



# Town of Holly Springs

## Town Council Meeting Agenda Cover Sheet

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### Agenda Item #: 6e

#### Consent Agenda

**Title:** Fiber Surplus Agreement

**Strategic Priority Area:** Organizational Excellence

**Staff Resource:** Jeff Wilson, IT

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#### **Action(s):**

Motion to approve the Surplus Fiber Indefeasible Right of Use Agreement ("IRU"), awarding the highest bidder, Ting Fiber, Inc., with access to the surplus fiber capacity, as advertised in the legal notice on October 11, 2019.

#### **Explanation:**

- An IRU agreement grants a right to use the fiber for the specified term, however does not convey title or ownership, or any interest in real or personal property.
- Pursuant to NCGS 160A-272 (d), on October 11, 2019, the Town placed a legal advertisement to offer for use certain surplus strands of fiber on the Town's fiber network.
- The advertisement was for a 30 day request for proposal (RFP) period. The only provider that requested information on the surplus fibers was Ting Internet, which is a fiber to the home provider.
- The included agreement for licensing of these surplus fibers for a term of 20 years includes the bid response forms.

#### **Background:**

- The Town has excess capacity in the fiber network it installed for its own use, and has several strands of fiber available for use by third parties. (i.e. "dark fiber"). By entering into IRU agreements, the Town can off-set some of its costs to run the fiber network with no additional expense to the Town.
- The Town treats the available Dark Fiber as surplus property for purposes of entering into IRU agreements and publishes its intent to "lease" these strands.
- Interested parties were requested to submit bids to the town using a newspaper advertisement, which was published in the News and Observer on October 11, 2019.

**Funding Source(s):** N/A

#### **Attachment(s):**

- Surplus Fiber IRU Agreement

## **SURPLUS FIBER IRU AGREEMENT**

THIS MASTER DARK FIBER IRU AGREEMENT (this “Agreement”) is made, as of the Effective Date (hereinafter defined), by and between Ting Fiber, Inc. (“Company”), a corporation organized and existing under the laws of the state of Delaware, USA, with offices located at 96 Mowat Avenue, Toronto, ON M6K 3M1, Canada, and The Town of Holly Springs, a political subdivision of the State of North Carolina (the “Town”) located at 128 South Main Street (PO Box 8), Holly Springs, NC 27540.

### **RECITALS**

**WHEREAS**, The Town has constructed or has a rights and interest to use a fiber optic communications system in the Holly Springs, North Carolina area, consisting of fiber optic cable and associated equipment installed along private and public property and rights-of-way (the “Town Network”) following the routes depicted in Exhibit A hereto (the “Routes”) such optical fibers being unnecessary and of no use to Town in the performance of its duties to the public; and,

WHEREAS, the Town operates the Town Network for its governmental purposes to provide telecommunication services for nonproprietary governmental functions such as police, fire, planning, zoning, and code enforcement and has additional capacity within the Town Network for use by third parties pursuant to nondiscriminatory policies adopted by the Town Council, and The Company seeks to make use of this additional excess capacity pursuant to those policies; and,

**WHEREAS**, The Company desires to acquire from the Town, and the Town desires to provide to the Company, an exclusive, indefeasible right to use certain optical fibers in the System along the Routes as hereafter described upon the terms and conditions set forth below; and

**WHEREAS**, with the granting of each indefeasible right to use such optical fibers, the Town desires to irrevocably transfer an equitable interest in such fibers to The Company for the applicable Term as set forth below; and

**WHEREAS**, the parties intend that the Company shall have substantially all benefits and risks associated with ownership of such optical fibers, subject to the provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS**

Capitalized terms and phrases used in this Agreement and not otherwise defined herein shall have the following meanings:

**“Acceptance Date”** means the date when the Town delivers the System to the Company, as determined by Section 6 herein.

**“Acceptance Standards”** means the fiber characteristics which the Town may utilize to accept fiber from its own construction contractor or partners, subject to variance due to route, segment, fiber types, initial and subsequent splicing and other physical factors not necessarily within the Town’s control, which characteristics the Town deems acceptable to begin its own use of Fibers in the System for digital transmission within the specifications of then-current digital optical transmission equipment. The Town’s Acceptance Standards may result in a System which requires further tuning for some future digital or analog use, the cost of which is not contemplated in this Agreement, and which may be the subject of some future agreement. Such Acceptance Standards shall be nearly uniform for all Fibers in the System and the Town’s Acceptance Standards for Dark Fibers shall be the same as for any other Fibers in the system, including Fibers for the Town’s use.

**“Acceptance Dispute Procedure”** means that process described in Section 6 which shall be applied in the event that the Company does not accept the Town’s application of the Town’s Acceptance Standards.

**“Affiliates”** means an entity controlling, controlled by, or under common control with, a party by means of direct or indirect equity ownership in excess of 40%.

**“Cable”** means the fiber optic cable installed pursuant to this Agreement as part of the System (including any replacement cable) and fibers contained therein, including the Surplus Dark Fibers.

**“Connecting Point”** means a point where the network or facilities of The Company will connect to the System.

**“Costs”** means actual costs incurred. All Costs shall be computed in accordance with generally accepted accounting principles. Such actual costs include, without limitation, the following: (a) labor costs, including wages and salaries (but not wages or salaries of administrative or clerical workers), plus benefits and overhead in the amount of thirty percent (30%) of such wages and salaries; and (b) other reasonable direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, costs of capital, Required Rights, franchise fees, sales, use or similar taxes, etc.).

**“Dark Fiber”** means any Fiber which is not lit optically by equipment of the Company, the Town or third party.

**“Dark Fiber Specifications”** means the specifications applicable to the Surplus Dark Fibers attached hereto as Exhibit B.

**“Effective Date”** means the date of the last signatory of this Agreement.

**“Fiber Miles”** means the number of dark fiber strands to be granted hereunder as specified in Section 2 multiplied by the Route Miles.

**“Fiber or Fibers”** means an individual strand of an optical fiber contained in the System including the Surplus Dark Fiber, the fibers of the Town, and the fibers of any third party in the System, excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to governmental authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

**“Indefeasible Right of Use”** or **“IRU”** is an exclusive, indefeasible right to use the specified property. The grant of an IRU does not convey title or ownership of the covered property nor any rights of possession or salvage in real or personal property.

**“IRU Fiber Optic Surplus Form”** or **“Surplus Form”** is a form created by the Town to provide details of surplus segments of the Town’s fiber optic cable or fibers and provided to interested parties in response to legal advertisements for available surplus fiber.

