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<tr>
<th>No.</th>
<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Call to Order</td>
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<td>2</td>
<td>Moment of Silence</td>
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<td>3</td>
<td>Pledge of Allegiance</td>
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<tr>
<td>4</td>
<td>Welcome to the People’s House!</td>
<td>A reminder that City Hall exists for, of and by the people of our City and is inclusive of ALL!! Council and staff are here to SERVE YOU and to create a welcoming, inclusive, safe, and thriving environment for ALL to enjoy as you live, work, play, volunteer, visit, learn and participate in decision making in our great City!!</td>
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<tr>
<td>5</td>
<td>Proclamation(s)</td>
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<td></td>
<td>ARBOR DAY</td>
<td>April 8, 2018</td>
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<td></td>
<td>CIVITAN AWARENESS MONTH</td>
<td>April 2018</td>
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<td>FAIR HOUSING MONTH</td>
<td>April 2018</td>
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<td>6</td>
<td>Consent Agenda</td>
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<td>(a) Minutes</td>
<td>Approve Minutes of the Regular meeting of March 06, 2018 and the Special Meeting of March 06, 2018.</td>
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<td>(b) Adopt a Resolution – Expansion of the Salisbury National Cemetery.</td>
<td>Requestor(s): Engineering – Wendy Brindle</td>
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<td>Adopt a RESOLUTION of support regarding the expansion of the National Cemetery and the ability to provide an easement for a future greenway.</td>
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<td>(c) Roofing Contract.</td>
<td>Requestor(s): Engineering – Wendy Brindle</td>
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<td>Authorize the City Manager to enter into a contract with Piedmont Commercial Roofing in the amount of $179,730 to replace the roof at City Park.</td>
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<td>(d) Supplemental Agreement.</td>
<td>Requestor(s): Engineering – Wendy Brindle</td>
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<td>Approve a Supplemental Agreement with NCDOT concerning sidewalks in the West End Plaza area, Project C-4908 G.</td>
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<td>(e) Right-of-Way Approval 111 South Main Street</td>
<td>Requestor(s): Engineering Staff received request from Von Poston, Business Owner</td>
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<td>Approve a Right-of-Way Use Permit for four parking spaces adjacent to 111 South Main Street for 90 calendar days in accordance with Section 22-50 of the City Code.</td>
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<td>Right-of-Way Approval 111 South Main Street</td>
<td>Requestor(s): Engineering Staff received request from Von Poston, Business Owner</td>
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<td>7</td>
<td>Adopt an Ordinance: CD-01-2018 Rezone 5 parcels along the North Margin of Statesville Boulevard.</td>
<td>Requestor(s): Code Services received request from Stephen Brock, Developer</td>
</tr>
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</table>
|   |   | Presenter(s): Preston Mitchell Stephen Brock, Developer | (a) Receive a presentation from staff.  
(b) Hold a public hearing.  
(c) Issue a Statement of Consistency and Statement of Reasonableness, and consider adopting an ORDINANCE to establish a Conditional District Overlay. |
| 8 | Adopt an Ordinance: Text Amendment TA-02-2018 Gas Station Canopies and other additional use standards. | Requestor(s): Code Enforcement – Preston Mitchell | Council to consider Land Development Ordinance Text Amendment TA-02-2018, to amend Chapter 3 related to the location of gas station canopies and other additional use standards: |
|   |   | Presenter(s): Preston Mitchell | (a) Receive a presentation from staff  
(b) Hold a public hearing  
(c) Issue a Statement of Consistency and Statement of Reasonableness, and consider adopting an ORDINANCE amending Chapter 3 of the Land Development Ordinance related to the location of gas station canopies and other additional use standards: |
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| **City of Salisbury**  
*North Carolina*  
**COUNCIL MEETING AGENDA**  
*April 3, 2018  
5:00 p.m.* |   |   |
| **9** | Adopt an Ordinance:  
Text Amendment TA-04-2018  
on-premise parking provisions. | **Requestor(s):**  
Code Enforcement  
**Presenter(s):**  
Preston Mitchell | Council to consider Land Development Ordinance Text Amendment TA-04-2018, to revise provisions of Chapters 6, 10, 13, and 22 related to on-premise parking provisions.  
(a) Receive a presentation from staff  
(b) Hold a public hearing  
(c) Issue a Statement of Consistency and Statement of Reasonableness, and consider adopting an **ORDINANCE** amending Chapters 6, 10, 13, and 22 of the Land Development Ordinance related to on-premise parking provisions. |
| **10** | Resolution-Agreement regarding the Fibrant System | **Requestor(s):**  
Council – Administration – City Manager Lane Bailey  
**Presenter(s):**  
City Manager Lane Bailey | Council to consider adopting a **RESOLUTION** to approve an agreement regarding the Fibrant System. |
| **11** | Ratify a non-warranty deed. | **Requestor(s):**  
Code Enforcement – Preston Mitchell  
**Presenter(s):**  
Preston Mitchell | Council to ratify a North Carolina non-warranty deed between the City of Salisbury and Robert E. Ingram Jr. (and wife) regarding the sale of property as recommended by the Salisbury City Attorney. |
| **12** | Youth Opportunities. | **Requestor(s):**  
Human Resources – Brianna Price  
**Presenter(s):**  
Brianna Price | Council to receive an update regarding current youth opportunities that are available through the City. |
| **13** | Update on the dog park project. | **Requestor(s):**  
Parks and Recreation – Nick Aceves  
**Presenter(s):**  
Nick Aceves | Council to receive an update on the dog park project at the Civic Center. |
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<td>Presenter(s): Mayor Heggins and Councilwoman Alexander</td>
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<tr>
<td>15</td>
<td>Appointments to Boards and Commissions.</td>
<td></td>
<td>Council to consider making appointments to various boards and commissions.</td>
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<tr>
<td>16</td>
<td>Public Comment.</td>
<td></td>
<td>Council to receive public comment. Public comment will be opened at approximately 6:00 p.m. or at the end of the meeting, whichever comes first.</td>
</tr>
<tr>
<td>17</td>
<td>City Manager’s Report.</td>
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<tr>
<td>18</td>
<td>Announcements.</td>
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<tr>
<td>19</td>
<td>Parks and Recreation.</td>
<td>Hurley Park 30th Anniversary Spring Celebration will be held Sunday, April 8, 2018 from 2:00 p.m. until 4:00 p.m. at 304 Annandale Avenue. There will be free entertainment and refreshments provided by the Hurley Park Advisory Board and Cheerwine. For more information please call 704-638-4459.</td>
<td>Salisbury Parks and Recreation will hold its 12th Annual Touch a Truck event Saturday, April 14, 2018 from 10:00 a.m. until 1:00 p.m. in the City Hall parking lot at 217 South Main Street. Participants will have an opportunity to have a hands-on, up close and personal education experience with a wide variety of vehicles including dump trucks, monster trucks, a helicopter, ambulances, and more. The event is free and open to the public.</td>
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<tr>
<td>20</td>
<td>Council’s Comments.</td>
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<td>21</td>
<td>Mayor Pro Tem Comments.</td>
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<td>21</td>
<td>Mayor’s Comments.</td>
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<td>22</td>
<td>Closed Session.</td>
<td>Council to go into closed session concerning an economic development matter as allowed by NCGS 143-318.11(a)(4) and a personnel matter as allowed by NCGS 143-318.11(a)(6).</td>
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<tr>
<td>23</td>
<td>Adjourn.</td>
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WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, Salisbury has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways.

NOW, THEREFORE, I, Al Heggins, Mayor of the City of Salisbury, DO HEREBY PROCLAIM April 8, 2018 as

ARBOR DAY

in Salisbury, urge all citizens to support efforts to protect our trees and woodlands and to support our City’s urban forestry program; and

FURTHER, I urge all citizens to plant trees to gladden the hearts and promote the well-being of present and future generations.

This the 3rd day of April 2018.

_________________________________
Al Heggins, Mayor
PROCLAMATION

WHEREAS, the Civitan Club of Salisbury was chartered on August 15, 1992 and is currently the largest Civitan Club in the State of North Carolina and the third largest in the world; and

WHEREAS, members of the Salisbury Civitan Club have served as regional, state, and national officers of Civitan International; and

WHEREAS, the Civitan club has contributed millions of dollars and volunteered countless hours to help the people with developmental disabilities; and

WHEREAS, Civitan Club projects provide citizens with meaningful involvement in their communities and promotes citizenship with emphasis on responsibilities; and

WHEREAS, the Civitan Club is recognized for its support of research and treatment of development disabilities through its funding of the Civitan International Research Center.

NOW THERFORE, I, Al Heggins, Mayor of the City of Salisbury, North Carolina, DO HEREBY PROCLAIM the month of April 2018 as

CIVITAN AWARENESS MONTH

in Salisbury, North Carolina, and urge all citizens to support the worthwhile efforts of this international service organization and in the work of Civitans in our community.

This the 3rd day of April 2018.

___________________________________
Al Heggins, Mayor
PROCLAMATION

WHEREAS, April has been designated as National Fair Housing Month; and

WHEREAS, April 11, 2018 marks the 50th anniversary of the passage of the Fair Housing Act which protects against discrimination whether renting, buying, or securing financing for any housing; and

WHEREAS, each April, we come together as a community and a nation to celebrate the passing of the Fair Housing Act in the aftermath of Rev. Dr. Martin Luther King Jr’s assassination and recommit to eliminate housing discrimination and create equal opportunity in every community; and

WHEREAS, the City of Salisbury seeks a high quality of life for all citizens and prohibits discrimination because of race, color, religion, sex, disability, familial status, and national origin; and

WHEREAS, economic stability, community health, and human relations in all neighborhoods are improved by diversity and integration; and

WHEREAS, acts of housing discrimination and barriers to equal housing opportunity violate the common sense of decency and fairness; and

WHEREAS, the City of Salisbury strives to be an inclusive community committed to equal Housing opportunities for all residents and prospective residents.

NOW, THEREFORE, I, Al Heggins, Mayor of the City of Salisbury, North Carolina, DO HEREBY PROCLAIM the month of April 2018 as

FAIR HOUSING MONTH

in Salisbury, and promote appropriate activities to provide and advocate for equal housing opportunities for all residents and prospective residents.

This the 3rd day of April 2018.

________________________________________
Al Heggins, Mayor
REGULAR MEETING

PRESENT: Mayor Al Heggins, Presiding; Mayor Pro Tem David Post; Council Members Karen Alexander, William Brian Miller and Tamara Sheffield; City Manager W. Lane Bailey; City Clerk Diane Gilmore, and City Attorney F. Rivers Lawther, Jr.

ABSENT:

Salisbury City Council met in Council Chambers in City Hall located at 217 South Main Street. The meeting was called to order by Mayor Heggins at 5:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Heggins led those present in the Pledge of Allegiance to the United States flag.

RECOGNITION OF VISITORS

Mayor Heggins welcomed all visitors present.

CHANGE TO THE AGENDA

Omit – Item 12 Council to authorize the City Manager to communicate with the University of North Carolina Chapel Hill (UNC) School of Government (SOG) to identify and retain a qualified facilitator for the City Council Annual Retreat scheduled for Wednesday, March 21 and Thursday, March 22, 2018.
Thereupon Mayor Pro Tem Post made a **motion** to omit item number 12 of the Council Agenda. Councilmember Alexander seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

**CONSENT AGENDA**

(a) **Minutes**

Adopt Minutes of the Regular meeting of February 6, 2018.

(b) **Establish a speed limit on a portion of West Bank Street.**

Adopt an Ordinance to amend section 13-336 of the City Code to establish 20 mph on a portion of West Bank Street.

**ORDINANCE AMENDING SECTION 13-336, ARTICLE X, CHAPTER 13 OF THE CODE OF THE CITY OF SALISBURY, RELATING TO SPEED LIMITS-GENERALLY.**

(The above Ordinance is recorded in full in Ordinance Book No. 27 at Page No. 16 and is known as Ordinance 2018-11.)

(c) **Temporary Road Closure**

Adopt an Ordinance declaring a temporary road closure on North Main Street between Council and Miller Streets for the Salisbury Police Department Foot Pursuit 5K event.

**ORDINANCE DECLARING A TEMPORARY ROAD CLOSURE FOR A SALISBURY POLICE DEPARTMENT FOOT PURSUIT 5K EVENT.**

(The above Ordinance is recorded in full in Ordinance Book No. 27 at Page No. 17 and is known as Ordinance 2018-12.)

(d) **Construction Contract**

Concurrence award of a contract in the amount of $718,296 for construction of a new road between Innes Street and Faith Road, TIP Project U- 5820B.

(e) **Dixonville-Lincoln Memorial Project Task Force – Memorial Walk Project**

Award a construction contract to Unit Paving, Inc. in the amount of $251,890 for the Dixonville-Lincoln Task Force Memorial Walk Project along Old Concord Road.
(f) **Contract for Elliott Davis, PLLC.**

Approve a contract to Elliott Davis, PLLC for auditing services for Fiscal Year ending June 30, 2018.

(g) **Resolution**

Adopt a Resolution establishing a public hearing for March 20, 2018 to receive public comment regarding the proposed lease for Fibrant.

RESOLUTION FOR PUBLIC HEARING ON FIBRANT LEASE PROGRAM.

(The above Resolution is recorded in full in Resolution Book No. 15 at Page No. 6, and is known as Resolution 2018-05.)

Thereupon, Councilmember Miller made a **motion** to adopt the Consent Agenda as presented. Mayor Pro Tem Post seconded the motion. Mayor Heggies, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

**PRESENTATION – FISCAL AND ECONOMIC BENEFIT REPORT REGARDING THE EMPIRE HOTEL REDEVELOPMENT.**

Planning Director Janet Gapen introduced Economic strategist Ms. Lucy Gallo who provided an economic analysis of the Empire Hotel Redevelopment Project.

Ms. Gallo explained fiscal benefits are revenues generated by the Empire Hotel project that affect the City’s budget through property and sales tax. She stated economic benefits to a community are measured through employment and it is estimated the Empire project would create 62 market-rate apartments and 20,000 square feet of commercial space. She noted the Empire Hotel Project will take approximately 24 months to complete.

Ms. Gallo stated once the project is completed it is estimated to have a construction value of $17 million. She commented if the property receives a historic landmark designation it would reduce the property tax value to $61,000, or 50% of fair market value. She stated the redevelopment would generate an estimated revenue of $103,000 annually for the City. She noted construction of the project could create 202 jobs, 94 temporary jobs and 102 permanent jobs.

