPONSIBILITIES

LICENSOR reserves to itself, its successors and assigns, the right to maintain its Poles and to operate its facilities thereon in such a manner as will best enable it to fulfill its own core electric service requirements and responsibilities. LICENSOR shall not be liable to LICENSEE for any interruption to service of LICENSEE or for interference with the operation of the Attachments of LICENSEE arising in any manner out of the use of LICENSOR's Poles. Nothing in this Agreement shall be construed to obligate LICENSOR to grant LICENSEE permission to use any particular Pole or Poles.

ARTICLE 9 RIGHTS-OF-WAY AND PERMITS FOR LICENSEE'S ATTACHMENTS

(a) Subject to applicable law, nothing in this Agreement shall be construed as a warranty or guarantee of permission from owners of private property, municipal or other governmental authorities, or other users, for LICENSEE to place or maintain its Attachments upon the Poles of LICENSOR. Where required to do so, LICENSEE shall secure any required consents, permits, or other appropriate authorization from such owners, users, or governmental authorities and upon written request of LICENSOR shall furnish to LICENSOR evidence of the procurement of such authorizations.

(b) Upon written notice from LICENSOR to LICENSEE that the use of any Pole is prohibited by municipal or other governmental authorities or property owners, the permit covering the use of such Pole shall immediately terminate and LICENSEE's Attachments shall be removed.

ARTICLE 10 LIABILITY AND DAMAGE RESPONSIBILITIES

(a) LICENSEE shall exercise all reasonable precautions to avoid damage to facilities of LICENSOR and other authorized users of LICENSOR's Poles and hereby assumes all responsibilities and liabilities for any and all loss for such damage directly and solely caused by LICENSEE or by any of its employees or agents.

(b) Throughout the term of this Agreement, LICENSEE shall maintain in full force and effect with a carrier or carriers selected by LICENSEE, in accordance with LICENSEE's franchise agreement, the following insurance:

- (1) Worker's compensation insurance in compliance with the laws of the State of Utah;
- (2) Bodily injury liability insurance, with limits of not less than \$1,000,000 as to any one person and \$2,000,000 as to any one accident or occurrence; and
- (3) Property damage liability insurance with limits of not less than \$1,000,000 for damage to the property of any one person and \$1,000,000 for each accident or occurrence.
- (4) An umbrella policy in favor of the LICENSOR in the amount of \$2,000,000.

The insurance described above also shall provide contractual liability coverage satisfactory to LICENSOR with respect to liability assumed by LICENSEE under Article 11. LICENSOR shall be named as an additional insured with respect to bodily injury and property damage insurance. Within sixty (60) days of the Effective Date of this Agreement, LICENSEE shall submit to LICENSOR certificates of insurance by each insurance carrier addressed to LICENSOR showing the effectiveness of insurance in accordance with this Agreement. LICENSEE's insurance policy or policies shall not be subject to cancellation without thirty (30) days prior written notice to LICENSOR.

ARTICLE 11 INDEMNIFICATION

(a) LICENSEE agrees to indemnify and hold harmless LICENSOR, its representatives, agents, employees, successors, and assigns, against and from any and all claims, demands, causes of action, damages, liabilities, costs (including without limitation reasonable attorneys' fees) and expenses, directly or indirectly resulting from or caused by: (1) the installation, maintenance, use, or removal of LICENSEE's equipment, including without limitation, those based upon LICENSEE's failure to secure any required consents, permits, or authorization from the owners of private property, other users, or governmental authorities to maintain its Attachments on LICENSOR's Poles; (2) any act, omission, or negligence of LICENSEE, or any

of its representatives, agents, or employees; and (3) any detrimental effect upon, interruption, discontinuance, or interference with LICENSEE's service occasioned by any action by LICENSOR or any other licensed user.

(b) The above and foregoing indemnities shall apply with respect to any and all claims, demands, causes of action, damages, liabilities, costs, and expenses, except to the extent caused by the gross negligence or willful misconduct of LICENSOR or any of its representatives, agents or employees.