**“Pro-Rata Share”** means a proportion equal to a fraction, the numerator of which is the number of Surplus Dark Fibers and the denominator of which is the number of all Fibers in the Cable. If this fraction varies over different portions of a Route, then the Pro-Rata Share shall be equal to the weighted average (weighted by length as set forth in the Town’s as-built drawings) of the relevant portions. For example, if the fraction for 100 feet of the affected portion is 0.1 and the fraction for the remaining 50 feet of the affected portion is 0.07, the weighted average for the entire Route would be 0.09.

**“Released Party”** means each of the following:

- (a) any Affiliates of the other party (except when an Affiliate is the grantee or assignee of any rights or obligations granted under this Agreement) and any lenders, except to the extent such lender has assumed a party’s position under this Agreement by reason of default by such party and/or foreclosure by a lender;
- (b) any employee, officer, director, stockholder, partner, member, or trustee of the other party or of its Affiliates lenders; or
- (c) assignees of the entities included in the above subparagraphs (a) or (b) and any employee, officer, director, stockholder, partner, member, or trustee of such assignees.

**“Right-of-way Agreements”** means rights, licenses, authorizations, easements, leases, fee interests or agreements that provide for the occupancy by the System of real property or fixtures (such as conduit, bridges, river crossings or transmission towers).

**“Route Miles”** means, with respect to an IRU Route Order, the actual miles traversed by the Cable (including spurs) along the Route under this Agreement and/or such IRU Route Order.

“Surplus Dark Fibers” means those Town-owned existing Fiber strands that have been determined to be surplus to the needs of the Town, and are specifically described by number and location in the Town’s advertisement for surplus property.

“System” means, collectively, those certain portions of the Town Network, consisting of the Routes and surplus Dark Fibers, as discussed herein.

“Town” means the Town of Holly Springs or a department of the Town of Holly Springs as appropriate, having authority and possession of the Fibers granted.

## 2. CONVEYANCE OF IRU

2.1 The Town has previously declared certain segments of its Dark Fiber to be surplus to the needs of the Town, has properly advertised the surplus Dark Fibers, and the Company has been determined to be the winning bidder. Effective upon the Acceptance Date, the Town hereby grants and conveys to The Company an exclusive IRU, for the purposes described herein, Routes set forth in Exhibit A (the “Surplus Forms”). The Surplus Dark Fibers are surplus and of no current use to the Town in the performance of its duties to the public. Such grant of an IRU does not convey any legal title to any real or personal property, including the Fibers, the Cable, the Routes or the System unless otherwise noted herein. This Surplus Fiber IRU Agreement does not obligate the Town to include any equipment used to transmit capacity over or “light” the Fibers.

2.2 For the purposes of Section 541(d) of the Bankruptcy Code (or for purposes of such equivalent local law as may apply to the Town), with the granting of each IRU hereby, (a) the Town irrevocably transfers an equitable interest in the Dark Fiber to the Company and the Company shall hold an equitable interest in Surplus Dark Fibers and IRUs vesting upon the Effective Date and continuing for the applicable Term and any Term as defined in the relevant IRU Surplus Forms, and (b) the Town retains all of its right, title, and interest to the Dark Fiber and not any equitable interest.

2.3 The Company shall only be granted IRU rights if it reasonably intends to use such surplus Fiber within three (3) months of acquiring the IRU. In the event it is not placed into use by the Company within six (6) months, the IRU for the unused fiber shall terminate.

## 3. CONSIDERATION

3.1 The consideration for the Town surplus IRU Fibers (the “Base Contract Price”) shall be (a) set forth on the Surplus Forms and (b) two hundred and fifty dollars (\$250) per year per route mile of any route (“Maintenance Charge”). Annual

payments of the Base Contract Price shall be made in advance, automatically by the Company based on the Town's fiscal year (July 1 through June 30) and shall be received by the Town no earlier than July 1 nor later than July 30<sup>th</sup>. No proration shall be made for any partial year. . The Town shall invoice annually for all costs, however the Company shall automatically pay at a minimum the Base Contract Price Each subsequent payment shall be invoiced upon the anniversary of the Effective Date. The Town shall issue an invoice to the Company, and the Company shall then pay all undisputed amounts within forty-five (45) days of receipt of the Town's invoice.

- 3.2 The Company shall make all payments to the Town set forth in Section 3.1 by check or draft of immediately available funds or by wire transfer of immediately available funds to the United States account or accounts designated by the Town. All other payments to be made pursuant to this Agreement may be made by check or draft of immediately available funds delivered to the address designated in writing by the other party (e.g., in a statement or invoice) or, failing such designation, to the address for notice to such other party provided pursuant to Section 18.

#### **4. POTENTIAL CONVEYANCE TO THE TOWN**

If the Company constructs Fiber, conduit or similar facilities and the Company has excess capacity available for use, the Town shall be able to lease such Fiber, conduit or similar facilities from the Company, on different segments and based on availability, for the same rates set forth in Section 3.

#### **5. CONNECTION OF CUSTOMER NETWORK TO THE SYSTEM**

The Company is responsible for all fees associated with connecting their fiber network to the Town's surplus fibers, including, but not limited to, splicing services and materials related to fiber splicing (i.e. splice enclosures). The Town will invoice the Company for the actual cost of these services and materials with no markup for providing these services.

#### **6. TESTING, ACCEPTANCE AND DELIVERY OF FIBERS**

- 6.1 The Surplus Dark Fibers shall be deemed ready for delivery to the Company on that date when (a) all necessary approvals and authorizations for the Town to deliver the specific Surplus Dark Fibers have been secured by the Town; (b) the Dark Fiber in the Town Network has been tested; and (c) the Fiber meets the Town's Acceptance Standards as defined above. The availability of each segment or portion of the Town's System for delivery, together with the actual miles of Fiber available for delivery, shall be certified to the Company in writing by the Town ("Certification").