Mayor Pro Tem Post asked for clarification regarding the estimated 100 jobs and the 62 residents. Ms. Gallo stated those impacts have been combined in the outcome of the 102 permanent jobs. She commented the analysis was created to capture the portion of new residents that would spend money at the Empire. Councilmember Miller asked if the estimate is conservative. Councilmember Miller agreed, and she noted the conservative estimate was an intentional approach.
Councilmember Sheffield asked if apartment occupancy was based on single residence. Ms. Gallo noted the estimate includes a majority of single residence units but does include a few two bedroom apartments. Councilmember Sheffield asked how 62 tenants were estimated. Ms. Gallo stated an overall net was based on new residents that would be absorbed in the area. Councilmember Sheffield asked how much revenue the current property generates. Ms. Gallo stated the property has no revenue and the City owns the property.

Councilmember Miller asked Ms. Gallo her opinion regarding the Empire Hotel Redevelopment Project and the transformation it could provide the community. Ms. Gallo noted the Empire Hotel project makes sense, and she pointed out there are 23 restaurants in the downtown area and the district appeals to people from all walks of life.

Mayor Heggins asked about marketing efforts for the property. Ms. Gallo stated a financial feasibility analysis that pertains to the residential and retail market has not been completed at this time. She explained the analysis was generated as if the Empire Hotel was in current operation.

Councilmember Miller asked City Manager Lane Bailey if third party experts were being consulted to review the feasibility plan. Mr. Bailey noted the Centralina Council of Governments (CCOG) is assisting in the review. He stated a meeting is planned with the North Carolina State Treasurers office to discuss the Empire Hotel project.

Ms. Gapen asked Ms. Gallo to address the Downtown incentive program. Ms. Gallo reviewed North Carolina incentives, and she noted the programs can be used to encourage growth. She pointed out there are tools available to highlight risk, and communities compare incentive programs to returned revenues.

Councilmember Miller asked if the Empire Hotel project could qualify for Tax Increment financing. Ms. Gallo commented the Tax Increment financing market no longer exists. She indicated the City could qualify for a Tax Increment Grant program to help stimulate new and large scale re-development projects. She noted the grant program could be a program the City could consider and she explained the City of Mooresville and the City of Durham have current policies in place. She commented the downtown area is accessible and has convenient parking. She explained a Special Assessment District Bond is a type of bond that is classified as a risk only to developers, and she commented it would not be appropriate for the Empire Hotel Project, but could be an option for future large redevelopment in the area.

Mayor Heggins thanked Ms. Gallo and Ms. Gapen for their presentation.

NAMING OF FIRE STATION NO. 6

Fire Chief Bob Parnell addressed Council regarding the naming of Fire Station 6 as the Justin Monroe and Vic Isler Fire Station and Academy and he introduced Chair of the Fireman’s Relief Board, Mr. Brent Lyerly. Mr. Lyerly reviewed the feedback received from the public hearing regarding Fire Station 6 which will be located at 310 Cedar Springs Road. He explained
Mr. Monroe and Mr. Isler lost their lives, in the line of service on March 7, 2008. Mayor Heggins thanked the Board and the fire department for their commitment and service to the community.

Thereupon, Councilmember Alexander made a motion to approve the naming of Fire Station 6 as the Justin Monroe and Vic Isler Fire Station and Fire Academy. Councilmember Sheffield seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Chief Parnell announced a memorial service will be held to honor Mr. Monroe and Mr. Isler on March 7, 2018 at 8:30 a.m. at Fire Station 5 located at the 1400 Block of South Main Street.

**UPDATE – SOLID WASTE SERVICES**

Public Services Director Tony Cinquemani introduced Assistant Director of Public Services Craig Powers. Mr. Powers commented on the changes in policy approved in June, and he noted no changes were made to operations, recycling, and yard waste collections. He indicated the policy change was to define bulky yard waste collections, and he noted one truck load per week for residents is allowed. He reviewed the fee schedule, and he pointed out staff operations have become more efficient. He noted that the Public Services Department has received positive and negative feedback regarding the change to solid waste services.

Mr. Powers stated the department would like to review the City Code related to abatements and nuisances to determine ways to advance the process. He explained abatements are served five days after an in-person conversation or 10 days after an abatement notice is mailed. He noted abatements are served to residents when bulky items are left for collection that do not fall under waste collection guidelines. He proposed a change of three and five day abatement service terms. He commented the department will provide quarterly Spruce-up Week collections, and he indicated Public Services would like to partner with the Community Appearance Committee (CAC) regarding neighborhood cleanups.

Councilmember Miller asked if it might be less expensive to provide an extra recycling bin to residents instead of weekly recycling collection. Mr. Powers stated the department would take that option into consideration.

Mayor Heggins asked about existing solid waste service fees. Mr. Powers stated the policy was adopted several years ago. He indicated he spoke with an area waste collection company who indicated the City’s fees were half the cost of bulky item pick-up in other areas.

Councilmember Sheffield commented a neighborhood alliance meeting will be held April 19, 2018, and she requested a Public Service Department representative to join the meeting to discuss the partnership with the roll-off bins. Mr. Powers agreed that a Public Service Department representative would attend.
Councilmember Alexander commended the Public Services Department for their service to the City.

REPORT – COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), HOME PROGRAM FUNDS.

Planning Director Janet Gapen addressed Council regarding the Community Development Block Grant (CDBG) and HOME program that support low to moderate income housing opportunities. She explained the CDBG program was marketed through the City’s Social Media outlets, and she pointed out a partnership with the Community Development Corporation (CDC) provided numerous marketing strategies. She reviewed CDBG grant funding since 2004 pointed out the funding fluctuated each year. She explained 2011 and 2012 were challenging years and funds decreased from $335,000 to $258,000. She indicated funds have stabilized over the last several years at approximately $270,000. She commented funding amounts for this year have not been provided to the City.

Ms. Gapen clarified that Program Income is an income that is folded back into project activities. She stated Program Income totaled $271,000 and $30,000. She noted set expenses include a debt service for the loan for the rehabilitation to the Park Avenue Community Center with the expected debt to be paid in 2022. She indicated the United States Department of Housing and Urban Development (HUD) allows 20% of CDBG funds to be allocated for program administration. She stated the City has limited funds to help support public service agencies that serve low to moderate income households, and she pointed out a majority of funds were allocated to agencies serving the homeless populations.

Ms. Gapen reviewed available funding for activities and indicated $117,000 was available for homeowner occupied rehab and $40,000 for sidewalk projects in the West End community.

Mayor Heggins asked how amounts for each group are determined. Ms. Gapen noted the program has an application process and groups request funding amounts. Mayor Heggins asked if organization funding is restricted. Ms. Gapen agreed, and she noted funding is reimbursed with appropriate documents.

Mayor Pro Tem Post asked about new organizations or those that have been declined. Ms. Gapen stated the Gateway Freedom Center was the first new organization to submit an application in several years. She explained HOME program dollars have to be used toward affordable housing. She stated a total amount with both programs is approximately $260,000.

Ms. Gapen reviewed sidewalk projects located between Partee Street and Brenner Avenue on Old Wilkesboro Road and sidewalk between Lynn Lane and College Park Apartments that were completed in 2015. She commented a current Greenway project between Old Wilkesboro Road and Jake Alexander Boulevard will include sidewalk extensions from College Park Apartments to the 1030 Jake Alexander Boulevard area. She indicated the $40,000 project near Old Plank Road is in design phase and will transition to construction phase this spring.
Ms. Gapen reviewed the HUD measurements of funding and explained on May 2 a test is applied to review remaining CDBG funds. She commented the HUD standard is to have no more than one and one half times the most recent grant amounts.

Councilmember Sheffield asked about the decrease in funding. Ms. Gapen stated the amount of funding is determined by HUD. Ms. Sheffield asked if agencies that receive funding provide feedback. Ms. Gapen commented at the end of the year those agencies provide statistics that include how many people they served and type of services provided.

Mayor Pro Tem Post asked about the number of homes the program assists. Ms. Gapen stated she did not have the specific numbers. She noted the CDC will begin a series of Home Owner Occupied Rehabilitation program classes and noted last year less than ten active participants participated. She added in certain situations the program is not able to assist everyone due to the homes investment amount exceeding the areas housing market value. Mayor Pro Tem Post also asked if Ms. Gapen had the number of vacant homes in the City. Ms. Gapen noted she did not have the number of vacant homes currently. She explained the Code Enforcement Department has 15 demolition cases. She commented a study performed two years ago identified homes in the area that had no water service for an extended period of time, and she indicated the study provided an estimate of 200 to 300 vacant homes in the area.

**PUBLIC COMMENTS**

Mayor Heggins opened the floor to receive public comments.

Ms. Carolyn Logan shared concerns regarding the City’s water testing and local crime. She asked Council to consider rehabilitating vacant homes.

Ms. Karen Bouger commended the solid waste department for their professionalism. She expressed she had confusion regarding the yard collections fee schedule.

Mr. Michael Kirksey expressed concerns about sidewalk projects in the West End Community.

There being no one else to address Council, Mayor Heggins closed the public comment session.

**RECESS**

Mayor Heggins made a motion to take a five minute recess and all Councilmembers in attendance agreed unanimously to recess.
Mayor Heggins reviewed revisions she made to the agenda request form. She stated Mayor Pro Tem Post submitted an agenda request form to request a revision to the agenda request form. Mayor Pro Tem Post indicated the reason for his request is to make revisions to the agenda and filter agenda items requested by the public through the appropriate staff channels. He explained Council recently took a course called the Essentials of Municipal Government and learned that no matter how a Mayor is elected the mayor’s role is to preside during Council meetings, and Councilmembers have equal authority to make decisions.

Councilmember Miller suggested a discussion was needed in order to determine a procedure when submitting agenda items. Mayor Pro Tem Post explained he would like to switch the order of the agenda to determine a process to the Rules of Procedure before making edits to the agenda request form.

Councilmember Miller stated Council should have discussions when altering the normal processes. He commented Council should be transparent when changes are presented, and he noted what Council determines as a process should be followed.

Mayor Heggins suggested Council keep revisions to the agenda request form in order to allow the public to submit agenda items, and Council could then deny or approve the items submitted.

Mayor Pro Tem Post explained Rules of Procedure suggests that the first item on the agenda is to approve the agenda or determine if a change is needed.

Councilmember Sheffield asked if a Council member has to approve an item to be placed on the agenda. Councilmember Alexander explained approvals take place at agenda meetings and noted a change could be made prior to a Council meeting. Councilmember Sheffield stated a Council member could approve agenda items submitted by the public.

Mayor Heggins stated she did not present the revision to the agenda request form to Council to start a debate. Councilmember Miller commented Council is not in disagreement with the way the agenda request form was changed and noted it was the approval section that raised concerns.

Mayor Heggins commented allowing a Council member to approve agenda items submitted by the public could cause confusion. Councilmember Sheffield commented each situation could be different, and she noted it could allow the public to have a voice. Mayor Heggins asked if the public would be able to communicate with Council in regards to submitting agenda items. Councilmember Sheffield stated it is a duty of Council to provide connections and outreach to the community. Councilmember Alexander commented the City’s webpage provides photos and contact information for Councilmembers.

Mayor Heggins tabled the agenda request form.
**RULES OF PROCEDURE**

Mayor Heggins commented that Robert’s Rules of Order is the Council’s current rules of procedure. Mayor Pro Tem Post commented the rules of procedure was adopted in 1979. Councilmember Miller noted after reading Roberts Rules of Order it is almost verbatim as to the Council’s current procedure. Mayor Heggins noted City Code does not state the book can be followed verbatim. Mayor Pro Tem Post noted the rules could have been adopted without amending the code or ordinance.

Thereupon, Mayor Pro Tem Post made a **motion** to amend section 2.4 to the Salisbury Code to strike Roberts Rule of Order and to adopt the rules of procedure written by the North Carolina University of Chapel Hill (UNC) School of Government, fourth edition.

Mayor Heggins stated a recent committee was formed that included her and Councilmember Alexander with the understanding it was to review the Rules of Procedure and report back to Council with suggestions. Mayor Heggins asked Council to allow the Committee to meet and review the Rules of Procedure. Councilmember Miller asked if the committee has met. Mayor Heggins stated the committee had not met. Councilmember Miller noted Council could considered allowing the Committee to do the work or reviewing electronic meeting participation and other items for clarification. Mayor Heggins stated that Mayor Pro Tem Post had made the request to adopt and replace the Roberts Rules of Procedure in the Code.

Councilmember Alexander asked, as a member of the Rules of Procedure Committee, if there would be an objection for Council to use the SOG’s Rules of Procedure book as a guide. Mayor Heggins commented she objected to that suggestion. Councilmember Miller asked how long Council should expect to wait for the Committee to meet. He added Council needs rules and procedures that will define how Council conducts itself and asked if it is reasonable to have recommendations by the next Council meeting. Mayor Heggins stated it is reasonable the Committee would have suggestions by the April 3, 2018 Council meeting.

Councilmember Miller asked that input be provide to Council during the first meeting in April. Mayor Heggins agreed.

**BOARDS AND COMMISSIONS**

**Tree Board**

Upon a motion by Councilmember Sheffield, seconded by Mayor Pro Tem Post. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following appointment was made to the Tree Board for a term to begin April 1, 2018:

- Ms. Carolyn Brown    Term Expires 3/31/21
- Mr. Edword Clark     Term Expires 3/31/21
- Ms. Melisa L. Williams Term Expires 3/31/21
- Ms. Katherine Boyd   Term Expires 3/31/21
Parks and Recreation Advisory Board

Upon a motion by Councilmember Alexander, seconded by Councilmember Miller. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following re-appointment was made to the Parks and Recreation Advisory Board Commission for a term to begin April 1, 2018:

Mr. Roy Bentley Term Expires 3/31/21

Upon a motion by Councilmember Alexander, seconded by Councilmember Miller. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voting AYE, the following appointment was made to the Parks and Recreation Advisory Board Commission for a term to begin April 1, 2018:

Mr. Russell Smyre Term Expires 3/31/21

Planning Board

Mayor Pro Tem Post noted Mr. Randy Reamer is an ETJ seat member on Planning Board. Councilmember Miller asked if a re-appointment was needed and commented Mr. Reamer would remain a member of Planning Board until a new seat member is nominated.