(c) LICENSEE shall, upon demand and at its own risk and expense, defend any and all such suits, actions, or other legal proceedings which may be brought or instituted against LICENSOR, its successors or assigns, on any such claim, demand, or cause of action; and shall pay and satisfy any judgment or decree which may be rendered against LICENSOR, its successors or assigns.

(d) LICENSOR will promptly notify LICENSEE, in writing, of any claim under this Article 11 and shall cooperate with LICENSEE with respect to the settlement and/or defense of such claims.

ARTICLE 12 REMOVAL OF LICENSEE'S ATTACHMENTS

(a) LICENSOR reserves the right, without liability to LICENSEE or its subscribers, to discontinue the use of, remove, replace, or change the location of any of its Poles regardless of LICENSEE's use of said Poles and LICENSEE shall at its sole cost and within sixty (60) days after written notice by LICENSOR, remove its Attachments as shall be required by LICENSOR.

(b) Upon notice from LICENSOR to LICENSEE that the use of any Pole or Poles by LICENSEE is unauthorized or illegal, the permit insofar as it covers the use of such Pole or Poles shall immediately terminate and LICENSEE shall promptly remove its Attachments from such Pole or Poles.

(c) LICENSEE may, at any time, remove its Attachments from a Pole or Poles of LICENSOR and shall give LICENSOR written notice of such removal in the form of Exhibit C.

ARTICLE 13 ASSIGNMENT OF RIGHTS

(a) LICENSEE shall not assign, sell, lease, or in any manner transfer any of the rights granted to it by this Agreement, without prior written consent of LICENSOR. The attempted assignment, transfer, lease, or sale by LICENSEE of any of the rights hereby granted without written consent of LICENSOR shall constitute a breach of this Agreement by LICENSEE, subject to the remedies set forth in Article 14. Notwithstanding anything to the contrary herein, LICENSEE may assign this Agreement without the necessity of obtaining LICENSOR's consent, to any person acquiring all or substantially all of LICENSEE's assets or stock; provided that such assignee has been duly authorized to provide the services described hereunder and provided further that LICENSEE shall notify LICENSOR in writing, within thirty (30) days of

such assignment.

(b) The terms and provisions of this Agreement shall be binding upon and extended to and inure to the benefit of the successors, assigns, and contractors and/or subcontractors of the LICENSEE.

ARTICLE 14 DEFAULTS AND REMEDIES

(a) If LICENSEE fails to comply with any of the provisions of this Agreement, or is in default in any of its obligations under this Agreement, LICENSOR shall provide written notice to LICENSEE to correct such default. If LICENSEE fails to correct such default or noncompliance within thirty (30) days after said notice by LICENSOR to LICENSEE to cure the default, LICENSOR may terminate the permit covering the Pole or Poles as to which such default or noncompliance shall have occurred, provided however, in such cases where a default or noncompliance cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, LICENSEE shall have an additional sixty (60) days to cure the default or noncompliance for a total of ninety (90) days, or as mutually agreed to by the Parties. In the event the LICENSOR terminates this Agreement, in its entirety, LICENSEE shall have one hundred eighty (180) days within which to remove its attachments, and in the event that LICENSEE does not remove its attachments within said period, LICENSOR may do so, the removal cost to be borne by LICENSEE.

(b) The rights and privileges of LICENSEE hereby granted shall not pass to any trustee, receiver, nor assignee for the benefit of creditors of LICENSEE or be otherwise transferable by operation of law. This Agreement shall terminate, at LICENSOR's election, in the event of the liquidation or involuntary dissolution of LICENSEE, or in the event LICENSEE is adjudicated a bankrupt or insolvent, or if a receiver for LICENSEE's property is appointed and such receiver is not discharged or such appointment revoked within thirty (30) days after the date of the appointment of such receiver. LICENSOR may terminate this Agreement by ten (10) days written notice to LICENSEE upon the happening of any one or more of the following events:

- (1) The making by LICENSEE of any assignment for the benefit of creditors;
- (2) The taking of any action for the voluntary dissolution of LICENSEE;
- (3) The filing by LICENSEE of a voluntary petition in bankruptcy; or
- (4) The appointment of a receiver for the LICENSEE.