- 6.2 The Town shall notify the Company at least one (1) week in advance as to the date when testing of the Surplus Dark Fibers is to occur, so that the Company may have an observer present. The Town shall also notify the Company when the Town deems the System or segment of the System has met the Town's Acceptance Standards, and the Surplus Dark Fibers are ready for delivery by sending any relevant Fiber test results (collectively the "Delivery Documentation") to the Company.
- 6.3 The Company shall have ten (10) business days from the date the Town delivers the Delivery Documentation to inspect the Delivery Documentation and, if the Company determines in its discretion that it is appropriate to re-test to ensure that the Dark Fiber Specifications have been met, to perform such re-testing as the Company may require (the "Inspection Period"). During and until expiration of the Inspection Period, the Company shall also be given all reasonable and necessary escorted access to inspect the Town's network to ensure that the Dark Fiber Specifications have been met.
- 6.4 The Surplus Dark Fibers shall be deemed delivered by the Town to the Company ("Acceptance"), upon the earlier of receipt of written notice from the Company to the Town, or the expiration of the Inspection Period unless, prior to the expiration of the Inspection Period, the Company provides written notice of any deficiencies in any of the Dark Fiber or the demarcation points, specifying the failure to meet particular Dark Fiber Specifications, and describing the same.
- 6.5 Upon receiving notice from the Company, pursuant to Section 6.4, that the Surplus Dark Fibers do not meet the Dark Fiber Specifications, the Town shall either:
- (a) within ten (10) days take such action with respect to such portion of the Surplus Dark Fibers to cause such portion of the Surplus Dark Fibers to meet the Acceptance Standards and then re-test the Surplus Dark Fibers in accordance with the provisions of this Article; or
  - (b) within ten (10) days take such action with respect to such portion of the System so as to cause such portion of the System to be altered for the purpose of providing Surplus Dark Fibers out of Fibers which do meet the Acceptance Standards and then re-test and document the Surplus Dark Fibers in accordance with the provisions of this Article, in which case the Surplus Dark Fibers shall be considered to be replaced set then meeting the Acceptance Standards; or
  - (c) notify The Company that the Town disputes the Company's determination that the Surplus Dark Fibers do not meet the Acceptance Standards. In the case of such dispute, the Company and the Town agree to resolve the dispute under the provisions of Subsection 6.6.

After taking corrective actions and re-testing the Surplus Dark Fibers, the Town shall provide The Company with a copy of the new test results and the Company shall again have all rights provided in this Article with respect to such new test results. The cycle described above of testing, taking corrective action and re-testing shall take place until the Surplus Dark Fibers meet the Acceptance Standards.

- 6.6 If the Town provides notice to the Company pursuant to Subsection 6.5(c), the parties shall agree on a mutually acceptable fiber optic testing company and such company shall re-test the Surplus Dark Fibers. If the testing company, after testing the Surplus Dark Fibers, determines that the Surplus Dark Fibers meet the Acceptance Standards, then the Company shall pay the testing company's charges for performing the testing and the Company shall be deemed to have accepted the relevant portion of the Surplus Dark Fibers. If the testing company, after testing the Surplus Dark Fibers, determines that the Fibers do not meet the Acceptance Standards, then the Town shall, in its sole and absolute discretion, decide to (i) pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in Subsection 6.5(a), or (ii) do nothing, terminate this Agreement without any obligation to take further action on behalf of the Town. If it elects to make any payment to a testing company, such payment by the Town, or any payment made by the Town under this Agreement, shall at no times during the Term exceed the consideration paid to the Town under this Agreement. The cycle described above of testing, taking corrective action and re-testing shall take place until the Fibers meet the Acceptance Standards
- 6.7 If the Company does not object to the results of any of the Town's Fiber acceptance testing or its own Fiber acceptance testing by written notice within fifteen (15) calendar days, the Company shall be deemed to have accepted the Surplus Dark Fibers on the Routes upon receipt of written notice from the Town of such deemed Acceptance. The date of the Company's notice accepting the Surplus Dark Fibers on the Routes or the date of deemed acceptance under this Section for the last segment to be accepted on the Routes shall be the Acceptance Date of the Surplus Dark Fibers for such Route.
- 6.8 As of the Acceptance Date, subject to the provisions of this Agreement, the IRU of the Surplus Dark Fibers shall be deemed to have been delivered to the Company in accordance with the provisions of this Agreement and all applicable payments due the Town, including but not limited to the Contract Price, shall be due and payable.

## **7. SYSTEM ROUTES**

- 7.1 The Town shall have the right to install and relocate the Routes or any portion of the System on any type of right-of-way, which is direct-buried, buried in conduit or aerial.

- 7.2 Notwithstanding any other provision herein to the contrary, the Company shall be solely responsible for obtaining, at its sole cost and expense, any and all necessary franchises, authorizations or permits specifically required in addition to the Required Rights as a result of the Company's, as opposed to the Town's, use, operation, access, build or connection of or with the Surplus Dark Fibers, and the Company's operation, maintenance, repair and replacement of all the Company Equipment associated therewith.

## **8. TERM**

- 8.1 The term of this Surplus Dark Fiber IRU shall begin on the Acceptance Date of the Surplus Dark Fibers by the Company and shall end for the Surplus Dark Fibers on the two hundred fortieth (240) month anniversary of the Acceptance Date with an option to renew the applicable IRU for an additional sixty (60) months after each Term. This option shall be exercised by the Company giving written notice to the Town sixty (60) days prior to the end of the initial Term. Upon expiration of a Term, unless either party provides written notice to the other of its intent that the Agreement terminate at such expiration date, this IRU shall continue on a month-to-month basis unless sooner terminated as provided in this Agreement or by operation of law, or unless terminated at the end of any month in said month-to-month term on thirty (30) days' notice from either party to the other.
- 8.2 The Town shall use commercially reasonable efforts to renew or replace existing Right-of-way Agreements, IRU's or other underlying rights to continue to maintain the System in place through the Terms, and any renewals thereof, on the Routes at its sole cost, except as expressly set forth in this Agreement.
- 8.3 The term of this Agreement shall expire when all Terms have expired unless earlier terminated pursuant to other provisions of this Agreement or renewed according to the provisions in 8.1.
- 8.4 No termination of this Agreement shall affect the rights or obligations of any party hereto: (a) with respect to any undisputed payment hereunder for services rendered prior to the date of termination; (b) pursuant to Sections 11, 12, 13, 14, 15, 19 and 22 entitled Audit Rights; Indemnification; Limitation of Liability; Insurance; Taxes and Governmental Fees; Confidentiality; and Rules of Construction, respectively; or (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

## **9. OPERATION, MAINTENANCE AND REPAIR OF THE SYSTEM**

- 9.1 During the Terms hereof, the Town shall provide, and the Company shall purchase maintenance services in accordance with the provisions of a separate agreement entitled, Master Operations and Maintenance Agreement, effective as of May 18, 2016 (“Master Maintenance Agreement”).