ANNOUNCEMENTS

Councilmember Miller announced a Special Permit Committee meeting will take place March 19, 2018 at 5:00 p.m. at Park Avenue Community Center to discuss the separation between special events and free speech and noted the meeting is open to the public.

COUNCIL COMMENTS

Councilmember Sheffield commented regarding the Election Review Committee and asked if a meeting time could be determined. Councilmember Sheffield stated the School of Government has provided guidelines for the meeting and requested a copy of the City’s charter.

Mayor Pro Tem Post asked if a University of North Carolina School of Government or a North Carolina League of Municipalities facilitator would be available to attend and facilitate the meeting. Councilmember Sheffield commented a facilitator was available. Councilmember Sheffield stated the meeting could offer public input.

Councilmember Sheffield asked Council to consider naming a section of the Greenway in memory of Mr. Bill Stanback to recognize his contributions to the community. Councilmember Alexander stated she would take the request to the Parks and Recreation Advisory Board.

City Manager Mr. Bailey commented the process is similar to the recent renaming of the Fire Station 6 that includes a 30 day period for public input.
MAYOR PRO TEM COMMENTS

Mayor Pro Tem Post asked Council to consider researching the cost to provide WiFi in economically disadvantage neighborhoods. Councilmember Alexander suggested e-rates might be an option.

MAYOR COMMENTS

Mayor Heggins commended Council for discussion and the service that councilmembers provide to the community.

CLOSED SESSION

Thereupon Councilmember Alexander made a motion to go into closed session to consult with an attorney as allowed by NCGS 143-318.11(a)(6). Councilmember Miller seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

RETURN TO OPEN SESSION

Thereupon Mayor Pro Tem Post made a motion to return to open session. Councilmember Alexander seconded the motion. Mayor Heggins, Mayor Pro Tem, and Councilmembers Alexander and Sheffield voted AYE. (4-0)

Mayor Heggins reported no action was taken during the closed session meeting.

ADJOURNMENT

Motion to adjourn the meeting was made by Mayor Pro Tem Post seconded by Councilmember Alexander. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 9:38 p.m.

_____________________________________
Al Heggins, Mayor

_____________________________________
Diane Gilmore, City Clerk
SALISBURY, NORTH CAROLINA
MARCH 6, 2018

SPECIAL MEETING

PRESENT: Mayor Al Heggins, Presiding; Mayor Pro Tem David B. Post, Council Members Brian Miller, Karen K. Alexander and Tamara Sheffield, City Manager William Lane Bailey, Assistant City Manager Zack Kyle, and City Clerk Diane Gilmore, and City Attorney F. Rivers Lawther, Jr.

ABSENT: None

Mayor Heggins and members of City Council met in a Special session in Council Chambers in City Hall located at 217 South Main Street. The meeting began at 4:00 p.m. and a moment of silence was taken.

DISCUSSION – ANNUAL GOAL SETTING RETREAT

Mayor Pro Tem Post suggested retreat topics be combined into groups and asked how much time will be devoted to each topic. Mayor Heggins suggested a block of time from 2:00 p.m. to 6:00 p.m. on March 21, 2018 to have a discussion on the City’s Vision and Mission. Mayor Pro Tem Post suggested a two hour time slot be allowed for the Vision and Mission statement. Councilmembers Miller and Alexander agreed. Mayor Heggins explained Mr. Rocky Cabagnot and Mr. Anthony Smith have agreed to facilitate the Vision and Mission discussion during the planning retreat.

Councilmember Miller suggested that an outside facilitator would be the best alternative. Mayor Heggins shared her thoughts regarding facilitators and her vision and reasoning to use community members to lead the planning retreat.

Mayor Pro Tem Post stated he contacted the University of North Carolina School of Government (SOG) and the North Carolina League of Municipalities (NCLM) to inquire about professional facilitators available and noted both institutes are able to provide facilitators.
Councilmember Alexander expressed her thoughts in the regards to having outside facilitation for the planning retreat and expressed it would be good for Council to have a facilitator with no community ties.

Councilmember Miller stated Council needs to decide who would facilitate the meeting and who Council would invite. Councilmember Miller explained that in the past the City Manager worked with a consultant to facilitate the retreat.

Mayor Pro Tem Post made a motion to authorize the City Manager to communicate with either the University of North Carolina and/or the North Carolina League of Municipalities to identify and retain a facilitator to assist Council with the Salisbury Goal Setting Retreat on March 21, 2018 and March 22, 2018 for the entire 12 hours. The motion was seconded by Councilmember Alexander. Mayor Heggins and Mayor Pro Tem Post and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

City Manager Lane Bailey stated he shared with Council that the facilitator from the School of Government (SOG) would not be able to attend due to schedule conflicts. He noted Julie Brennan and Warren Miller with FountainWorks could serve as the facilitators. He asked if Council had a preference of having someone who has facilitated in the past. He commented Ms. Madeline Hensley with Walking Stick, who retired with the North Carolina League of Municipalities, is also an option. Mayor Heggins asked Council to consider the use of a facilitator not been used for past retreats. Councilmembers Miller and Alexander agreed.

Mayor Heggins commented that at a previous meeting Council adopted a four hour time slot to allow discussion regarding to the City’s Vision and Mission statement. Councilmember Miller commented that four hours might not be efficient. Councilmember Sheffield asked for clarification on the Vision and Mission discussion. Mayor Heggins explained community members and representatives need voices at the discussion table. Councilmember Miller suggested that each Councilmember invite a group of 10 individuals to join the discussion with the purpose to include perspectives from different community members.

Councilmember Miller asked where the retreat would be held. City Clerk Diane Gilmore stated she has a tentative hold on three facilities.

Mr. Bailey referred to retreat topics and noted the Board of Education expressed an interest in additional Student Resource Officers (SRO) for elementary schools in lieu to recent incidents at an elementary school in Florida. He also suggested discussing a grant regarding Fire Fighters. Councilmember Miller asked if the Community Improvement Project (CIP) portion of the retreat would take an hour. Mr. Bailey noted the Utility Fund and the General Fund could be discussed with the CIP and noted that might be a discussion for the first day. Mayor Heggins asked if there would be a time that goals set by the previous Council would be reviewed. Mr. Bailey agreed.
Councilmember Sheffield stated the Vision and Mission, CIP, and the review of previous goals could be discussed on day one. Mayor Heggies agreed.

Councilmember Miller confirmed that each Councilmember would provide the City Clerk ten names for an invitation. Mayor Pro Tem Post confirmed the City Manager would work with the facilitator.

**ADJOURN**

Motion to adjourn the meeting was made by Councilmember Miller and seconded by Councilmember Sheffield. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 4:58 p.m.

____________________________________
Al Heggies, Mayor

____________________________________
Diane Gilmore, City Clerk
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category: ☐ Public ☐ Council ☐ Manager ☒ Staff

Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: Engineering Department

Name of Presenter(s): Wendy Brindle, City Engineer

Requested Agenda Item: Council to consider adopting a Resolution of Support regarding the expansion of the Salisbury National Cemetery and the ability to construct a greenway along the perimeter of the expanded property

Description of Requested Agenda Item:
Phase IV of the Salisbury Grant’s Creek Greenway will provide a safe off-road connection from neighborhoods to key facilities within Salisbury, and eventually serve as a primary north-south connection of the Carolina Thread Trail to Davie and Cabarrus Counties. The City has received Transportation Alternative Program (TAP) funding to help with the completion of this phase of greenway between Catawba College and Kelsey Scott Park.

The Department of Veteran’s Affairs (VA) is considering a donation of land from the Salisbury YMCA to expand their National Cemetery Annex, and is currently taking public comment on the proposed acquisition. The City has been working with the VA and YMCA to reserve the perimeter of the property for installation of a portion of Phase IV of the Salisbury Grant’s Creek Greenway, critical to the connection to Kelsey Scott Park.

The attached Resolution supports the expansion of the Salisbury National Cemetery and the ability to install a portion of Grant’s Creek Greenway along the perimeter of the property.

Attachments: ☒ Yes ☐ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)
Staff recommends that Council adopt the attached Resolution of Support regarding the expansion of the Salisbury National Cemetery and the ability to construct a greenway along the perimeter of the expanded property

Contact Information for Group or Individual: Wendy Brindle, City Engineer
wbrin@salisburync.gov
704-638-5201

☒ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☐ Regular Agenda (item to be discussed and possibly voted on by Council)
FINANCE DEPARTMENT INFORMATION:

__________________________________________  _________________________________
Finance Manager Signature                        Department Head Signature

____________________________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date****

For Use in Mayor's Office Only

☐ Approved  ☐ Declined

Reason:
City of Salisbury
North Carolina

RESOLUTION SUPPORTING
THE PROPOSAL TO ENLARGE AND ENHANCE
THE SALISBURY NATIONAL CEMETERY ANNEX
LOCATED AT 501 STATESVILLE BOULEVARD, SALISBURY NC
AND PROVIDE AN EASEMENT FOR A FUTURE GREENWAY

WHEREAS, it has been officially proposed that the U. S. National Cemetery Administration of the U. S. Department of Veterans Affairs hereby approve to enlarge and enhance the existing Salisbury National Cemetery Annex (SNCA) located at 501 Statesville Boulevard, Salisbury, NC, and

WHEREAS, the U. S. Department of Veterans Affairs, including the Office of Construction and Facilities Management and the Office of Real Property, has successfully completed its due diligence process for the proposed land acquisition for the expansion of the Salisbury National Cemetery, and

WHEREAS, the U. S. Department of Veterans Affairs has prepared and issued its “Draft Environmental Assessment (DEA)” for the proposed acquisition of available land adjacent to the existing Salisbury National Cemetery Annex (SNCA) with an official “Finding of No Significant Impact (FONS)” in strict accordance with the regulations and provisions of the National Environmental Policy Act (NEPA) and Public Law 91-190, 42 USC 4321-4347, and

WHEREAS, it is reported and understood that the Salisbury National Cemetery Annex is currently the only U. S. National Cemetery in North Carolina accepting veteran burials, and

WHEREAS, it is reported and estimated that with the present rate of veteran burials, the Salisbury National Cemetery Annex (SNCA) will be nearing its maximum capacity during the next decade, with tentative plans to move all future veteran burials out-of-state, and

WHEREAS, the Rowan County YMCA has generously agreed to donate available and vacant land adjacent to the Salisbury National Cemetery Annex (SNCA) for the specific purpose to enlarge and enhance the cemetery property, and
WHEREAS, the City of Salisbury, fully supports this project with an understanding that the City of Salisbury will install and maintain a “Greenway” around the outside perimeter of the property for purposes of improving the quality of life for all citizens and veterans, and

NOW THEREFORE BE IT RESOLVED, that this official resolution be hereby adopted and approved for the submission to the U. S. Department of Veterans Affairs this, the ____ day of ______________, 2018.

________________________
Al Heggins, Mayor

________________________
Diane Gilmore, City Clerk
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category: □ Public □ Council □ Manager □ Staff

Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: Engineering

Name of Presenter(s): Wendy Brindle

Requested Agenda Item: Roof Replacement – City Park

Description of Requested Agenda Item: As part of our ongoing inspection of all City roof systems it was determined that the roof at City Park has reached its useful life. Funds to perform this replacement were solicited thru the budget process and the project approved. The project specifications were developed by our roofing consultant Nelson Hall and Associates. The project was advertised and a pre-bid held on February 7, 2018. Bids were received on February 21, 2018. Five companies responded to our solicitation for prices to replace the roof. The bid tabulation is included for your reference. The project will require 100 business days to complete.

Attachments: □ Yes □ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

This project was budgeted at $181,500. The cost of the project will be $191,950, including a contingency of $10,000. This project is currently $10,450 over budget, which will be covered through savings in the General Fund.

Action Requested of Council for Agenda Item: Authorize the City Manager to enter into a contract with Piedmont Commercial Roofing to replace the roof at City Park for a sum of $179,730.

Contact Information for Group or Individual: Wendy Brindle, City Engineer wbrin@salisburync.gov / 704-638-5201

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☐ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

S. Waddy Fisher
Finance Manager Signature

Wendy C. Brindle
Department Head Signature

Anna Bannister
Budget Manager Signature
For Use in Mayor's Office Only

☐ Approved        ☐ Declined

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February 21, 2018

Nelson Hall & Associates, Inc.
1901 Lancaster Ave., Monroe, NC 28112
Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: Engineering Department

Name of Presenter(s): Wendy Brindle, City Engineer

Requested Agenda Item: Council to consider a supplemental agreement with NCDOT concerning sidewalks in the West End Plaza Area, Project C-4908 G

Description of Requested Agenda Item:
Congestion Mitigation Air Quality (CMAQ) is a federal program that helps fund transportation-related projects that improve air quality. CMAQ projects are prioritized and awarded by the Cabarrus Rowan Metropolitan Planning Organization (CRMPO), and then are administered by the North Carolina Department of Transportation (NCDOT). We have such an agreement for sidewalks along Jake Alexander Boulevard and Statesville Boulevard in the West End Plaza area.

Under terms of the most recent agreement, the project was to be completed by February 2018. Delays with right-of-way acquisition have caused the project to be behind schedule, and NCDOT has provided a supplemental agreement to extend the project completion to August 31, 2019. To ensure funds are retained, Engineering recommends accepting the agreement to extend the deadline. All other terms of the agreement remain the same, and the project can be completed prior to the deadline with no penalties.

Attachments: Yes

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)
Staff recommends that Council approve the attached supplemental agreement to extend the timeframe for project C-4908 G

Contact Information for Group or Individual: Wendy Brindle, City Engineer
wbrin@salisburync.gov
704-638-5201

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☐ Regular Agenda (item to be discussed and possibly voted on by Council)
FINANCE DEPARTMENT INFORMATION:

Finance Manager Signature

Department Head Signature

Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved

☐ Declined

Reason:
NORTH CAROLINA  
SUPPLEMENTAL AGREEMENT  
ROWAN COUNTY  

DATE: 3/27/2018  

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  

TIP #:  C-4908G  
AND  
WBS ELEMENTS:  PE  44008.1.7  
ROW  44008.2.7  
CITY OF SALISBURY  
CON  44008.3.7  
FEDERAL-AID #:  CMS-0914(22)  
CFDA #:  20.205  
TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION]  $0  

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the “Department”, and the City of Salisbury, hereinafter referred to as the “Municipality.”  