(c) In the event either party shall be required to resort to litigation for the purpose of enforcing its rights under this Agreement, the judgment resulting from such litigation shall include an allowance for court costs and reasonable attorneys' fees, paid or incurred in connection with enforcing the terms of this Agreement.

ARTICLE 15 ENFORCEMENT

Failure by LICENSOR to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any terms or conditions.

ARTICLE 16 RIGHTS OF OTHER USERS

This Agreement shall not be construed as affecting the rights or privileges previously conferred by LICENSOR, by contract or otherwise, to others not parties to this Agreement, to use any Poles covered by this Agreement; and LICENSOR shall have the right to continue and extend such rights and privileges. This Agreement shall not be construed as affecting or limiting the rights of LICENSOR to make other and additional contracts with other persons, firms, or corporations for the joint use or rental of LICENSOR's Poles and facilities; provided that, such other pole attachment agreements shall not contain terms that are more favorable to such other parties than those given to LICENSEE under the terms of this Agreement.

ARTICLE 17 PAYMENT OF INVOICES

Invoices for expenses and other charges under this Agreement, including without limitation, amounts due under Article 3, shall be paid within forty-five (45) days after LICENSEE's receipt of the invoice. Nonpayment shall constitute a default of this Agreement if not paid within ten (10) days after written notice of such nonpayment by LICENSOR to LICENSEE.

ARTICLE 18 IDENTIFICATION OF LICENSEE'S EMPLOYEES

In furtherance of the purpose of the laws, rules, and regulations relating to sabotage, espionage, and subversive activities, LICENSEE shall require its contractors and/or subcontractors to have suitable means of identification for their employees who will have occasion to perform work on or about LICENSOR's Poles, wires, or other facilities. Upon written request of LICENSOR, LICENSEE shall promptly remove or cause the removal of any employee, agent, or contractor from performing any work on or about LICENSOR's Poles, wires, or other facilities, found by the LICENSOR to be unqualified or unfit for the performance of such work or who fails to comply with the terms of this Agreement.

ARTICLE 19 FORCE MAJEURE

Neither LICENSOR nor LICENSEE shall be liable for any delay for failure to perform its obligations under this Agreement, other than the payment of monies due, in the event of a Force Majeure occurrence. Force Majeure, as used herein, shall include, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, absence of necessary orders and permits of any kind which have been properly applied for, equipment, material, supplies, labor or machinery shortage, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, drought, arrest, war, civil

disturbances, explosions, sabotage, injunction, blight, famine, blockade, quarantine, or any other similar cause or event not reasonably within the control of the party claiming the Force Majeure.

ARTICLE 20
PREVENTION AND SATISFACTION OF LIENS

LICENSEE agrees that no lien shall attach to the property of LICENSOR. LICENSEE, its subcontractors, servants, agents, or employees shall not file, assert, nor prosecute any mechanic's or materialman's liens against LICENSOR or its property. LICENSEE, its subcontractors, servants, agents, or employees also shall not permit any mechanic's or materialman's liens to be filed, assigned or prosecuted against LICENSOR or its property.

ARTICLE 21
NOTICES

Any notice required or permitted pursuant to this Agreement shall be given by certified mail, return receipt requested, addressed to:

LICENSOR at:

Springville City
Attention: City Administrator
110 South Main
Springville, UT 84663

LICENSEE at:

With a copy to:

Either party may, by like written notice at any time, designate a different address to which notices shall subsequently be transmitted to it.

ARTICLE 22
CONTRACTING

LICENSEE shall, as soon as practical after the execution of this Agreement, notify LICENSOR in writing of the names of any contractors or subcontractors which the LICENSEE proposes for any or various portions of the work to be performed in attaching LICENSEE's Attachments to LICENSOR's Poles. LICENSEE shall be fully responsible under the provision of Article 10 to LICENSOR for the acts or omissions of its contractors and/or subcontractors and of the persons directly or indirectly employed by them.