## **10. USE OF THE SYSTEM**

- 10.1 The Company may use the Surplus Dark Fibers for any lawful purpose, including, but not limited to, connecting the Surplus Dark Fibers to other systems or networks in order to offer Internet services throughout the Town of Holly Springs.
- 10.2 The Company shall promptly notify the Town of any matters pertaining to any damage or impending damage to or loss of System that are known to it and that could reasonably be expected to adversely affect the System. The Town shall promptly notify the Company of any matters pertaining to any damage or impending damage to or loss of the Surplus Dark Fibers that are known to it and that could reasonably be expected to adversely affect the Company.
- 10.3 Each party shall take all reasonable precautions against, and shall assume liability for, subject to the terms of this Agreement, any damage caused by it to the System or to Fibers used or owned by itself, the other party or third parties.
- 10.4 Neither the Company nor the Town shall use equipment, technologies or methods of operation that interfere in any way with or adversely affect the System or the use of the System by the other party or by third parties, or their respective Fibers, equipment or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to the System or to Fibers used or owned by the other party or third parties. Notwithstanding the above, the provisions of this Section shall not prevent a party from using commercially reasonable equipment, technologies, or methods of operation if the interference or adverse effect on the other party or a third party results primarily from such other party or third party’s use of equipment, technologies, or methods of operation that are not commercially reasonable or that are not standard in the telecommunications industry.
- 10.5 The Company shall not cause or permit any part of the System to become subject to any lien, claim, right, security interest, encumbrance, expense or charge (collectively, “Lien”), whether by operation of law or otherwise. If the Company breaches its obligations under this Section, it shall immediately notify the Town in writing, shall promptly cause such Lien to be discharged and released of record without cost to the Town, and shall indemnify the Town against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. The Town shall not cause or permit the Surplus Dark Fibers to become subject to any Lien, whether by operation of law or otherwise. If the Town breaches its obligations under this Section, it shall immediately notify the Company in writing, shall promptly cause

such Lien to be discharged and released of record without cost to the Company, and shall indemnify the Company against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

## **11. AUDIT RIGHTS**

Each party shall keep such books and records (which shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) as shall readily disclose the basis for any charges (except charges fixed in advance by this Agreement or by separate agreement of the parties) or credits, ordinary or extraordinary, billed or due to the other party under this Agreement and shall make them available for examination, audit, and reproduction by the other party and its agents for a period of one (1) year after such charge or credit is billed or due. Such disclosure shall be limited to books and records that are necessary to verify the validity of such charges or credits, and any such disclosed information shall be deemed confidential information.

## **12. INDEMNIFICATION**

12.1 To the fullest extent permitted by law, the Company shall indemnify, defend, protect and hold harmless the Town, its parents, subsidiaries and Affiliates, and its and their respective directors, employees, members, managers, officers, agents, successors, assigns and contractors (collectively and individually, "Claimant"), from and against, and assumes liability for any third-party claims, demands, lawsuits, judgments, settlements, losses, costs, and expenses (including, but not limited to, reasonable fees and disbursements of counsel and court costs), liabilities, damages and penalties of any kind (collectively, "Claims") arising out of:

- (a) Any injury, death, loss, or damage to any person, tangible property, or facilities of any person or entity (including reasonable attorneys' fees and costs at trial and appeal), to the extent arising out of or resulting from the willful misconduct or the negligent acts or omissions of the Company, its officers, employees, servants, Affiliates, agents, contractors or underlying facility owners or from any person for whom it is in law responsible, or otherwise resulting from, arising in connection with or relating to its performance (including breach or failure thereto) under this Agreement; or
- (b) Any violation by the Company of regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body in connection with its performance under this Agreement.

12.2 To the fullest extent permitted by law, the Town shall indemnify, defend, protect and hold harmless the Company, its Claimants, from and against, and assumes liability for any Claim arising out of:

- (a) Any injury, death, loss, or damage to any person, tangible property, or facilities of any person or entity (including reasonable attorneys' fees and costs at trial and appeal), to the extent arising out of or resulting from the willful misconduct or the negligent acts or omissions of the Town, its officers, employees, servants, Affiliates, agents, contractors or underlying facility owners or from any person for whom it is in law responsible, or otherwise resulting from, arising in connection with or relating to its performance (including breach or failure thereto) under this Agreement;
  - (b) Any failure by the Town to obtain and maintain the Required Rights; or
  - (c) Any violation by the Town of regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body in connection with its performance under this Agreement.
- 12.3 In addition to the foregoing indemnities, with respect to third parties that use services provided over the Surplus Dark Fibers, the Company shall indemnify, defend, protect and hold harmless the Town and its Claimants against any claims by such third parties for damages arising out of or resulting from any defect in or failure of the Surplus Dark Fibers or the System to the extent not caused by the Town.
- 12.4 An indemnified party shall provide the indemnifying party with prompt, written notice of any written Claim covered by this indemnification; provided that any failure of an indemnified party to provide any such notice, or to provide it promptly, shall not relieve the indemnifying party from its indemnification obligations in respect of such Claim, except to the extent the indemnifying party can establish actual prejudice and direct damages as a result thereof. Each indemnified party shall cooperate appropriately with the indemnifying party in connection with the indemnifying party's evaluation of such Claim. The indemnifying party shall defend any indemnified party, at the indemnified party's request, against any Claim. Promptly after receipt of such request, the indemnifying party shall assume the defense of such Claim with counsel reasonably satisfactory to the indemnified party. The indemnifying party shall not settle or compromise any such Claim or consent to the entry of any judgment without the prior written consent of each indemnified party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified party.
- 12.5 The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

### **13. LIMITATION OF LIABILITY**

- 13.1 NEITHER PARTY NOR ANY CLAIMANT (AS DEFINED ABOVE) AFFILIATED WITH OR IN A CONTRACTUAL RELATIONSHIP WITH A

PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, FACILITY OWNERS, LENDERS, AGENTS, SUCCESSORS, ASSIGNS, CONTRACTORS AND AFFILIATES FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR ITS ACTS OR OMISSIONS RELATED TO THIS AGREEMENT OR ITS USE OF THE SYSTEM, WHETHER OR NOT ARISING FROM SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR VIOLATION OF LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY CLAIMS BROUGHT UNDER ARTICLE 13 AND ARTICLE 19.

- 13.2 Except as provided in Article 13, nothing contained herein shall operate as a limitation on the right of either the Town or the Company to bring an action or claim for damages against any third party (other than a Claimant affiliated with or in a contractual relationship with the other party), including indirect, special or consequential damages, based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of such party's Fibers or the System. Each of the Town and the Company shall assign such rights of claims, execute such documents and do whatever else may be reasonably necessary to enable the other (at such other party's sole expense) to pursue any such action against such third party.
- 13.3 Neither party shall have any recourse of any kind against any Released Party or any assets of a Released Party in respect of any claim except in the case of such Released Party's gross negligence or willful misconduct, it being expressly agreed and understood that no liability whatever shall attach to or be incurred by any Released Party in respect of any other claims under or by reason of this Agreement or any other instrument, arrangement or understanding related to the Ting Surplus Dark IRU. Each party waives all such recourse to the extent set forth in this Section on behalf of its successors, assigns, and any entity claiming by, through, or under such party.