WITNESSETH:  

WHEREAS, the Department and the Municipality on 1/16/2013, entered into a certain Project Agreement for the original scope: of the installation of sidewalks near Salisbury Mall on Jake Alexander Boulevard (JAB) from the railroad tracks to Statesville Boulevard, and on Statesville Boulevard from JAB to Holly Avenue.  Sidewalks will be placed on both sides of the road with the exception of the area on the west side of JAB from the railroad to the driveway entrance south of Rose Avenue; and,  

WHEREAS, the Department and the Municipality on 11/7/2014 entered into a Supplemental Project Agreement to extend the completion date of the Project; and,  

WHEREAS, the Department and the Municipality on 10/20/2015 entered into a Supplemental Project Agreement to expand the scope and extend the completion date of the Project; and,  

WHEREAS, the parties wish to extend the completion date of the Project;  

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:
TIME FRAME


Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on 1/16/2013, 11/7/2014 and 10/20/2015 is ratified and affirmed as therein provided.
IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST: CITY OF SALISBURY

BY: _______________________________ BY: _______________________________
TITLE: ____________________________ TITLE: ____________________________
DATE: ____________________________ DATE: ____________________________

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL) _______________________________

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

City of Salisbury

DEPARTMENT OF TRANSPORTATION

BY: _______________________________

(CHIEF ENGINEER)

DATE: _______________________________

APPROVED BY BOARD OF TRANSPORTATION ITEM O: ____________________________ (Date)
NORTH CAROLINA
ROWAN COUNTY

SUPPLEMENTAL AGREEMENT

DATE: 3/21/2018

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

TIP #: C-4908 G

AND

WBS ELEMENTS: PE 44008.1.7

ROW 44008.2.7

CITY OF SALISBURY

CON 44008.3.7

OTHER FUNDING: CMS-0914(22)

FEDERAL-AID #:

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] $0

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the City of Salisbury, hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the Department and the Municipality on 1/16/2013, entered into a certain Project Agreement for the original scope: installing sidewalks on both sides of Jake Alexander Blvd from the railroad tracks to Statesville Blvd, and on both sides of Statesville Blvd from Jake Alexander Blvd to Holly Avenue, to include installing safe pedestrian crossings and other safety enhancements within the project area, programmed under Project C-4908 G; and,

WHEREAS, the Department and the Municipality on 11/7/2014 and 10/20/2015 entered into a Supplemental Project Agreements to extend the completion date of the Project; and

WHEREAS, the parties wish to extend the completion date of the Project;

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

Agreement ID # 7836
TIME FRAME


Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on 1/16/2013, 11/7/2014 and 10/20/2015 is ratified and affirmed as therein provided.
IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:  
CITY OF SALISBURY

BY: ________________________________  
BY: ________________________________

TITLE: ________________________________  
TITLE: ________________________________

DATE: ________________________________  
DATE: ________________________________

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number


Remittance Address:

City of Salisbury


DEPARTMENT OF TRANSPORTATION

BY: ________________________________

(CHIEF ENGINEER)

DATE: ________________________________

APPROVED BY BOARD OF TRANSPORTATION ITEM O: ____________________________ (Date)
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category: □ Public □ Council □ Manager □ Staff

Requested Council Meeting Date: April 03, 2018

Name of Group(s) or Individual(s) Making Request: Von Poston, Business Owner

Name of Presenter(s): Vickie Eddleman, Traffic Engineering Coordinator

Requested Agenda Item: Council to Consider Approval of Right-of-Way Use Permit for four parking spaces along adjacent to 111 South Main Street for 90 calendar days.

Description of Requested Agenda Item:
Engineering has received a request from the property owner of 111 South Main Street to utilize up to the total of four (4) parking spaces adjacent to his building for the renovations/removal of items from the building. He and his tenants and/or contractors would need use of these spaces for more than the allowable 2 hours during various times of the day with which to perform the necessary work. These spaces would be used only for vehicles necessary for the work, getting tools from or moving items into the vehicles. Anyone needing a space to just park will have to park elsewhere, obeying all applicable parking regulations. The sidewalk will remain open. A temporary permit was issued to begin March 30, 2018. The work is expected to be complete by July 1, 2018. Since the request for use of right-of-way may exceed 14 calendar days, Section 22-50 of the City Code of Ordinances requires Council approval.
Staff wants Council Members to be aware, the property owner is also requesting a separate permit for a dumpster in the alleyway at the rear of his building.

Attachments: □ Yes □ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

There is no budgetary impact on this item.

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)
Recommend that City Council, per Section 22-50 of the City Code of Ordinances, approve Right-of-Way Use Permit as stated for the work being performed at 111 South Main Street.

Contact Information for Group or Individual:
Vickie Eddleman, City of Salisbury, 704-638-5213
Von Poston, Salisbury Square Antiques & Collectibles, 704-633-0773

☑ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

□ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

Finance Manager Signature

Department Head Signature

Budget Manager Signature
Right-of-Way Use Permit Application

LOCATION OF WORK: 111 South Main Street

NAME OF APPLICANT: Mr. Von Poston, Business Owner

ADDRESS: 111 South Main Street    PHONE: 704-633-0773

START DATE: 03/30/2018    END DATE: 07/01/2018

PROPOSED USE: Renovations and removing items from the building

Note: Applications must be approved by the City Traffic Engineer or authorized representative prior to placement of materials or equipment on site.

REQUIREMENTS:

1. Maximum permit period of 14 calendar days.
2. Applicant is responsible for repair of damage to public property.
3. Permit subject to all requirements as specified in the City of Salisbury Code of Ordinances, Section 22-50, Right-of-Way Use for Construction and Maintenance (copy provided with application).
4. By accepting and utilizing this permit, the applicant will indemnify and hold the City of Salisbury and its officials, officers, employees and agents harmless from and against any liability and damages resulting from any negligent acts or omissions in the use of this public right-of-way.
5. A copy of the approved permit must be posted at the site (permit issued upon application approval).

OFFICE USE ONLY

APPROVED: Vickie Fiddleman, Traffic Engineering Coordinator
City Traffic Engineer or Authorized Representative

# Parking Spaces Approved: 4    Width of Sidewalk Approved for Use: Sidewalk to remain open

Minimum 5' Wide Pedestrian Access Required: Yes

Description of approved uses: Business owner, tenants, and contractors will need access to vehicles to retrieve tools and/or remove items as related to renovations.

DISTRIBUTION: POLICE    FIRE    DEVELOPMENT SRVCS.    PUBLIC WORKS    NCDOT (if applicable)

CITY OF SALISBURY
P.O. BOX 479, SALISBURY, NORTH CAROLINA 28145-0479
Right-of-Way Request for Parking Spaces
Beginning 03/30/2018 through 05/30/2018
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category: □ Public □ Council □ Manager ☒ Staff

Requested Council Meeting Date: April 03, 2018

Name of Group(s) or Individual(s) Making Request: Von Poston, Business Owner

Name of Presenter(s): Vickie Eddleman, Traffic Engineering Coordinator

Requested Agenda Item: Council to Consider Approval of Right-of-Way Use Permit for a portion of the public alleyway adjacent to the rear of 111 South Main Street for 90 calendar days.

Description of Requested Agenda Item:
Engineering has received a request from the property owner of 111 South Main Street to utilize a portion of the public alleyway adjacent to his building to place a dumpster for the renovations/removal of items from the building. The location of the dumpster would obstruct the continuous use of the public alleyway, but not totally block the alleyway. The alleyway in question has four access points. Because this could affect neighboring businesses, this permit would be contingent upon the property owner notifying all affected businesses prior to the placement of the dumpster. It is the property owner’s responsibility to try to work with the affected business owners to mitigate any hardships this may cause. It is unknown when the dumpster will need to be brought in. As to not hinder construction, staff is requesting allowing the permit to beginning April 04, 2018. The work is expected to last until July 1, 208. Since the request for use of right-of-way may exceed 14 calendar days, Section 22-50 of the City Code of Ordinances requires Council approval.
Staff wants Council Members to be aware, the property owner is also requesting a separate permit for a right-of-way use permit for the four spaces adjacent to the front of his building.

Attachments: ☒ Yes □ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

There is no budgetary impact on this item.

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)
Recommend that City Council, per Section 22-50 of the City Code of Ordinances, approve Right-of-Way Use Permit as stated for the work being performed at 111 South Main Street.

Contact Information for Group or Individual:
Vickie Eddleman, City of Salisbury, 704-638-5213
Von Poston, Salisbury Square Antiques & Collectibles, 704-633-0773

☒ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

□ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

Finance Manager Signature

Department Head Signature
Right-of-Way Use Permit Application

LOCATION OF WORK: 111 South Main Street

NAME OF APPLICANT: Mr. Von Poston, Business Owner

ADDRESS: 111 South Main Street

PHONE: 704-633-0773

START DATE: 04/04/2018

END DATE: 07/01/2018

PROPOSED USE: Renovations and removing items from the building

Note: Applications must be approved by the City Traffic Engineer or authorized representative prior to placement of materials or equipment on site.

REQUIREMENTS:

1. Maximum permit period of 14 calendar days.
2. Applicant is responsible for repair of damage to public property.
3. Permit subject to all requirements as specified in the City of Salisbury Code of Ordinances, Section 22-50, Right-of-Way Use for Construction and Maintenance (copy provided with application).
4. By accepting and utilizing this permit, the applicant will indemnify and hold the City of Salisbury and its officials, officers, employees and agents harmless from and against any liability and damages resulting from any negligent acts or omissions in the use of this public right-of-way.
5. A copy of the approved permit must be posted at the site (permit issued upon application approval).

OFFICE USE ONLY

APPROVED: Vickie Eddleman, Traffic Engineering Coordinator
City Traffic Engineer or Authorized Representative

# Parking Spaces Approved: __ Alleyway at rear of building ___ Width of Sidewalk Approved for Use: NA

Minimum 5' Wide Pedestrian Access Required: __ NA ___

Description of approved uses: Business owner and contractors will need to place a dumpster in alleyway for removal of items related to renovations.

DISTRIBUTION: POLICE FIRE DEVELOPMENT SRVCS. PUBLIC WORKS NCDOT (if applicable)

CITY OF SALISBURY
P.O. BOX 479, SALISBURY, NORTH CAROLINA 28145-0479
Right-of-Way Request for Dumpster in Public Alleyway
Beginning 04/04/2018 through 05/30/2018
Dumpster location indicated by a red line.
Open public alleyway indicated by green lines.
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<tr>
<th>Please Select Submission Category:</th>
<th>□ Public</th>
<th>□ Council</th>
<th>□ Manager</th>
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<td>Name of Group(s) or Individual(s) Making Request:</td>
<td>STEPHEN BROCK (DEVELOPER)</td>
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| Name of Presenter(s):             | PRESTON MITCHELL (CITY)  
                                            STEPHEN BROCK (DEVELOPER) |
| Requested Agenda Item:            | CD-01-2018: CITY OF SALISBURY |
| Description of Requested Agenda Item: | REQUEST TO REZONE 5 PARCELS ALONG THE NORTH MARGIN OF STATESVILLE BLVD TO 'RMX-CD' TO ALLOW FOR THE CONSTRUCTION OF AN 80-UNIT APARTMENT DEVELOPMENT. |
| Attachments: | □ Yes | □ No |
| Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents) | |
| Action Requested of Council for Agenda Item: | COUNCIL TO HOLD A PUBLIC HEARING AND CONSIDER ADOPTING AN ORDINANCE TO REZONE THE PROPERTY AS REQUESTED. |
| Contact Information for Group or Individual: | #5244 or preston.mitchell@salisburync.gov |
| Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda) | □ |
| Regular Agenda (item to be discussed and possibly voted on by Council) | ✔ |

**FINANCE DEPARTMENT INFORMATION:**

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<th>Finance Manager Signature</th>
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***All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

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<td>□ Approved</td>
<td>□ Declined</td>
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CASE# CD-01-2018
BROCK VENTURES, INC.
REQUEST TO REZONE
5 PARCELS
FROM...
'GENERAL RESIDENTIAL'
TO...
'RESIDENTIAL MIXED-USE'
TO PERMIT AN 80-UNIT
MULTI-FAMILY DEV.

QUESTIONS?
CALL 704.638.5244

Date: 3/2/2018
DISTRICT MAP AMENDMENT: CD-01-2018

Project Title: AARONFIELD (APARTMENT DEVELOPMENT)
Petitioner(s): Brock Ventures, Inc.
Owner(s): Multiple (contact city staff for list of owners)
Representative(s) or Developer(s): Stephen Brock
Address: 2300 BLK STATESVILLE BLVD
Tax Map - Parcel(s): TM: 329, Parcel(s): 039,040,279,378,379
Size / Scope: Approximately 12 acres for development
Location: Located along the north margin of Statesville Blvd approximately 2/3-mile west of former Salisbury Mall

PETITION

Referencing the attached site map, this petition rezones the subject properties – a total of five (5) – from a straight GR (General Residential) district to RMX-CD (Residential Mixed Use) with the CONDITIONAL DISTRICT (CD) OVERLAY to permit the development of an 80-unit “workforce” apartment development (see attached Master Plan).

Workforce housing is a tax credit product where the developer constructs market-rate apartment units and amenities, but reserves those units for individuals within a specific income band – generally $19K to $40K for this area. The applicable tax credit program is a state-level initiative with credits and funding issued by the NC Housing Finance Agency.

Conditional District Overlay

The CD Overlay permanently marries a development plan with the rezoning to create a fixed development proposal for the site. This process ensures community expectations are met while meeting the needs of the developer. It is often used when design considerations differ from the Land Development Ordinance, when specific uses should be limited in the underlying zoning district, or when required by the code.

CD Alternatives Request

1. Campus-style development
2. Fenestration ratio (% of door/window openings)

Planning Board Recommended Conditions for Development

1. Establish a maximum clearing limit for northern portion
2. Provide additional buffering and visual screening along west boundary line adjacent to existing residential
**ZONING**

**Existing Zoning:**
*General Residential (GR6) district*  
*(6 dwelling unit per acre maximum)*  
The General Residential District is intended for City’s existing predominately-residential neighborhoods as well as provide for new primarily residential development in accordance with a suburban pattern. These Districts are differentiated only by the density of the overall development relative to the planning goals of the City as set forth in the Comprehensive Plan.

**Proposed Zoning:**  
*Residential Mixed-Use (RMX) district*  
*(18 dwelling unit per acre maximum)*  
Intended for higher density residential in close proximity (<½ mile) to existing and planned commercial nodes and may serve as a buffer zone for light intensity, neighborhood-scale commercial uses between thoroughfares and neighborhoods.