ARTICLE 23
LICENSEE'S COMPLIANCE WITH ORDINANCES,
LAWS, RULES AND REGULATIONS

LICENSEE, in the performance of its broadband communication services obligations and in exercising the rights granted under any license issued to LICENSEE by LICENSOR under this Agreement, shall, at all times, comply with all applicable ordinances, laws, rules, and regulations of any and all governmental authorities having jurisdiction and shall exercise such rights for lawful communication purposes only.

IN WITNESS WHEREOF, this Agreement had been executed by duly-authorized representatives of the Parties.

SPRINGVILLE CITY

by: _____
Richard J. Child, Mayor

PRESTIGE BROADBAND, LLC

Name: _____
Title: _____

EXHIBIT A

PERMIT NO.
APPLICATION AND PERMIT

To: Springville City Power
450 West 600 North
Springville, Utah 84663

In accordance with the terms of the Pole Attachment License Agreement, dated _____, 201__, _____ hereby applies for a permit to make Attachments to the Poles identified below. It has obtained all necessary consents or permits from private property owners and governmental authorities in accordance with Article 9 of the Pole Attachment License Agreement.

LOCATION

No. Poles Attached _____

By _____

Title _____

Licensee _____

A permit is issued on _____, 20__, to place the above described Attachment(s) on the identified Pole(s), subject to Licensee's acceptance of any changes or rearrangements detailed on the attached sheet, at an estimated cost of \$_____, for Licensor's rearrangements. Acceptance should be indicated on this form and returned to Licensor within sixty (60) days from the date hereof, failing which the permission hereby granted in this permit shall automatically be revoked.

Springville City by:

Title _____

To: Springville City Power
450 West 600 North

Springville, Utah 84663

The above mentioned changes and rearrangements are accepted by Licensee on _____, 20__, and the costs hereof will be paid to Licensor in accordance with Article 7 of the Pole Attachment License Agreement.

By _____

Title _____

EXHIBIT B

NOTIFICATION OF ATTACHMENT BY LICENSEE

_____, 20__

To: Springville City Power
450 West 600 North
Springville, Utah 84663

In accordance with the terms of the Pole Attachment License Agreement, dated _____, 201__, Pole Attachment information is shown below:

Location _____
(Street name)

Total Poles Attached _____

By _____

Title _____

Notice Acknowledged

_____, 20__

By _____

Title _____

Licensors
Notice No. _____

EXHIBIT C

NOTIFICATION OF REMOVAL BY LICENSEE

To: Springville City Power
450 West 600 North
Springville, Utah 84663

In accordance with the terms of the Pole Attachment License Agreement, dated _____, 2014, please cancel the Permit for the following Pole(s) from which Attachment(s) were removed on _____, 20__.

Location _____
(Street name)

Total Poles Discontinued _____

By _____

Title _____
Licensee

Notice Acknowledged
_____, 20__



STAFF REPORT

DATE: December 27, 2017

TO: The Honorable Mayor and City Council

FROM: John Penrod, City Attorney

SUBJECT: CONSIDERATION OF APPROVING A RESOLUTION THAT ESTABLISHES A PROCEDURE FOR VOTING ON CANDIDATES TO FILL THE MIDTERM CITY COUNCIL VACANCY TO REPLACE CITY COUNCILMEMBER RICHARD J. CHILD.

RECOMMENDED ACTION

Motion to approve Resolution No. ____ that approves a procedure for voting on candidates to fill the midterm vacancy on the City Council to replace City Councilmember Richard J. Child.

BACKGROUND

In Springville City's most recent election, Richard J. Child was elected to the office of Mayor. Mr. Child has served approximately two years of a four-year term as a Councilmember of the Springville City Council, leaving a midterm City Council vacancy on January 1, 2018. The purpose of the proposed resolution is to establish the procedure the City Council will follow in voting on candidates to fill the vacancy left by Mr. Child's election to the office of Mayor.