## **14. INSURANCE**

- 14.1 During the term of this Agreement, the parties shall each obtain and maintain not less than the following insurance:
- (a) Commercial General Liability Insurance, including coverage for sudden and accidental pollution legal liability, with a combined single limit of \$2,000,000 for bodily injury and property damage per occurrence and in the

aggregate, including coverage for premises-operations, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations and explosion, collapse and underground. The limit requirements stated above may be met through a combination of primary and excess policies.

The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

- 14.2 Unless otherwise agreed, each party's insurance policies required above shall be obtained and maintained with companies rated A- or better by Best's Key Rating Guide or a similar rating by another generally recognized rating agency and the other party, its Affiliates, officers, directors and employees, and any other party entitled to indemnification hereunder shall be named as additional insured to the extent of such indemnification. The Town participates in a risk pool with the North Carolina League of Municipalities. Each party shall provide the other party with an insurance certificate evidencing the insurance requirements of this Article. The insurance certificate shall indicate that the other party shall be notified not less than thirty (30) calendar days prior to any cancellation or non-renewal.
- 14.3 If either party provides any of the foregoing coverages through a claims made policy basis, that party shall cause such policy or policies to be maintained for at least three (3) years beyond the expiration of this Agreement.
- 14.4 Nothing in this Agreement shall be construed to prevent either party from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Section.
- 14.5 The parties shall each obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, Affiliates, assignees, officers, directors, and employees or any other party entitled to indemnity under this Agreement to the extent of such indemnity.
- 14.6 The Town shall also require its subcontractors, if any, who may enter upon or work on Surplus Dark Fibers or equipment to maintain insurance policies with the same coverage and limits listed in this Section, and to agree to furnish the Company, if requested, certificates or adequate proof of such insurance. The insurer or the insured's representative shall provide at least ten (10) days prior written notice of policy cancellation to the Company.

## **15. TAXES AND GOVERNMENTAL FEES**



With a copy to: Town of Holly Springs  
Attention: IT Director  
PO Box 8  
Holly Springs, NC 27540

With electronic copies to: [jeff.wilson@hollyspringsnc.us](mailto:jeff.wilson@hollyspringsnc.us)  
[john.schifano@hollyspringsnc.us](mailto:john.schifano@hollyspringsnc.us)  
[randy.harrington@hollyspringsnc.us](mailto:randy.harrington@hollyspringsnc.us)

If to the Company: Ting Fiber Inc.  
c/o Ting Networks  
96 Mowat Ave.  
Toronto, Ontario  
M6K 3M1

With a copy to:

With electronic copies to: [adam@ting.com](mailto:adam@ting.com)  
[ovi@ting.com](mailto:ovi@ting.com)  
[dsingh@tu cows.com](mailto:dsingh@tu cows.com)

18.2 Unless otherwise provided herein, notices shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, on the day after being sent when sent by overnight delivery service, or three (3) days after deposit in the mail when sent by U.S. mail.

## 19. CONFIDENTIALITY

19.1 If either party provides confidential information to the other in writing and identified as such or if in the course of performing under this Agreement or any other Agreement in force between the parties, a party learns confidential information, the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any case with at least reasonable care; provided, however, that the parties shall each be entitled to provide such confidential information to their respective directors, officers, members, managers, employees, agents, and contractors, consultants (“Representatives”), Affiliates, contractors, financial institutions, underlying facility owners, potential assignees (who are bound by a written agreement restricting use and disclosure of confidential information) and Representatives of Affiliates, in each case whose access is reasonably necessary. Each party shall be liable (with respect to the other party) for any breach of this provision by any person to whom that party

discloses confidential information. The terms of this Agreement (but not its execution or existence) shall be considered confidential information for purposes of this Section. Notwithstanding any other provision herein, neither the Town nor the Company shall be required to hold confidential any information that:

- (a) Becomes publicly available other than through the recipient;
- (b) Is required to be disclosed by a governmental, regulatory authority or judicial order, rule or regulation or proceedings with respect to this Agreement or a party's obligations as a publicly-held company, provided that a party subject to such requirement shall promptly notify the other party of such requirement prior to disclosure;
- (c) Is independently developed by the disclosing party;
- (d) Becomes available to the disclosing party without restriction from a third party; or
- (e) Is required by its lender and is given to such lender on a confidential basis.

These obligations shall survive expiration or termination of this Agreement for a period of two (2) years.

## **20. DEFAULT**

20.1 Except as set forth in Section 20.2 or 20.4, a party shall not be in default under this Agreement unless and until (a) one of the following events occurs: (i) either party fails to make a payment of any undisputed amount required under this Agreement and such failure continues for more than ten (10) days after such party receives written notice of such failure from the non-defaulting party; (ii) either party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement applicable to it; and (b) the other party provides it written notice of such default and the first party shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if the first party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default may be extended for such period of time as may be necessary to complete such curing. Upon the failure of a party to timely cure any such default after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may terminate the Agreement and/or pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

20.2 Once the Agreement is terminated as a result of default pursuant to Section 20.1 the Company shall have no further right to use any of the Surplus Dark Fibers or

occupy the Town's controlled space. The Company shall have thirty (30) days from termination or expiration of the Agreement to remove all of the Company Equipment without damaging property of the Town or any other party, and if the Company fails to remove the Company's Equipment, within such thirty (30) day period, the Town shall have the right to remove the Equipment at the Company's expense. Where the Company has failed to comply with the terms of Subsection 10.4, the Town may seize and retain any equipment, the removal of which might impact the Town's use of the System. In addition to its right to terminate, and without limiting any other rights or remedies available to the Town, the Town shall be entitled to retain as liquidated damages the Contract Price under Subsection 3.1 in the event of termination by the Town hereunder, as well as any seized equipment. The parties have computed, estimated and agreed upon the foregoing amount as an attempt to make a reasonable forecast of actual loss because of the difficulty in measuring actual damages.

20.3 If the Company fails to make any undisputed payment under this Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at a rate (unless specifically described elsewhere in this Agreement) equal to eighteen percent (18%) per annum or, if lower, the highest percentage allowed by law. The foregoing shall also apply to disputed payments not paid when initially due from the initial due date where, or to the extent, such disputed payments are determined to be valid charges.

20.4 Notwithstanding the foregoing, either party shall have the right to dispute any amount due under this Agreement and amounts reasonably disputed by a party (along with interest attributable to such amounts) shall apply but shall not be due and payable for a period of thirty (30) days following the due date therefor, provided the disputing party: (a) pays all undisputed charges when due, (b) presents a written statement and supporting documentation of any billing discrepancies to the other party in reasonable detail within thirty (30) days of the due date of the invoice in question, and (c) negotiates in good faith with the other party for the purpose of resolving such dispute within said sixty (60) day period. In the event such dispute is mutually agreed upon and resolved in favor of the Town, the Company agrees to pay the Town the disputed amounts together with any applicable interest within sixty (60) days of the resolution (the "Alternate Due Date"). In the event such dispute is mutually agreed upon and resolved in favor of the Company, the Company shall receive a credit for the disputed charges in question.