**LAND DEVELOPMENT ORDINANCE PROVISIONS**  

**Uses**
All uses in the RMX district will be prohibited other than:  
- Dwelling – multifamily more than 4 units per bldg.

**Building Types**
The following building types are proposed for this development:  
- Apartment (principal type)  
- Commercial (as an accessory – clubhouse and office)

**Recreational Open Space**
Not applicable for garden-style multifamily – voluntary

**Landscaping**
This development in the RMX district must provide the following buffer yards:  
- ‘A’ buffer yard (8’) against the ‘HB’ district  
- ‘C’ buffer yard (15’) against the ‘GR’ district  
- 8’ Street yard along Statesville Blvd.

**Existing Road Frontages**
*Statesville Blvd:* Boulevard (Major Thoroughfare)
The Salisbury Planning Board held its regular meeting Tuesday, March 13, 2018, in the Council Chamber at Salisbury City Hall, 217 S. Main Street, at 4 p.m. with the following being present and absent:

**PRESENT:** John Schaffer, Dennis Lunsford, Bill Burgin Jon Post, Cress Goodnight Randy Reamer, Dennis Rogers and Bill Wagoner

**ABSENT:** Josh Canup, Thomasina Paige, Two Vacancies

**STAFF:** Preston Mitchell, and Jessica Harper

**WELCOME GUESTS AND VISITORS**

Bill Burgin, Chair, called the Planning Board meeting to order.

**APPROVAL OF MINUTES**

- Planning Board Minutes of January 23, 2018 approved by Bill Burgin as submitted. All approved.

**NEW BUSINESS**

Bill facilitated the meeting as Chair:

- **CD-01-2018**
- **TA-02-2018**
- **TA-04-2018**

- Staff Presentation (Preston Mitchell)
- **CD-01-2018**

Conditional District (CD) wanting to change base zoning with a master plan. The CD will rezone to Residential Mixed Use just to use that particular use. Developer wants to rezone and combine five parcels. Developer proposes to use land for Aaronfield (80 unit) apartment complex. Staff presented the board with information including location of proposed site along with existing surrounding neighborhoods and apartment complexes. Included parcel(s): 039,040,279,378,379. Approximately 12 acres for development. Located along the
north margin of Statesville Blvd approximately 2/3-mile west of former Salisbury Mall.

A buffer of 15ft and 8 ft buffer along HB side (right) would be required for development and provided board with a look at the master site plan. Existing homes on site would be demolished. The new development would be located towards front of parcels near Statesville Blvd. The parcel would contain an undevelopable rear with a tree line to remain. The proposed apartments will be garden style apartments typical in the area. City services include Fibrant, police, fire, W&S, transit (1/3 mile), parks & recreation, but do not include sanitation. Multi-family is private pick-up for trash. Sidewalks with designated crosswalk. Multi-family dwelling would be permitted utilizing 4 units per building.

Conditions can be discussed at City Council. CD exceptions include campus style development and fenestration ratio. The fenestration ratio (cuts and openings in wall) required is 60%, but are asking 40%. This is consistent with existing and surrounding complexes.

All properties within 100 ft. received letters and properties were posted for rezoning.

Staff recommends approval of this development and recommend that it is consistent with the Vision and Policies of the comprehensive plan. The Vision 2020 Policies would apply and include:

- Policy N-18: As new neighborhoods are developed, a mixture of housing types/sizes/prices shall be provided within the bounds of each neighborhood planning area.
- Policy N-19: Higher density housing projects, such as apartment complexes and condominium developments, should be located adjoining places of work, shopping and public transit. Access to such higher density housing shall not be through a lower density housing area. Higher density housing may often act as a transitional use between offices or shops and lower density housing.

**Courtesy Hearing**

- 3/3
  
Steven Brock (Petitioner) 836 Stonehurst Ct, Annapolis, MD 21409.
Local developer working with builder (Matt Raab). This development is for working class and not section 8, HUD, government, or projects targeting specific band of income as mentioned. A professional study was done to evaluate demand. Demand included 250-516 units in the Salisbury area.

*NONE FOR*

*ALL AGAINST*
• Randy Reamer (attorney) who resides at 2060 Sherills Ford Rd Salisbury NC. Randy Reamer a member of this planning board has recused himself for the purposes of this hearing. Mr. Reamer represents Mary Ward who is accompanied by friends and neighbors. Mrs. Ward has 7 acre tract of land. All neighbors are opposed and do not want the westerly and gradual erosion of unusable property.

• Mary Ward Penley who resides at 2400 Statesville Blvd Salisbury NC and also owns 2386 Statesville Blvd. She has been living in the home since 1967 and is in favor of leaving the zoning as is and does not want eighty apartments built next door. She accommodate four to six units but not 80residens next to her property. She would be forced to sell her land if this complex was built. Ms. Ward recognized that an additional 80 cars would be accessing the neighboring property and would add to the already hick traffic. Four apartments exist near her home and claims her property would depreciate. Ms. Ward is eighty-five years old and would hate to pull up her roots and move at her age. Demands a privacy wall like Trump. When she moved there it was the county and now that part of the city is ignored.

• Robert Misenheimer who resides at 2410 Statesville Blvd Salisbury NC. Does not want the rezoning and suggests that government should be responsive to the people and not necessarily what the board wants, but what the people want. He does not want it rezoned. The reason he lives there is because of the current zoning and wants to keep it the way it is. “A man’s house is his castle”. His place of refuge to get away from it all is being threatened. This rezoning will make property less desirable to sell. Safety is a high concern. The neighbors already have issues with people cutting through properties while drinking and littering. Theft and loitering are also existing issue. Apartments should not be located next to single family homes and are not considered family oriented. Developer does not have as much control as he thinks.

• Jane Shoeffe who resides at 2405 Statesville Blvd Salisbury NC. She has lived there since 1959. They existing neighbors opposed to the complex experience “riff-raff” walking the roads. They enter behind property from Laurel Point to go to the store. Eighty extra units will add to the sidewalk walkers and riff-raff. Ms. Shoeffe is not opposed to progress, but suggests they move the complex farther down.

• Emily Ward who resides at 2386 Statesville Blvd (tenant and daughter of Ms. Penley) is also opposed to the rezoning and claims it would bring more crime to the neighborhood. She enjoys her property and
the natural elements. She does not want added noise and drunks passing out on the porch. She wants the family environment to remain for her grandson whom she is raising.

- Joanne Kendall who resides at 212 N. McCoy Rd Salisbury NC. Has lived in big cities her entire life and appreciates progress. Salisbury is unique and suggested building condos where residents will own their own homes and has a stake in it. Let the people have a stake in the community and not be given stuff.

- Mr. Brock returns with additional 3 min. Understands that changes can be scary. He emphasizes that low income residents have miss characterized inaccurately without evidence. The will be a full-time property management that will have quarterly unit inspections and making sure tenants are original to lease. Construction is high quality energy star rated with hardy plank siding. Energy star apartments with brick façade. His complex will push existing property owners to increase standards.

- Board Discussion
- Statement of Consistency and Recommendation to City Council

Board Discussion
Bill Wagoner wanted additional information regarding an estimated number of existing apartment complexes in the area. Staff estimates 750 apartments located near the proposed site off of the five lane Statesville Blvd. Wagoner also wanted an estimated traffic count of Statesville Blvd near Majolica Rd. The AADT rating was determined to be 16,000/day as compared to 35,000/day on Jake Alexander Blvd near Mooresville Rd. Staff stated that a non-residential blvd is intended for high volumes and is classified as a federal highway. There is a density cap that exists with the proposed zoning of 18 units per acre. The developer is only proposing 6.4 units per acre. All other mixed zoning conversions near the site occurred pre LDO 2008. If rezoned to RMX adding buildings would not be allowed under CD.

Dennis Rogers wanted more information from the developer regarding number of bedrooms and rental cost. Mr. Brock confirmed: 12-1 bedroom at $525.00/month, 36-2 bedroom at $615.00/month, 32-3 bedroom at $680.00/month. Staff added information to the board regarding LIHTC (Low income housing tax credit) program funded by North Carolina Finance Agency where a developer can propose market rate apartments developed under certain guidelines. Developer will apply in August and confirmed sections 8 tenants are possible. Mr. Brock is compelled to accept section 8 vouchers.
Mr. Misenheimer *interrupted*: Confirmed that the rental prices are HUD, and section 8 rental prices. Safety and crime is a concern due to low income tenants.

Jon-Section 8 voucher will be accepted after claiming property is not section 8. The majority of the complexes will not be considered HUD or section 8. Mr. Brock claims to have higher building and construction standards that qualify as energy star. Staff urges board not to continue the conversation regarding real estate law and fair housing laws and adds to consider this not only as a CD, but as a land-use decision. Staff informs board to consider the land owners, but also the proposed development and will it fill a need for the community.

Cress asks if the apartment complex demands this type of development. Staff confirms that this area is considered a multi-family area around the mall. Statesville Blvd is the largest chunk of multi-family. Staff compares size of all existing apartment complexes. Dining, working, and shopping are available along Statesville Blvd.

Burgin explained the history behind apartments and that in this area it is consistent. The need and the fit is there. Burgin proposed an addition of a fence to help the land owners and neighbors accept the new apartment complex. Mr. Brock explained that a fence is an option and will be considered depending upon cost. Wagoner also recommended to affix the tree line behind property and proposed a larger buffer at neighboring properties. Mr. Brock will consider all options.

Staff explained to Mr. Shafer in detail about Policy N-19. Connections to shopping, dining, and working meets the spirit and intent of the policy. The policy mentions 1/3 mile as compared to the ¼ mile stated in the Policy. Mr. Lundsford sympathized with property owners, but mentioned there is no proof the development would increase crime or lower property values. The board must look at the facts of the case vs. the emotion behind it.

Mr. Brock explained to the board that an independent study on demand was done. The conclusion was:

1-bedroom @ 516  
2-bedroom @ 427  
3-bedroom @ 246

Bill Wagoner recommends the developer develops a buffer plan into the condition prior to motion. The motion will and can include conditions such as increased
buffer or recommend specific species of trees. The conditions can be moved and approved by city council or tabled if planning board can’t make a decision. Mr. Raab agreed to develop a more specific planting goal. Randy Reamer mentioned a sunset provision that was quickly rebutted to not apply to current rezoning and or development. Wagoner asked if this development is viable from a planning point of view. They determined it was good for planning now and in the future.

**MOTION**
Cress made the following MOTION: “The Salisbury Planning Board approves CD-01-2018 that Aaronfield apartments is consistent with the goals, objectives, and policies of vision 20/20 comprehensive plan and hereby recommend for approval contingent upon border buffer, tree line, and city council approval. Planning board will not approve if buffer and tree line can’t be determined. Allowing complete visual separation that may not include solid fence, but can be met through vegetation of approximately three years. Dennis Lundsford seconded the motion with most members VOTING 6:1 AYE. John Post opposed. This approval is contingent

**CD-01-2018** will got to City Council April 3, 2018 AT 5:00 P.M.
Aaronfield of Salisbury

STREET VISIBLE ELEVATION REQUIREMENTS

Building 100 REAR ELEVATION
Total Building Length – 96’6”
Total LF containing doors, porches, balconies, terraces and/or windows – 38’8”
38’8”/96’6” = 40%
AN ORDINANCE AMENDING THE LAND DEVELOPMENT ORDINANCE AND THE LAND DEVELOPMENT DISTRICT MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, REZONING FIVE PARCELS IN THE 2300 BLOCK OF STATESVILLE BOULEVARD TO RESIDENTIAL MIXED-USE (RMX) DISTRICT AND ESTABLISHING A CONDITIONAL DISTRICT OVERLAY TO PERMIT THE DEVELOPMENT OF AN 80-UNIT APARTMENT COMPLEX. (PETITION NO. CD-01-2018)

WHEREAS, a petition and associated development documents to rezone land and establish a Conditional District Overlay on the property described herein were properly filed by the petitioner and authorized by the property owner(s); and

WHEREAS, the Salisbury Planning Board, an advisory board to the Salisbury City Council, reviewed the rezoning petition and associated development documents on March 13, 2018, voting 6-1 to recommend conditional approval of the development plan and stated that the proposal is consistent with the Vision 2020 Comprehensive Plan; and

WHEREAS, the City Council held a properly-noticed public hearing at the regularly-scheduled City Council meeting of April 3, 2018; and

WHEREAS, the City Council hereby finds and determines that adoption of an Ordinance to rezone the property described herein to RMX district and by establishing a Conditional District (CD) Overlay is reasonable, in the public interest, and CONSISTENT with the goals, objectives, and policies of the Vision 2020 Comprehensive Plan as it relates to promoting a variety of housing types in the community and that higher density housing should be located near places of work, shopping, and public transit and designed with direct access to major roads.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Salisbury, North Carolina:

SECTION 1. That property identified in the City of Salisbury and Rowan County as Tax Map 329, Parcel(s) 0 39, 040, 279, 378, and 379 including those abutting rights-of-way and reaching to the respective centerlines, as designated on the official property identification maps of Rowan County, is hereby rezoned to ‘RMX’ district and establishment of a new Conditional District (CD) Overlay pursuant to the approved CD Master Plan.

SECTION 2. DEVELOPMENT DOCUMENTS: That any and all development within this Conditional District (CD) Overlay shall substantially adhere to the approved development documents entitled ‘AARONFIELD OF SALISBURY,’ which are on file with the City of Salisbury and signed by the Mayor of the City of Salisbury. A corrected set of documents, reflecting City Council approval and any development conditions that were approved by City Council and made a part of this Ordinance, shall be provided to the City for the Mayor’s signature within 30 days of the effective date of this Ordinance and prior to the issuance of any development permits.
SECTION 3. PERMITTED USES (PRIMARY): ‘Dwelling – Multifamily more than 4 units per bldg.’

SECTION 4. DEVELOPMENT CONDITIONS: That the following conditions are applicable to the development proposal associated with this Ordinance (see above, Section 2, Development Documents) within the Conditional District (CD) Overlay:

- Conditions as noted in red on the approved Master Plan and supporting documentation

SECTION 5. That as permitted by the Land Development Ordinance, the development documents associated with this Conditional District (CD) Overlay may establish alternatives to specific provisions of the Land Development Ordinance; however, where alternatives are not provided, those and all other applicable Land Development Ordinance provisions remain applicable for any and all development within this Conditional District (CD) Overlay.