In filling the council vacancy, State law requires the following procedure be followed:

1. All candidates must be interviewed in an open meeting.
2. The municipal legislative body, which includes the mayor and council in a six-member council, votes on the candidates.
3. The two candidates with the highest votes in the first round of voting move on to the second round of voting.
4. If a candidate receives a majority vote in the second round of voting, the candidate is the candidate selected to fill the midterm vacancy.
5. If neither candidate receives a majority vote in the second round of voting, the midterm vacancy is chosen by lots.

State law is silent on how the rounds of voting are to take place.

In drafting the proposed procedures for filling the councilmember vacancy, staff has contacted several other cities to determine how other cities have filled council vacancies. Other cities have done it several different ways. For instance, one city's first round of voting was done by the city council making motions and voting on individuals to be eliminated until they got down to two candidates. Another city simply skipped State law's requirements to have two votes. This City made a motion and voted unanimously for an individual to fill the vacancy. It appears that every city has voted to fill vacancies in different ways.

The procedure staff is recommending is as follows:

1. The City Council will interview each candidate in an open meeting. Each candidate will be asked the same three questions and be given two minutes to respond to each question. Each City Councilmember may ask one follow up question to each candidate.
2. After interviewing each candidate, each Councilmember will rank his top three candidates on a ballot.
3. If there are not two candidates who are ranked the highest, the City Council will move to a rollcall vote to select two candidates.
4. Once the first round of voting is complete and there are two candidates left, the second round of voting will be by a rollcall vote in which each Councilmember will vote by naming the candidate they choose. The Councilmembers will vote in a randomly selected order, and if needed, the Mayor will have the last vote.
5. If there is not a clear winner, the winner will be selected by lots using a bag with two marbles.

The proposed procedure is staff's recommendation. The City Council may revise the procedure or elect to move forward without a procedure, but State law must be followed. The meeting to fill the councilmember vacancy will take place on Tuesday, January 9th at 5:15 pm.

FISCAL IMPACT

None.

Attachments: Proposed Resolution

RESOLUTION #2018-XX

A RESOLUTION APPROVING THE PROCEDURE FOR FILLING THE MIDTERM VACANCY ON THE CITY COUNCIL TO REPLACE CITY COUNCILMEMBER RICHARD J. CHILD.

WHEREAS, in Springville City’s most recent election, Richard J. Child was elected to the office of Mayor; and

WHEREAS, at the time Mr. Child was elected to the office of Mayor, Mr. Child had served approximately two years of a four-year term as a Councilmember of the Springville City Council, leaving a midterm City Council vacancy on January 1, 2018; and

WHEREAS, in accordance with Section 20A-1-510(1)(b) of the Utah Code Annotated, on December 11, 2017, Springville City posted a public notice stating that Springville City will accept applications from any qualified individuals interested in filling the City Council vacancy, hold a meeting on January 9, 2018 at 5:15 pm to interview all qualified individuals who have applied for the vacancy, and vote on the applicants to fill the vacancy that same night; and

WHEREAS, the Springville City Council must follow Section 20A-1-510(c) of the Utah Code in filling the midterm City Council vacancy; and

WHEREAS, the Springville City Council desires to adopt the attached Procedure to Fill Vacant Council Seat to be implemented on January 9, 2018 in selecting the individual to fill the midterm City Council vacancy, which procedures are in compliance with in following Section 20A-1-510(c) of the Utah Code.

NOW, THEREFORE, BE IT RESOLVED BY THE SPRINGVILLE CITY COUNCIL:

SECTION 1. Adoption of Procedure to Fill Vacancy. The Procedure to Fill Vacant Council Seat, substantially in the form attached as Exhibit A, is approved as the procedure the City Council will follow to fill the vacant City Council position on January 9, 2018.

SECTION 2. Effective Date. This resolution shall become effective immediately upon passage.