## **21. FORCE MAJEURE**

21.1 Neither the Town nor the Company shall be in default under this Agreement with respect to any delay in its performance (other than a failure to make undisputed payments when due) caused by any of the following conditions (each a "Force

Majeure Event’): (a) act of God; (b) fire; (c) flood; (d) material shortage or unavailability not resulting from the responsible party’s failure to timely place orders or take other necessary actions therefor; (e) government codes, ordinances, laws, rules, regulations or restrictions (including changes thereto) (f) war or civil disorder; (g) strikes or utility company delays not resulting from the responsible party’s failure to timely take necessary actions therefor; (h) any other cause beyond the reasonable control of such party. The party claiming relief under this Section shall immediately notify the other by the most expeditious means possible, to be followed promptly by communication in writing, of the existence of the Force Majeure Event relied upon, the expected duration of the Force Majeure Event, and the cessation or termination of the Force Majeure Event. The party claiming relief under this Section shall exercise commercially reasonable efforts to minimize the time for any such delay and the impact of the Force Majeure Event.

- 21.2 If all or any portion of the Surplus Dark Fibers are made inoperable and beyond feasible repair due to a casualty or other Force Majeure Event, the Company shall be entitled to terminate this Agreement with respect to the Surplus Dark Fibers affected by such casualty or other Force Majeure Event. In such event, both parties shall be entitled to seek to recover the economic value of their respective interests in the Surplus Dark Fibers (a) under any insurance policy carried by either party or any third party, or (b) in either joint or separate actions, from any third party which may be legally responsible for causing such casualty. The parties shall equitably share any recoveries as their economic interests appear, but shall otherwise have no claim against the other as a result of any such taking.

## **22. RULES OF CONSTRUCTION**

- 22.1 The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. References to “person” or “entity” each include natural persons and legal entities, including corporations, limited liability companies, partnerships, sole proprietorships, business divisions, unincorporated associations, governmental entities, and any entities entitled to bring an action in, or that are subject to suit in an action before, any state or federal court of the United States. The word “including” means “including, but not limited to.” “Days” refers to calendar days, except that references to “business days” exclude Saturdays, Sundays and Town holidays.
- 22.2 Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

- 22.3 Except as set forth to the contrary herein, any right or remedy of the Town or the Company shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. The provisions of Article 14 (Insurance) shall not be construed as limiting the indemnifying party's obligations pursuant to Article 12 (Indemnification) or other provisions of this Agreement.
- 22.4 This Agreement has been fully negotiated between and jointly drafted by the Town and the Company.
- 22.5 Except as otherwise set forth herein, requirements as contained in telecommunications agreements between the Town or the Company and third-party utilities, government or military entities and or commercial customers may be communicated by either party to the other party and, unless outside the range of current commercially available telecommunications services, shall then be considered as the measure of whether a party's performance is reasonable and timely. Where third-party agreement terms are communicated in this manner, neither party shall be obligated to communicate all of the terms of said agreements, and the terms and the existence of such agreements shall be confidential. Such confidentiality shall survive the termination of this Agreement. Where no such third-party requirements are communicated, and except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a party's performance is reasonable and timely.
- 22.6 The failure of either the Town or the Company to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.
- 22.7 If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 22.8 Nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement except under the indemnification and insurance provisions and except that the Released Parties shall have the benefit of Sections 13.3 and 23.
- 22.9 Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a party's performance is reasonable and timely.

## **23. ASSIGNMENT**

23.1 Except as otherwise provided herein, neither party may assign, sell, transfer, delegate or in any other manner dispose of any of its rights, privileges or obligations under this Agreement without the other party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any attempt to make any such assignment, sale, transfer, delegation or disposition without any such prior written consent of the other party shall be null and void. Notwithstanding the foregoing, either party may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without consent of the other party to an Affiliate of such party, so long as the assignor remains liable for all of its obligations under this Agreement prior to the assignment date and assignee is liable for all of its obligations under this Agreement from and after the assignment date. Notwithstanding the foregoing, the Company may assign, sell, transfer, delegate or in any other manner dispose of, any of its rights, privileges or obligations under this Agreement without consent of the Town to a purchaser or acquirer of all or substantially all of the capital stock or assets of the Company or an entity with which the Company consolidates or merges.

Notwithstanding any presumptions under applicable state law that a change in control of a party constitutes an assignment of an agreement, a change in control of a party, not made for purposes of circumventing restrictions on assignment or of depriving the other party of rights under this Agreement, shall not be deemed an assignment for purposes of this Agreement.

## **24. REPRESENTATIONS AND WARRANTIES**

- 24.1 In addition to any other representations and warranties contained in this Agreement, each party hereto represents and warrants to the other that expressly:
- (a) It has and shall maintain the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
  - (b) It has taken all requisite corporate, partnership or other applicable organizational action to approve the execution, delivery and performance of this Agreement;
  - (c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and
  - (d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body; and
  - (e) Its performances contemplated under this Agreement are not inconsistent with any underlying third-party IRU agreements.

- 24.2 In addition to any other representations and warranties contained in this Agreement, the Town hereto represents and warrants to the Company that (a) the Surplus Dark Fibers shall meet or exceed the Dark Fiber Specifications and (b) it shall maintain all necessary Required Rights.
- 24.3 To the extent the Town is permitted to do so pursuant to the terms of any applicable third party warranty relating to any portion of the Surplus Dark Fibers, the Town agrees to “pass through” to the Company the benefit of the Town's rights with respect to such warranty and to reasonably cooperate in connection with the Town’s enforcement thereof.

## **25. RELATIONSHIP OF THE PARTIES**

The relationship between the Town and the Company shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. The Town and the Company, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

## **26. ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

- 26.1 This Agreement constitutes the entire and final agreement and understanding between the Town and the Company with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference.
- 26.2 This Agreement may only be modified or supplemented by an instrument in writing executed by duly authorized representatives of the Town and the Company.
- 26.3 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 26.4 This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other party.

## **27. AGREEMENT BINDING; ASSIGNEES**

This Agreement shall be binding on and inure to the benefit of the parties and their respective permitted successors and assigns. In the case of any assignment, sale, transfer or disposition requiring the other party’s consent or as permitted under this Agreement, the

assignee, purchaser or transferee shall execute and deliver a written agreement reasonably acceptable to the non-assigning party in which the assignee, purchaser or transferee agrees to be bound by all of the terms and conditions of this Agreement to the extent of the rights and obligations assigned, sold or transferred.