SECTION 6. That improvements (public and/or private) for Stormwater drainage, streets, water and sewer shall be designed and installed in accordance with applicable City and Salisbury-Rowan Utilities standards and policies. Layouts shown on the approved, stamped, and signed Development Documents are considered schematic and may require administrative revision(s) upon review of engineering drawings or details (Construction Documents).

SECTION 7. That all Ordinances, or parts of Ordinances, in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 8. That this Ordinance shall be effective from and after its passage.
Petition

- Stephen Brock, petitioner and developer
  - Various owners
  - Option to Purchase
- Rezone lots to ‘RMX’ and establish CD Overlay
- Aaronfield: 80-unit apartment development
Buffering
Master Plan

Aaronfield
Bldg. Elevations
V2020 Vision

Policy N-18: As new neighborhoods are developed, a mixture of housing types/sizes/prices shall be provided within the bounds of each neighborhood planning area.

Policy N-19: Higher density housing projects, such as apartment complexes and condominium developments, should be located adjoining places of work, shopping and public transit. Access to such higher density housing shall not be through a lower density housing area. Higher density housing may often act as a transitional use between offices or shops and lower density housing.

Housing.
We see a multitude of housing choices, ranging from single-family homes, to townhouses, to garage apartments, to apartments over downtown shops or the neighborhood corner store. We see neighborhoods with several different well-designed housing types for all incomes where the elderly, young families, singles and others share experiences and help one another.
City Services

- Broadband
- Fire
- Parks & Rec
- Police
- (Sanitation)
- Transit
- W & S
Ordinance

- Permitted Use(s): MF Dwelling > 4 du/bldg.
- Conditions: Clearing/Grading Limits
- CD Exceptions: Campus-Style Development Fenestration Ratio (%)
Fenestration Ratio

Aaronfield of Salisbury

STREET VISIBLE ELEVATION REQUIREMENTS

Building 100 REAR ELEVATION
Total Building Length – 96’6”
Total LF containing doors, porches, balconies, terraces and/or windows – 38’8”
38’8”/96’6” = 40%
Planning Board
3.13.2018
Voted 6-1 to Approve with Conditions
And Consistent w/ V2020 Comp Plan
Conditions*

* Recommended, with voluntary compliance
Master Plan

Aaronfield
Requested Council Meeting Date: APRIL 3, 2018

Name of Group(s) or Individual(s) Making Request: PRESTON MITCHELL FOR CITY OF SALISBURY

Name of Presenter(s): SAME

Requested Agenda Item: TA-02-2018: CITY OF SALISBURY

Description of Requested Agenda Item: REQUEST TO AMEND THE TEXT OF THE LAND DEVELOPMENT ORDINANCE RELATED TO THE LOCATION OF GAS STATION CANOPIES AND OTHER ADDT’L USE STANDARDS.

Contact Information for Group or Individual: #5244 or preston.mitchell@salisburync.gov

Action Requested of Council for Agenda Item: COUNCIL TO HOLD A PUBLIC HEARING AND CONSIDER ADOPTING AN ORDINANCE TO REVISE THE LAND DEVELOPMENT ORDINANCE.

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

FINANCE DEPARTMENT INFORMATION:

___ Finance Manager Signature

___ Department Head Signature

___ Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved

☐ Declined

Reason:
The Salisbury Planning Board held its regular meeting Tuesday, March 13, 2018, in the Council Chamber at Salisbury City Hall, 217 S. Main Street, at 4 p.m. with the following being present and absent:

**PRESENT:** John Schaffer, Dennis Lunsford, Bill Burgin, Jon Post, Cress Goodnight, Randy Reamer, Dennis Rogers, and Bill Wagoner

**ABSENT:** Josh Canup, Thomasina Paige, Two Vacancies

**STAFF:** Preston Mitchell, and Jessica Harper
OTHER BOARD BUSINESS

- Staff Presentation (Preston Mitchell)

**TA-02-2018: Additional Use Standards:**

- **N.1.a.b.c. Gas Station:** The proposed changes will change location of the gas canopies allowing said gas canopies to exist in any yard if located in HB & LI. NMX, CMX: A maximum of two (2) pumps (allowing up to four (4) fueling spots), including canopies, may be located in the front yard. Any additional pumps and canopies shall be located in the side or rear yards, except that pumps and canopies are prohibited in a side yard. DMX, TND: Fuel pumps and canopies are prohibited in the front and side yards and are limited to the rear yard.

- **N.2. Required Vehicle and Bicycle Parking provisions of Chapter 10, Parking, Section 10.3,** shall apply to the associated convenience store or staffed pay station and are not applicable for the fuel pump areas or unmanned stations.

- **N.4 Lighting provided by canopies shall be per the specifications of Chapter 11, Lighting on Private Property.**
T. Live Work Unit: The work area shall occupy no greater than 50% of total unit.

Staff recommends approval of the text amendment and finds it is not inconsistent with the Vision 20/20 comprehensive plan.

MOTION
Bill Wagonner made the following MOTION: “The Salisbury Planning Board approves the request to TA-02-2018 be approved based on it being not inconsistent. Motion seconded, VOTING AYE. None opposed.
AN ORDINANCE AMENDING CHAPTER 3 (ADDITIONAL USE STANDARDS) OF THE LAND DEVELOPMENT ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA RELATED TO GAS CANOPIES AND OTHER ADDITIONAL USE STANDARDS. (PETITION NO. LDOTA-02-2018)

WHEREAS, the Salisbury Planning Board, an advisory board to the Salisbury City Council, reviewed the text amendment on March 13, 2018 and hereby recommends its approval; and

WHEREAS, the City Council held a properly-noticed public hearing at the regularly-scheduled City Council meeting of April 3, 2018; and

WHEREAS, the City Council hereby finds and determines that adoption of an ordinance to amend the Land Development Ordinance of the City of Salisbury as underlined or stricken herein is reasonable, in the public interest, and not inconsistent with the Vision 2020 Comprehensive Plan because there are no specific objections or continuance of adopted goals or policies.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Salisbury, North Carolina:

SECTION 1. That CHAPTER 3 (ADDITIONAL USE STANDARDS), Exhibit A, is amended as underlined or stricken.

SECTION 2. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. That this ordinance shall be effective from and after its passage.
N. Gas Station – For All Applicable Districts

1. Fuel pumps and canopies are prohibited in any front yard. All canopies shall be a minimum of ten feet (10 ft.) from any adjoining non-residential use or public right-of-way and a minimum of twenty feet (20 ft.) from any residential use. Fuel Pump and Canopy Siting: Notwithstanding district location, excessively large or tall canopies are prohibited. All canopies shall be sized to accommodate general coverage from the elements and tall enough to accommodate a 14-foot commercial motor vehicle.

   a. DMX, TND: Fuel pumps and canopies are prohibited in the front and side yards and are limited to the rear yard.

   b. NMX, CMX: A maximum of two (2) pumps (allowing up to four (4) fueling spots), including canopies, may be located in the front yard. Any additional pumps and canopies shall be located in the side or rear yards, except that pumps and canopies are prohibited in a side yard that is adjacent to the OSP, RMX, or any Residential district.

   c. HB, LI: Fuel pumps and canopies may be located in any yard.

2. All areas where vehicles are stored temporarily shall be considered as parking lots and shall comply with the provisions of Chapter 10, Required Vehicle and Bicycle Parking provisions of Chapter 10, Parking, Section 10.3, shall apply to the associated convenience store or staffed pay station and are not applicable for the fuel pump areas or unmanned stations.

3. All such vehicle storage areas shall be located at the rear of the building.

4. Lighting provided by canopies shall be per the specifications of Chapter 11, Lighting on Private Property.

5. No outdoor public address system shall be permitted which can be heard beyond the boundaries of the property.

6. A maximum of eight (8) cars may be serviced at fueling stations in the NMX, DMX, and TND Districts.

7. Up to half of the required parking may be satisfied by fueling station parking.

O. General Retail – 3,500 square feet or less – For RMX & NMX only

1. Alcohol sales shall require a Special Use Permit

P. General Retail - Greater than 50,000 square feet – For All Districts

1. Traffic Study Required: Development greater than 50,000-sf in gross floor area shall require the submission of a Traffic Impact Analysis in accordance with Section 16.13. The improvements recommended by the study shall be constructed by the applicant as a condition of approval.
Q. **Group Care Facility (More than 6 residents) – For All Districts**

1. Any structure used for such facility in the UR or RMX district shall maintain an appearance of a residence, which is compatible with the surrounding neighborhood.

2. These facilities shall be developed and maintained in accordance with all current and applicable provisions of the N.C. Department of Health & Human Services.

R. **Home Occupation – For OSP, RR, GR, UR, HR, RMX, HS, IC, MHD & TND**

Unless expressly and separately regulated elsewhere in this Ordinance, a home occupation is permitted as an accessory to a dwelling unit in accordance with the following provisions:

1. Home occupations shall be limited to the following uses in the following districts:

   a. **OSP, RR:**
      (1) Domesticated or farm-related animal husbandry, including kennels (domesticated: min. 1 acre; farm-related: min. 3 acres)
      (2) Financial and professional services
      (3) Studio, such as arts, martial arts, yoga
      (4) Vehicle services: minor maintenance and repair (min. 1 acre)
      (5) Indoor/outdoor recreation facility (min. 3 acres)
      (6) Fabrication, machine, or welding shop (min. 3 acres)
      (7) Neighborhood manufacturing

   b. **GR, MHD, RMX:**
      (1) Domesticated animal husbandry (min. 1 acre)
      (2) Financial and professional services
      (3) Studio, such as arts, martial arts, yoga
      (4) Neighborhood manufacturing

   c. **UR, HR, HS, IC, TND:**
      (1) Financial and professional services
      (2) Studio, such as arts, martial arts, yoga
      (3) Neighborhood manufacturing
2. Except in the OSP and RR districts, the home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.

3. For all districts other than OSP or RR, a maximum of one (1) non-resident employee, contracted or otherwise employed, is permitted at the home during allowed operating hours. Other non-resident employees, contracted or otherwise employed, are prohibited from parking personal vehicles on-site and prohibited from congregating on the subject property during allowed operating hours. In the OSP and RR districts, a maximum of five (5) non-resident employees, contracted or otherwise employed, are permitted at the home during allowed operating hours. Other non-resident employees, contracted or otherwise employed, are prohibited from parking personal vehicles on-site and prohibited from congregating on the subject property during allowed operating hours.

4. The use shall not be open to the public, or any customer, before 8:00 a.m. or after 6:00 p.m.

5. Pursuant to the American National Standards Institute (ANSI) definition of “gross living area,” a single home occupation conducted within the dwelling (excluding a finished or unfinished basement or accessory structures) shall occupy no more than 300 square feet of gross living area, while more than one home occupation shall occupy no more than 30 percent or more than 500 square feet (whichever is less) of gross living area of the dwelling.

6. Except for equipment or materials of a type and quantity that could reasonably be associated with the principal residential use, outdoor open storage of home occupation elements (including but not limited to tools, products, machinery, materials, and waste) in the GR, UR, HR, HS, or TND districts shall be prohibited in any yard. Except for equipment or materials of a type and quantity that could reasonably be associated with the principal residential use, outdoor open storage of home occupation elements (including but not limited to tools, products, machinery, materials, and waste) in the RMX, IC, or MHD districts may be provided in the rear yard subject to providing Complete Visual Separation, as defined in the Landscaping chapter of this Ordinance, from any street or adjacent residential property. Except for equipment or materials of a type and quantity that could reasonably be associated with the principal residential use, outdoor open storage of home occupation elements (including but not limited to tools, products, machinery, materials, and waste) in the OSP and RR districts may be provided in any yard subject to providing Complete Visual Separation, as defined in the Landscaping chapter of this Ordinance, from any public street or adjacent residential property.

7. Excluding a finished or unfinished basement, or accessory structure, display of stock, goods, or products (for the purpose of sale) shall not be visible from any street or adjacent residential property.

8. Except in the OSP and RR districts, operation of the home occupation shall not be visible from any dwelling on an adjacent lot, nor from a street.
9. Except in the OSP and RR districts, oversized commercial vehicles and utility trailers, as defined by the municipal ordinance, shall not be permitted in connection with a home occupation.

10. Except in the OSP and RR districts, the number of vehicles used by clients, employees (contracted or otherwise employed), or business-related visitors to the home shall be limited to two (2) vehicles at any time.

11. The home occupation shall not utilize mechanical, electrical, or other equipment, which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisances outside the dwelling or accessory structure housing the home.

12. One non-illuminated wall sign is permitted not to exceed three (3) square feet in size.

S. Housing Service for the Elderly – For GR & UR only

1. The total number of dependent or independent units shall not exceed the applicable district’s density maximum.

T. Live Work Units – For All Applicable Districts

1. Shall not exceed 3,000 gross square feet and three (3) stories in height.

2. The work area shall occupy no greater than 50% of total units.

3. The same occupant shall inhabit the work area and living area.

U. Manufactured Housing – For All Districts

1. The manufactured home shall meet the architectural standards of Section 5.7.C.

2. A minimum width (the width being the narrower of the two overall dimensions) of the main body of the manufactured home as assembled on the site shall be at least twenty-two (22) feet for a distance extending along the length (the length being the longer of the two overall dimensions) of at least forty (40) feet. In general terms, this only permits “doublewide” manufactured housing.

3. A manufactured home shall not be used for a non-residential purpose.

V. Manufacturing – Neighborhood – For RMX only

1. Outdoor storage is prohibited.

2. The use shall be limited to 10 employees.

W. Public Safety Station – For RR, GR, UR, HR, RMX & NMX only

1. Incarceration facilities shall not be incorporated into the station.

X. Residential Treatment Facility – For RR, RMX, NMX & TND only
SALISBURY CITY COUNCIL
AGENDA ITEM REQUEST FORM

Please Select Submission Category: [ ] Public [ ] Council [ ] Manager [ ] Staff

Requested Council Meeting Date: APRIL 3, 2018

Name of Group(s) or Individual(s) Making Request: PRESTON MITCHELL FOR CITY OF SALISBURY

Name of Presenter(s): SAME

Requested Agenda Item: TA-04-2018: CITY OF SALISBURY

Description of Requested Agenda Item: REQUEST TO AMEND THE TEXT OF THE LAND DEVELOPMENT ORDINANCE AND CITY CODES RELATED TO ON-PREMISE PARKING PROVISIONS.