PASSED AND APPROVED this 2nd day of January, 2018.

Richard J. Child, Mayor

Attest:

Kim Rayburn, City Recorder

EXHIBIT A
PROCEDURE TO FILL VACANT COUNCIL SEAT

PROCEDURE TO FILL VACANT COUNCIL SEAT

Purpose:

The Springville municipal legislative body will follow the procedures in this document to fill a midterm councilmember vacancy in an open City Council meeting. The procedures in this document follow 20A-1-510 of the Utah Code Annotated, a copy of which is attached hereto.

Under State Law, the mayor in a six-member council is considered a member of the municipal legislative body and shall have a vote to fill the vacant council seat as stated herein.

Procedure:

1. **Interviews:** Section 20A-1-510(b)(iii) requires the municipal legislative body, in an open meeting, to “interview each individual whose name is submitted for consideration” to fill the midterm municipal office vacancy. The mayor shall conduct the interview as follows:

- a. Each candidate will be allowed to provide answers to the following three (3) questions:
 - i. What do you want us to know about you?
 - ii. If you could change anything about Springville City, what would you change?
 - iii. What is your vision for the future of Springville?
- b. Answers to the above three questions will be limited to two minutes each.
- c. Immediately following an individual candidate’s answers to the above three (3) questions, the municipal legislative body may ask follow up questions limited to one question per councilmember and mayor for each candidate. Each question and answer will be limited to a combined time of one (1) minute for each question asked.
- d. City staff will keep time for the answers and provide the candidate with a 15 second warning before the end of the time period.

2. **First Vote.** Section 20A-1-510(1)(c)(ii) requires the municipal legislative body to limit the number of applicants to “two individuals having the highest number of votes after the first vote.” The first vote of the municipal body shall happen as follows:

- a. **Ballot.**
 - i. Each member of the municipal legislative body, excluding the mayor, will individually rank the top three (3) candidates on a ballot. In ranking the candidates, the members will give their highest candidate 3 points, their second ranked candidate 2

points, and the member's lowest of the top three candidates 1 point.

- ii. *Two Top Candidates.* If there are clearly two candidates with the highest number of total points, the first vote will be considered complete and the top two ranked candidates will move on to the second vote.
 - iii. *One Top Candidate.* In the event there is one candidate with the highest number of points and two or more candidates tied for the second highest number of votes, the top ranked candidate will move on to the second vote, and the other candidates will be voted on through a roll call vote.
 - iv. *No Top Two Candidates.* In the event there are three or more candidates tied for the highest ranked candidates, the tied candidates will be voted on through a roll call vote.
- b. **Roll Call Vote.** If there is a need for a roll call vote in the first round of voting, each member of the municipal legislative body shall have one vote, which will be conducted by stating the name of the person (or persons if more than one person needs to be voted into the second round of voting) for which the member wants to vote. The candidate(s) with the highest number of votes (does not have to be a majority) will make it to the second vote. Roll call voting will take place in the order set by the mayor.

3. **Second Vote.** Section 20A-1-510(1)(c)(ii) states that the two highest vote getters from the "first vote taken shall appear before the municipal legislative body and the municipal legislative body shall vote again." The second vote shall be a roll call vote, which shall happen from the following randomly selected order:

- Chris Creer
- Michael Snelson
- Craig Jensen
- Jason Miller

Each member shall have one vote, which shall be conducted by stating the name of the person for which the member wants to vote. The winner of the second vote must receive a majority vote of the members of the municipal legislative body. The mayor shall be the last member to vote and may elect not to vote should a candidate receive three votes before he votes.

4. **Lots.** Section 20A-1-510(1)(c)(iii) states: "If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body." If the decision comes down to being filled by lot, the city recorder shall provide a bag with one red marble and one blue marble both of which shall be the same size and weight. The oldest of the two candidates shall pick one marble from the bag. If the candidate picks the red marble, that candidate shall be the winner. If the candidate picks the blue marble, the other candidate shall win.