## **28. DISPUTE RESOLUTION.**

- 28.1 Except as set forth in Sections 20.4 and 28.2, the parties shall resolve any disagreement or dispute arising under this Agreement as follows:
- (a) Either party may refer the matter to management-level representatives of the parties by written notice to the other party. All negotiations conducted by such representatives shall be confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.
  - (b) If the matter has not been resolved within thirty (30) days after delivery of such written notice, either party may initiate legal proceedings to resolve their dispute.
- 28.2 The dispute resolution procedures set forth in Section 28.1 shall not be binding upon any party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief, when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution of the actual dispute or (b) actions to collect payments due under this Agreement.

## **29. PROVISION OF CAPACITY.**

Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall be construed to prohibit or restrict the Company's ability to provide "lit" capacity services to third parties, including, without limitation, selling, leasing, or granting IRU's in optical waves, or "lambdas," and private line capacity.

## **30. EXHIBITS**

The following Exhibits are incorporated hereto and made a part hereof:

- Exhibit A – Fiber Optic Line Surplus Form(s)
- Exhibit B – Dark Fiber Specifications

**IN WITNESS WHEREOF** and in confirmation of their consent to the terms and conditions contained in this Agreement and agreeing to be legally bound hereby, the Town and the Company have executed this Agreement as of the Effective Date.

**Town of Holly Springs**

**FOR THE COMPANY:  
Ting Fiber, Inc.**

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

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

Name: Randy J. Harrington

Name:

Title: Town Manager

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**FIBER OPTIC SURPLUS FORM(S)**

TOWN OF HOLLY SPRINGS  
FIBER OPTIC LINE SURPLUS FORM

Pursuant to NCGS 160A-272 (d), Holly Springs seeks to license use to third parties certain surplus fiber optic strands. These strands, and the conditions of the license, are as follows:

Start Point: 155 Treatment Plant Rd  
End Point: 2516 Avent Ferry Rd  
Name of Segment: Avent Ferry Pump Station  
Length of Segment: 3.48 miles  
Date Available: 10/11/19  
Total Capacity in  
Segment in # Lines: 58  
Amount Surplused: 24  
Term (in years) that  
Town expects it to be  
Available: 20

Conditions of

Award: Winning bidder at time of award must be a current fiber to the home or fiber to the business internet provider in Holly Springs with guaranteed speed of at least 300 Mbps.

Winning bidder must actively use segment and not acquire for hedging purposes.

Pay town license fee of \$ 15,033.60 (may be increased if there are multiple bidders)

Annual Maintenance fee of \$ 250/year, payable in advance in 5 year increments

Winning bidder may not do any work on the network, only Town authorized personnel or vendors will do splicing. Town will charge winning bidder for all splicing or equipment.

Bidder Information: Company Name: Ting Fiber Inc.  
Contact: Philip Chan, Project Manager  
Address: 2121 East Williams Street. Suite 106  
Apex NC 27539  
  
Phone: +1 647 797 0801  
E-mail: pchan@ting.com

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Legal Notice Date: 10/11/19 Date/Time Bidding Closes: 11/11/19

Submit responses to: Jeff Wilson, IT Director  
jeff.wilson@hollyspringsnc.us

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TOWN OF HOLLY SPRINGS  
FIBER OPTIC LINE SURPLUS FORM

Pursuant to NCGS 160A-272 (d), Holly Springs seeks to license use to third parties certain surplus fiber optic strands. These strands, and the conditions of the license, are as follows:

Start Point: 155 Treatment Plant Rd  
End Point: Bass Lake Park  
Name of Segment: Bass Lake  
Length of Segment: 5.7 miles  
Date Available: 10/11/19  
Total Capacity in  
Segment in # Lines: 22  
Amount Surplused: 4  
Term (in years) that  
Town expects it to be  
Available: 20

Conditions of

Award: Winning bidder at time of award must be a current fiber to the home or fiber to the business internet provider in Holly Springs with guaranteed speed of at least 300 Mbps.

Winning bidder must actively use segment and not acquire for hedging purposes.

Pay town license fee of \$ 4,104 (may be increased if there are multiple bidders)

Annual Maintenance fee of \$ 250<sup>/year</sup>, payable in advance in 5 year increments

Winning bidder may not do any work on the network, only Town authorized personnel or vendors will do splicing. Town will charge winning bidder for all splicing or equipment.

Bidder Information: Company Name: Ting Fiber Inc.  
Contact: Philip Chan, Project Manager  
Address: 2121 East Williams Street. Suite 106  
Apex NC 27539  
  
Phone: +1 647 797 0801  
E-mail: pchan@ting.com

---

Legal Notice Date: 10/11/19 Date/Time Bidding Closes: 11/11/19

Submit responses to: Jeff Wilson, IT Director  
jeff.wilson@hollyspringsnc.us

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TOWN OF HOLLY SPRINGS  
FIBER OPTIC LINE SURPLUS FORM

Pursuant to NCGS 160A-272 (d), Holly Springs seeks to license use to third parties certain surplus fiber optic strands. These strands, and the conditions of the license, are as follows:

Start Point: 155 Treatment Plant Rd  
End Point: Avent Ferry Rd @ Cass Holt Rd  
Name of Segment: Cass Holt Rd  
Length of Segment: 1.65 miles  
Date Available: 10/11/19  
Total Capacity in  
Segment in # Lines: 58  
Amount Surplused: 32  
Term (in years) that  
Town expects it to be  
Available: 20

Conditions of

Award: Winning bidder at time of award must be a current fiber to the home or fiber to the business internet provider in Holly Springs with guaranteed speed of at least 300 Mbps.

Winning bidder must actively use segment and not acquire for hedging purposes.

Pay town license fee of \$ 9,504 (may be increased if there are multiple bidders)

Annual Maintenance fee of \$ 250<sup>/year</sup>, payable in advance in 5 year increments

Winning bidder may not do any work on the network, only Town authorized personnel or vendors will do splicing. Town will charge winning bidder for all splicing or equipment.