Attachments: [ ] Yes [ ] No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item: COUNCIL TO HOLD A PUBLIC HEARING AND CONSIDER ADOPTING AN ORDINANCE TO REVISE THE LAND DEVELOPMENT ORDINANCE.

Contact Information for Group or Individual: #5244 or preston.mitchell@salisburync.gov

[ ] Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

[ ] Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

____________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date****

For Use in Mayor’s Office Only

[ ] Approved [ ] Declined

Reason:
The Salisbury Planning Board held its regular meeting Tuesday, March 13, 2018, in the Council Chamber at Salisbury City Hall, 217 S. Main Street, at 4 p.m. with the following being present and absent:

**PRESENT:** John Schaffer, Dennis Lunsford, Bill Burgin Jon Post, Cress Goodnight Randy Reamer, Dennis Rogers and Bill Wagoner

**ABSENT:** Josh Canup, Thomasina Paige, Two Vacancies

**STAFF:** Preston Mitchell, and Jessica Harper
TA-04-2018: Parking

• 10.2.B moved to muni code. Where on-street parking on-street is permitted, the on-street spaces directly along a parcel’s frontage for any use other than single-family adjoining the development site may count toward the minimum parking requirement. This provision does not apply for single-family dwellings.

• 10.2.E Parking for RVs, Trailers, Commercial Vehicles, and Boats: Parking for Recreational Vehicles, Trailers, Oversized Commercial Vehicles and Boats shall be restricted to the rear yards in the GR, UR, HR, and TND districts.

• 10.2 F. Front Yard Parking for Single-Family & Duplex Development: Vehicle parking in the front yard shall be located on a prepared surface, as defined in this chapter, and shall not exceed 25% of the front yard width. This provision shall not apply to front yard circulation drives.

10.4.C. Off-Street Parking Area Surfaces by Building Type

• Industrial Development: Although Building Types are not applicable for LI or HI districts, areas designated for parking, truck movement, and loading shall be on prepared surfaces only. Prepared surfaces include any non-slip and dust-free material.

• 2. Public Landmark, Institutional, Townhouse, Apartment, Mixed-Use, and Commercial: Areas designated for required parking shall be on paved surfaces only. Paved surfaces include concrete, asphalt, brick, or other similar non-slip and dust-free paving material as approved by the City Engineer.

• 3. House: Areas designated for required parking shall be on prepared surfaces only. Prepared surfaces include concrete, asphalt, brick, gravel (minimum four (4) inches thick), or other similar dust-free
materials, but shall not include landscaped yard areas, or dirt, or mulch.

- **D. Driveway Entrance Width for Parking Lots:** The maximum width for a parking lot driveway throat shall be 24 feet in all districts except in the HB, LI, and HI districts, and except as required by the City of Salisbury or the North Carolina Department of Transportation (NCDOT). The maximum width for a parking lot driveway throat in the HB, LI, and HI districts shall be 36 feet.

- **E. Circulation and Maneuvering:** 1. Off-street parking areas shall be designed to facilitate adequate movement and access by sanitation, emergency, utility, and other public service vehicles without posing a danger to pedestrians or impeding the function of the parking area. 2. Except for single-family and duplex

Staff recommends approval of the text amendment and finds it is not inconsistent with current policies.

**MOTION**

Randy Reamer made the following MOTION: “The Salisbury Planning Board approves the request to TA-04-2018 be approved based on it being not inconsistent. Motion seconded, VOTING AYE. None opposed.

**Other Business**

TA-03-2018 and Planning Board Goals tabled till March 27, 2018

**ADJOURN 6:30 p.m.**

There being no further business to come before the Planning Board the meeting was adjourned.

_______________________
Bill Burgin, Chair

_______________________
Jessica Harper, Secretary
AN ORDINANCE AMENDING CHAPTER 6 (LOT, INFILL AND ACCESSORY PROVISIONS) AND CHAPTER 10 (PARKING) OF THE LAND DEVELOPMENT ORDINANCE, AND CHAPTER 13 (MOTOR VEHICLES AND TRAFFIC) AND CHAPTER 22 (STREETS AND SIDEWALKS) OF THE SALISBURY CITY CODE, OF THE CITY OF SALISBURY, NORTH CAROLINA, RELATED TO LOT AND PARKING PROVISIONS. (PETITION NO. LDOTA-04-2018)

WHEREAS, the Salisbury Planning Board, an advisory board to the Salisbury City Council, reviewed the text amendment on March 13, 2018 and hereby recommends its approval; and

WHEREAS, the City Council held a properly-noticed public hearing at the regularly-scheduled City Council meeting of April 3, 2018; and

WHEREAS, the City Council hereby finds and determines that adoption of an ordinance to amend the Land Development Ordinance of the City of Salisbury as underlined or stricken herein is reasonable, in the public interest, and not inconsistent with the Vision 2020 Comprehensive Plan because there are no specific objections or continuance of adopted goals or policies.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Salisbury, North Carolina:

SECTION 1. That CHAPTER 6 (LOT, INFILL AND ACCESSORY PROVISIONS), Exhibit A, is amended as underlined or stricken.

SECTION 2. That CHAPTER 10 (PARKING), Exhibit B, is amended as underlined or stricken.

SECTION 3. That CHAPTER 13 (MOTOR VEHICLES AND TRAFFIC) and CHAPTER 22 (STREETS AND SIDEWALKS), Exhibit C, is amended as underlined or stricken.

SECTION 4. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. That this ordinance shall be effective from and after its passage.
Chapter 6. LOT, INFILL, ADDITION, AND ACCESSORY PROVISIONS

6.1 Applicability

The following provisions shall apply throughout the jurisdiction of this Ordinance, regardless of the underlying zoning district provisions.

6.2 General Lot Provisions

A. Location of Required Yards:

1. **Front Yard:** A space extending the full width of the lot between the architectural front of the principal building façade (the front setback) and the front lot line or the fronting street right-of-way measured perpendicular to the building at the closest point to the front lot line. Typically this yard is required to remain open and unoccupied, with the exception of certain expressly-permitted encroachments or structures such as porches, bay windows, porticos, arcades, stoops, sidewalks, street trees, street furniture, fences, walls, and landscaping. Corner lots comprise of two (2) or more front yards. Therefore, all applicable front yard provisions (including permissions and prohibitions) are required in both, or all, front yard areas.

2. **Side Yard:** A space extending from the front yard to the rear yard between the principal building façade and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building facade. Side yards extend from the sides of a building to a street ROW or property line.

3. **Rear Yard:** A space extending across the full width of the lot between the architectural rear of the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line. Rear yards extend from the back of a building to a property line.

B. **Setbacks along Thoroughfares:** Setbacks along thoroughfares shall be measured from the future right-of-way as determined by the locally adopted Thoroughfare Plan and/or Long Range Transportation Plan for roadway widening.

C. **Reserve Strips:** The creation of reserve strips, whether by deed or plat, in such a manner as to deny access from adjacent property, is prohibited.
D. May Not Reduce/Create Lot(s) Below Minimum Requirements: No yard or lot existing upon adoption of this Ordinance shall be reduced in size or area below the minimum requirements of the district. Yards or lots created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land or parcels for public utilities, substations, street right-of-way, or similar purposes.

E. Rights-of-Way Not Considered in Yard Requirements: Rights-of-way or easements for streets and roads shall not be considered a part of a lot or open space, or front, side, or rear yards for the purpose of meeting yard requirements.

F. Irregular Lots:

1. Irregular Setbacks: The location of required front, side and rear yards (or setbacks) on irregularly shaped lots shall be determined by the Administrator. The determination will be based on the intent and purpose of this Ordinance to achieve an appropriate spacing and location of buildings and buildings on individual lots. Where questions arise as to appropriateness, the subdivider may be requested to provide additional design information.

2. Irregular Lot Width: Irregularly-shaped lots, such as pie-shaped cul-de-sac lots, shall use the midpoint of the lot depth to determine minimum lot width. However, irregularly-shaped lots with a lot depth greater than 200 feet shall determine minimum lot width at a depth of 100 feet from the front yard right-of-way line.

G. Dimensional Standards for Lots not Served by Public Water and/or Sewer: For all lots (residential and non-residential) not served by public water and/or sewer service, the following minimum dimensional standards shall supersede the minimum lot requirements in this chapter.

<table>
<thead>
<tr>
<th></th>
<th>Public Water Only</th>
<th>No Public Water or Sewer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Area</td>
<td>15,000 sq. ft.</td>
<td>20,000 sq. ft.</td>
</tr>
<tr>
<td>Minimum Width</td>
<td>75 ft.</td>
<td>100 ft.</td>
</tr>
<tr>
<td>Minimum Depth</td>
<td>150 ft.</td>
<td>150 ft.</td>
</tr>
</tbody>
</table>

H. One Principal Building per Lot: Only one principal building and its customary accessory building(s) shall be located on any lot, except in the RMX, NMX, CMX, DMX, HB, LI, HI, HS, IC, and TND districts that permit a lot to contain residential and/or non-residential uses in one or more principal buildings or within the same building.

I. Corner lots: Any building on any corner lot shall comply with the minimum front setback for each street which the corner lot abuts.
Chapter 10. PARKING

10.1 Purpose and Intent

In order to provide adequate service for the parking of motor vehicles and bicycles, the City has enacted the following standards to regulate the construction, expansion, and renovation of parking lots and similar facilities.

In addition, this chapter is guided by and intends to fulfill the following policy directives of the Salisbury Vision 2020 Comprehensive Plan:

- On-street parking shall be encouraged in compact neighborhoods.
- Neighborhood-serving businesses shall employ on-street parking in coordination with a limited number of off-street parking spaces.
- New, large-scale, commercial development shall connect adjacent parking lots.
- The provision of secure bike storage shall be encouraged at shopping and work places.

10.2 General Parking Provisions

A. District Exceptions: All uses located within the DMX, LI, and HI districts are exempt from Sec. 10.3 (Required Vehicle & Bicycle Parking). However, if vehicle parking is voluntarily provided in the DMX district, then the corresponding number of bicycle spaces shall be provided and all other applicable provisions shall apply.

B. On-Street Parking: Where on-street parking is permitted, the on-street spaces directly along a parcel’s frontage for any use other than single-family adjoining the development site may count toward the minimum parking requirement. This provision does not apply for single-family dwellings.

C. Multi-Tenant Development: A development with multiple tenants shall provide the aggregate number of parking spaces required for each separate use. When the site is developed as a planned integrated development with non-reserved shared parking that is calculated based on off-set peak hours of operation, the applicable approval authority may consider such a proposal. The shared parking calculations shall be detailed in the site data table of the applicable Master, Major, or Minor Site Plan.

D. Accessibility: Parking for the disabled shall be provided in accordance with the North Carolina State Accessibility Code.

E. Parking for RVs, Trailers, Commercial Vehicles, and Boats: Parking for Recreational Vehicles, Trailers, Oversized Commercial Vehicles and Boats shall be restricted to the rear yards in the GR, UR, HR, and TND districts.
CHAPTER 10: PARKING

F. Front Yard Parking for Single-Family & Duplex Development: Vehicle parking in the front yard shall be located on a prepared surface, as defined in this chapter, and shall not exceed 25% of the front yard width. This provision shall not apply to front yard circulation drives.

G. Parking Reductions for Housing for the Elderly & Disabled: The Administrator may authorize a reduction in off-street parking requirements for multifamily dwellings (including duplexes and multifamily buildings of 4 or more units) to no less than three (3) off-street parking spaces for each four (4) dwelling units or fraction thereof provided that:

1. The design for off-street parking shall indicate compliance with the requirements for residential uses; however, only that amount of space need be developed as required by the Administrator as provided by this section.

2. All the dwelling units in a specific development shall include those features accommodating occupancy by the elderly. For example, the dwelling units and access to them shall include, but not be exclusively limited to, such structural features as ramps, low-rise steps, grab bar, and handrails.

3. Should any unit be occupied by non-elderly people, other than spouse or dependent of an elderly person, that unit shall be excluded from the computation for off-street parking for the elderly as authorized by the Administrator and shall be provided with off-street parking as required for the residential use classification in Section 10.3.

H. Structure Parking

1. In all districts where a parking structure is located, it shall be screened in such a way that cars are not visible from the street. In the DMX district, the ground level of a parking structure shall contain or be wrapped by retail, office or some other non-residential use along at least the primary façade.

2. Parking structure street facades shall be treated with high quality materials and given vertical articulation and emphasis compatible with the principle structure. The façade shall be designed to visually screen cars.

3. The location of off-street bicycle parking in parking structures is highly encouraged. Where bicycle parking is located in a parking structure, it shall be located on the level closest to the street and/or a primary building entrance.
### 10.3 Required Vehicle and Bicycle Parking

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Minimum Required (a)</th>
<th>Maximum Permitted (a)</th>
<th>Bicycle Parking Spaces (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>1 per bedroom up to 2 per unit</td>
<td></td>
<td>5% (c)</td>
</tr>
<tr>
<td>Lodging</td>
<td>1 per room or suite</td>
<td></td>
<td>2%</td>
</tr>
<tr>
<td>General Office / Business or Personal Service</td>
<td>2 per 1000 ft²</td>
<td>5 per 1000 ft²</td>
<td>5%</td>
</tr>
<tr>
<td>Medical/Dental Office</td>
<td>3 per 1000 ft²</td>
<td>5 per 1000 ft²</td>
<td>5%</td>
</tr>
<tr>
<td>Retail</td>
<td>2 per 1000 ft²</td>
<td>5 per 1000 ft²</td>
<td>5%</td>
</tr>
<tr>
<td>Restaurant/Bar</td>
<td>2 per 1000 ft²</td>
<td>20 per 1000 ft²</td>
<td>5%</td>
</tr>
<tr>
<td>Entertainment / Recreation / Fitness</td>
<td>2 per 1000 ft²</td>
<td>6 per 1000 ft²</td>
<td>5%</td>
</tr>
<tr>
<td>Theater</td>
<td>1 per 3 seats</td>
<td></td>
<td>5%</td>
</tr>
<tr>
<td>Manufacturing / Wholesale / Storage</td>
<td>2 per 1000 ft²</td>
<td></td>
<td>2%</td>
</tr>
<tr>
<td>Civic / Institutional</td>
<td>2 per 1000 ft²</td>
<td></td>
<td>5%</td>
</tr>
</tbody>
</table>

(a) All square footage calculations are gross interior floor area.
(b) Required bicycle parking spaces are based on the indicated minimum percentage of vehicle parking spaces provided. A single “inverted U” bicycle parking rack will count as two (2) bicycle parking spaces. The minimum number of bicycle parking spaces per use, when required, is two (2) or one rack and the maximum number of required bicycle spaces shall be 20 or 10 racks.
(c) Bicycle parking is required for multi-family dwellings of only more than 4 units per building.
10.4 Off-Street Parking Area Design Provisions

Off-street parking areas should be designed to minimize breaks in the pedestrian network along public streets and create safe and comfortable passage for pedestrians. Off-street parking or storage shall be provided on every lot, an abutting lot of the same ownership, or directly across any street or alleyway of the same ownership. A Certificate of Occupancy shall not be issued upon completion of any building or group of buildings unless and until all off-street parking and loading requirements, shown upon the plans or required by the zoning Ordinance, are in place and ready for use.