Bidder Information: Company Name: Ting Fiber Inc.  
Contact: Philip Chan, Project Manager  
Address: 2121 East Williams Street. Suite 106  
Apex NC 27539  
  
Phone: +1 647 797 0801  
E-mail: pchan@ting.com

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Legal Notice Date: 10/11/19 Date/Time Bidding Closes: 11/11/19

Submit responses to: Jeff Wilson, IT Director  
jeff.wilson@hollyspringsnc.us

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TOWN OF HOLLY SPRINGS  
FIBER OPTIC LINE SURPLUS FORM

Pursuant to NCGS 160A-272 (d), Holly Springs seeks to license use to third parties certain surplus fiber optic strands. These strands, and the conditions of the license, are as follows:

Start Point: 155 Treatment Plant Rd  
End Point: Holly Springs Rd @ Earnie Ln  
Name of Segment: Earnie Lane  
Length of Segment: 2.65 miles  
Date Available: 10/11/19  
Total Capacity in  
Segment in # Lines: 57  
Amount Surplused: 6  
Term (in years) that  
Town expects it to be  
Available: 20

Conditions of

Award: Winning bidder at time of award must be a current fiber to the home or fiber to the business internet provider in Holly Springs with guaranteed speed of at least 300 Mbps.

Winning bidder must actively use segment and not acquire for hedging purposes.

Pay town license fee of \$ 2,862 (may be increased if there are multiple bidders)

Annual Maintenance fee of \$ 250<sup>/year</sup>, payable in advance in 5 year increments

Winning bidder may not do any work on the network, only Town authorized personnel or vendors will do splicing. Town will charge winning bidder for all splicing or equipment.

Bidder Information: Company Name: Ting Fiber Inc.  
Contact: Philip Chan, Project Manager  
Address: 2121 East Williams Street. Suite 106  
Apex NC 27539  
  
Phone: +1 647 797 0801  
E-mail: pchan@ting.com

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Legal Notice Date: 10/11/19 Date/Time Bidding Closes: 11/11/19

Submit responses to: Jeff Wilson, IT Director  
jeff.wilson@hollyspringsnc.us

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TOWN OF HOLLY SPRINGS  
FIBER OPTIC LINE SURPLUS FORM

Pursuant to NCGS 160A-272 (d), Holly Springs seeks to license use to third parties certain surplus fiber optic strands. These strands, and the conditions of the license, are as follows:

Start Point: 155 Treatment Plant Rd  
End Point: Bass Lake Rd @ Holly Mountain Rd  
Name of Segment: Holly Mountain  
Length of Segment: 4.6 miles  
Date Available: 10/11/19  
Total Capacity in  
Segment in # Lines: 22  
Amount Surplused: 8  
Term (in years) that  
Town expects it to be  
Available: 20

Conditions of

Award: Winning bidder at time of award must be a current fiber to the home or fiber to the business internet provider in Holly Springs with guaranteed speed of at least 300 Mbps.

Winning bidder must actively use segment and not acquire for hedging purposes.

Pay town license fee of \$ 6,624 (may be increased if there are multiple bidders)

Annual Maintenance fee of \$ 250<sup>/year</sup>, payable in advance in 5 year increments

Winning bidder may not do any work on the network, only Town authorized personnel or vendors will do splicing. Town will charge winning bidder for all splicing or equipment.

Bidder Information: Company Name: Ting Fiber Inc.  
Contact: Philip Chan, Project Manager  
Address: 2121 East Williams Street. Suite 106  
Apex NC 27539  
  
Phone: +1 647 797 0801  
E-mail: pchan@ting.com

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Legal Notice Date: 10/11/19 Date/Time Bidding Closes: 11/11/19

Submit responses to: Jeff Wilson, IT Director  
jeff.wilson@hollyspringsnc.us

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## **EXHIBIT B**

### **DARK FIBER SPECIFICATIONS**

#### **1. OVERVIEW**

The intent of this Exhibit is to identify the Dark Fiber Specifications, acceptance testing procedures and Acceptance Standards used within the Town Network. Deviations from these specifications may occur if the Town acquires a portion of the System from a third party.

#### **2. SPECIFICATIONS**

- 2.1 All splices shall be fusion spliced. Mechanical splices are only allowed during temporary restoration and shall be replaced with fusion splices.
- 2.2 Fibers shall be terminated with Ultra SC-PC connectors (typical return loss of 0.50 dB).
- 2.3 After end-to-end connectivity on the Fibers has been completed, bi-directional OTDR span and power meter testing shall be completed. The Town shall perform tests after the Fiber Cable is installed and the splicing enclosures have been completed and are in their final resting configuration with the Cable vault or hand hole covers closed. This ensures that no micro or macro bending problems with the Cable or Fiber strands shall contribute to the loss/attenuation measurements.
- 2.4 Power meter tests shall be completed to verify and insure that no Fibers have been crossed at any of the splice points within the Town Network. The Town shall test and record power level readings on all Fiber strands in both directions of transmission (bi-directionally) using the 1310 & 1550 nm wavelengths.
- 2.5 All OTDR and power meter tests shall be completed as follows:
  - (a) All OTDR traces shall be taken from both ends of a section (between adjacent locations) and recorded using the 1310 & 1550 nm wavelength. Loss/attenuation measurements for each splice point from both directions shall be taken and recorded.
  - (b) The end-to-end loss value as measured with an industry-accepted laser source and power meter should have an attenuation rating of less than or equal to the following:
    - (i) At 1310 nm:  $(0.40 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.50) + (0.10 \times \text{number of splices})$ .
    - (ii) At 1550 nm:  $(0.30 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.50) + (0.10 \times \text{number of splices})$ .

- (c) The Town's loss/attenuation objective for each Fiber optic splice is 0.10 dB when measured in one direction with an OTDR test set (excluding connector loss, which is typically 0.50 dB per mated connector pair). If after three attempts this parameter is not met, the splice shall be marked as Out-Of-Spec (OOS) and the splice shall remain provided the average loss/attenuation value of all splices on an individual Fiber basis shall not exceed 0.10 dB for the entire ring or subsystem.
  - (d) For bi-directional OTDR testing, the distance from location "A" and location "Z" (As defined in the bid documents) shall be recorded for each splice point. The loss/attenuation at each splice point shall be recorded at both wavelengths (1310 nm & 1550 nm) in each direction. The Town shall then average the two readings to obtain the final average splice loss/attenuation for each splice point of each Fiber strand within the Fiber optic cable.
  - (e) Each Fiber strand color must be recorded along with its buffer tube color or the ribbon color. The laser source transmit power level using the 1310 & 1550 nm wavelengths shall always be recorded together with the receive power level reading at the receiving end of the test.
- 2.6 OTDR traces shall be taken and splice loss measurements recorded. The Town shall store OTDR traces on electronic media. Loss measurements shall be recorded using an industry-accepted laser source and a power meter. Copies of all data sheets and tables and one set of diskettes with all traces shall be available to The Company.
- 2.7 Following emergency restoral, the Town personnel shall perform span test documenting end-to-end attenuation measurement of each Fiber and shall be completed in both directions at 1310 & 1550 nm wavelengths. Upon permanent repair, new splice loss readings should be no greater than the original splice loss specifications.