A. Location of Off-Street Parking Area as Permitted by Building Type

<table>
<thead>
<tr>
<th>Building Type</th>
<th>Rear Yard Only</th>
<th>Side and Rear Yards Only</th>
<th>Front Yard Limited to Prepared Surfaces Only</th>
<th>Front Yard Limited to Two Rows Only (one drive aisle with two bays)</th>
<th>Unrestricted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>OSP</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>Institutional</td>
<td>RR</td>
<td>V</td>
<td>V</td>
<td>V</td>
<td>V</td>
</tr>
<tr>
<td>House-Street</td>
<td>GR</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>III</td>
</tr>
<tr>
<td>House-Alley</td>
<td>HR</td>
<td>II</td>
<td>II</td>
<td>II</td>
<td>II</td>
</tr>
<tr>
<td>Townhouse-Alley</td>
<td>UR</td>
<td>III</td>
<td>II</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Apartment</td>
<td>T1</td>
<td>II</td>
<td>III</td>
<td>II</td>
<td>III</td>
</tr>
<tr>
<td>Mixed-Use</td>
<td>T2</td>
<td>III</td>
<td>II</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Commercial</td>
<td>T3</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Commercial</td>
<td>T4</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Commercial</td>
<td>T5</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Commercial</td>
<td>T6</td>
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<td>III</td>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>Mixed-Use</td>
<td>MHD</td>
<td>III</td>
<td>III</td>
<td>III</td>
<td>III</td>
</tr>
<tr>
<td>Commercial</td>
<td>TND</td>
<td>II</td>
<td>III</td>
<td>II</td>
<td>II</td>
</tr>
</tbody>
</table>

I Rear Yard Only
II Side and Rear Yards Only
III Front Yard Limited to Prepared Surfaces Only
IV Front Yard Limited to Two Rows Only (one drive aisle with two bays)
V Unrestricted

Off-street parking locations

Street ROW

Rear Yard Parking
Side and Rear Yards Parking
Front Yard Parking

SALISBURY, NC LAND DEVELOPMENT ORDINANCE
ADOPTED DECEMBER 18, 2007; EFFECTIVE JANUARY 1, 2008
AMENDED 5/6/08, ORD.2008-17
CHAPTER 10: PARKING

B. Off-Street Parking Access Aisle and Parking Stall Dimensional Standards

<table>
<thead>
<tr>
<th>Angle of Parking (degree)</th>
<th>Access Aisle Width (feet)</th>
<th>Parking Stall (a,b) Width (min.)</th>
<th>Parking Stall (a,b) Length (min.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>90</td>
<td>24</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>60</td>
<td>18</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td>45</td>
<td>Prohibited</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>30</td>
<td>Prohibited</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>0 (parallel)</td>
<td>20</td>
<td>10</td>
<td>8(c)</td>
</tr>
</tbody>
</table>

(a) Dimensional standards not including dimensions for Accessible parking stalls
(b) Compact Parking stalls measuring 8’6” x 18’ may be provided and shall not exceed 20% of the total required parking. All compact stalls shall be marked for compact vehicles only
(c) Dimension measured from the face of the curb and may include the gutter

C. Off-Street Parking Area Surfaces by Building Type

1. Industrial Development: Although Building Types are not applicable for LI or HI districts, areas designated for parking, truck movement, and loading shall be on prepared surfaces only. Prepared surfaces include any non-slip and dust-free material.

2. Public Landmark, Institutional, Townhouse, Apartment, Mixed-Use, and Commercial: Areas designated for required parking shall be on paved surfaces only. Paved surfaces include concrete, asphalt, brick, or other similar non-slip and dust-free paving material as approved by the City Engineer.

3. House: Areas designated for required parking shall be on prepared surfaces only. Prepared surfaces include concrete, asphalt, brick, gravel (minimum four (4) inches thick), or other similar dust-free materials, but shall not include landscaped yard areas, or dirt, or mulch.

D. Driveway Entrance Width for Parking Lots: The maximum width for a parking lot driveway throat shall be 24 feet in all districts except in the HB, LI, and HI districts, and except as required by the City of Salisbury or the North Carolina Department of Transportation (NCDOT). The maximum width for a parking lot driveway throat in the HB, LI, and HI districts shall be 36 feet.

E. Circulation and Maneuvering:

1. Off-street parking areas shall be designed to facilitate adequate movement and access by sanitation, emergency, utility, and other public service vehicles without posing a danger to pedestrians or impeding the function of the parking area.

2. Except for single-family and duplex dwellings in a House building type with separated parking areas and driveways, parking and maneuvering areas shall be arranged to allow vehicles to enter and leave the premises or parking area in a forward motion.
F. **Encroachment:** Off-street parking areas shall be designed so that parked vehicles do not encroach upon or extend onto public rights-of-way, sidewalks or strike against or damage any wall, vegetation, utility, or other structure.

G. **Overflow Parking:** Overflow parking is when the number of provided parking spaces exceeds the maximum permitted ratio. This overflow parking shall be constructed of any dust-free compacted, pervious ground cover, and the owner of the property shall be responsible for the maintenance of such parking in a clean and dust-free condition.

### 10.5 Bicycle Parking Provisions

Bicycle parking is required to encourage the use of bicycles for personal transportation and to provide for bicycle access to employment, retail, and other destinations.

A. **Required Racks:** Where bicycle racks are used, “Inverted U” type racks or other racks that support the bicycle at two points on the bicycle frame are required.

B. **Rack Siting and Dimensions:**

1. Racks shall be secured to the ground on a hard surface such as concrete, asphalt or unit pavers.

2. Each bicycle parking space shall provide six feet by two feet (6’ x 2’) in area per bicycle plus the area needed for access.

3. Bicycle parking shall be located no closer than three (3) feet from any wall to provide adequate space for access and maneuvering.

4. At least four (4) feet between parallel racks shall be provided for access.

5. Bicycle racks installed on sidewalks should provide for a clear, unobstructed width of at least five (5) feet for pedestrians and should be installed at least three (3) feet from the face of curb.
6. Bicycle racks shall be placed a minimum of four (4) feet from existing street furniture (i.e. mailboxes, light poles, benches) and be no closer than twelve (12) feet from the edge of fire hydrants.

7. Racks should be placed along a major building approach line and clearly visible from the approach and no more than 50 feet from building entrances or no further than the closest motor vehicle parking space, whichever is less. Rack placement should allow for visual monitoring by people within the building and/or people entering the building.

8. If required bicycle parking is not visible from the street or main building entrance, a sign shall be posted at the main entrance indicating the location of the parking.

9. Uses with several major, actively used entrances shall locate a portion of the required bicycle parking at each entrance.

10.6 Parking Lot Connections

Required parking lot connections shall apply to new development and major revisions to existing development (see Sec. 6.4 of this Ordinance) of one (1) acre or more in size. Where a connection stub has been provided by an adjoining development, connection shall be made with that existing stub. Reserve strips are expressly prohibited per Sec. 6.2 of this Ordinance, and no other provision of this Ordinance shall prevent a required connection from being provided.

A. Where a connection is required, a minimum of two (2) connection stubs shall be provided to adjoining property; however, if the subject site accesses two (2) or more streets, only one (1) interlot connection stub shall be provided to adjoining property.

B. Where a connection is required and an alley abuts the subject site, a minimum of one (1) connection to the alley shall be provided and no other interlot connection stubs shall be required.

C. Where a connection is required or provided, the connection shall be made in the rear if rear parking is provided.

D. Table of Required (R) & Optional (O) Parking Lot Connections

<table>
<thead>
<tr>
<th>RMX-Res</th>
<th>RMX-NonRes</th>
<th>NMX</th>
<th>CMX</th>
<th>DMX</th>
<th>HB</th>
<th>LI/HI</th>
<th>HS/IC</th>
<th>TND</th>
</tr>
</thead>
<tbody>
<tr>
<td>R</td>
<td>R</td>
<td>R</td>
<td>O</td>
<td>R</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
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<tr>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>O</td>
<td>O</td>
<td>O</td>
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<td>R</td>
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<td>R</td>
<td>R</td>
<td>R</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
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<tr>
<td>O</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>R</td>
<td>O</td>
<td>R</td>
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<td>R</td>
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<td>O</td>
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<td>O</td>
<td>R</td>
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<tr>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
</tr>
<tr>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
<td>O</td>
</tr>
<tr>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>R</td>
</tr>
</tbody>
</table>
Chapter 13 – MOTOR VEHICLES AND TRAFFIC

ARTICLE VI. - STOPPING, STANDING AND PARKING

DIVISION 1. - GENERALLY

Sec. 13-161. - Parking of oversized commercial vehicles, trailers.

It shall be unlawful for any person to park any oversized commercial vehicle or trailer on any street within the corporate limits of the city at any time except when engaged in loading and unloading, or when such vehicle is being used for emergency services or for temporary use at construction sites during the period of active construction.

(Code 1977, § 15-161; Ord. No. 2010-05, § 3, 2-16-10)

Editor’s note—Ord. No. 2010-05, § 3, adopted Feb. 16, 2010, changed the title of § 13-161 from "parking of oversized vehicles, trailers" to "parking of oversized commercial vehicles, trailers". This historical notation has been preserved for reference purposes.

Sec. 13-161.1. - Parking restricted on private property.

(a) Parking for recreational vehicles, trailers, oversized commercial vehicles and boats shall be restricted to the rear yards in the residential districts of the city referred to in the LDO as UR, GR, HR, and TND districts.

(b) Parking on any surface other than a prepared surface, as defined by the LDO, in the front yard of a House building type is prohibited.

(Ord. No. 2010-05, § 3, 2-16-10)

ARTICLE VIII. - REMOVAL AND DISPOSITION OF ABANDONED, NUISANCE, AND JUNKED MOTOR VEHICLES

Sec. 13-276. - Administration.

(a) The police department and the public services department code services division of the city shall be responsible for the administration and enforcement of this article. The police department shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the city and on property owned by the city. The public services department code services division shall be responsible for administering the removal and disposition of abandoned, nuisance and junked motor vehicles located on private property.

(b) If appropriate inspecting officers have probable cause to expect a violation of this article, they shall have the right, upon presentation of proper credentials, to enter on any premises
within the city ordinance-making jurisdiction at any reasonable hour in order to determine if any motor vehicle is in violation of this article.

(c) The city may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles, and junked motor vehicles in compliance with this article and applicable state laws.

(d) Nothing in this article shall be construed to limit the legal authority or powers of officers of the city police department or fire department in enforcing other laws or in otherwise carrying out their duties.

(Ord. No. 1990-42, § 1, 8-21-90)

Sec. 13-277. - Definitions.

For purpose of this article, certain words and terms are defined as herein indicated:

**Abandoned vehicle** is defined as authorized and defined in G.S. 160A-303 and is a vehicle that:

1. Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
2. Is left on a public street or highway for longer than seven (7) days;
3. Is left on property owned or operated by the city for longer than twenty-four (24) hours; or
4. Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two (2) hours.

**Authorizing officials** means the police department or the director of public services, respectively, designated to authorize the removal of vehicles under the provisions of this article.

**Junked motor vehicle** is defined as authorized and defined in G.S. 160A-303.2 and means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

1. Is partially dismantled or wrecked; or
2. Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
3. Is more than five (5) years old and appears to be worth less than one hundred dollars ($100.00).

**Motor vehicle** or **vehicle** means all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**Nuisance vehicle** means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

1. A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
2. A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height;
(3) A point of collection of pools or ponds of water;

(4) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor;

(5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;

(6) So situated or located that there is a danger of it falling or turning over;

(7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;

(8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

(9) Any vehicle specifically declared contrary to public health, safety and welfare by the code services manager.

(Ord. No. 1990-42, § 1, 8-21-90; Ord. No. 2010-05, § 4, 2-16-10)

Sec. 13-278. - Abandoned vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be an abandoned vehicle.

(b) Upon investigation, proper authorizing officials of the city may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(Ord. No. 1990-42, § 1, 8-21-90)

Sec. 13-279. - Nuisance vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

(b) Upon investigation by the city code inspector, the director of public services may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle and order the vehicle removed.

(Ord. No. 1990-42, § 1, 8-21-90)

Sec. 13-280. - Junked motor vehicle regulated; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
(b) It shall be unlawful for any owner, person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located, to fail to comply with the concealment requirements of this section.

(c) Subject to the provisions of subsections (d) and (e), after investigation by the city code inspector, the director of public services may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance. The following, among other relevant factors, may be considered:

1. Protection of property values;
2. Promotion of tourism and other economic development opportunities;
3. Indirect protection of public health and safety;
4. Preservation of the character and integrity of the community; and
5. Promotion of the comfort, happiness, and emotional stability of area residents.

(d) Any junked motor vehicle must be kept in a garage or accessory building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or accessory building structure means a lawful, nonconforming use or a garage or accessory building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations. The city code inspector has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision.

(e) Motor vehicles that are used on a regular basis for business or personal use are exempt from removal and disposal as junk vehicles.

(Ord. No. 1990-42, § 1, 8-21-90)

Cross reference—Buildings, Ch. 7; zoning, App. B.

Sec. 13-287. - Conditions on removal of vehicles from private property.

As a general policy, the city will not remove a vehicle from private property if the owner, occupant, or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the city from private property without a written request of the owner, occupant, or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the code enforcement officer. The city may require any person requesting the removal of an abandoned, nuisance, or junked motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

(Ord. No. 1990-42, § 1, 8-21-90)
Sec. 13-289. - Exceptions.

Nothing in this article shall apply to any vehicle:

(1) Which is located in a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-141 et seq.;

(2) Which is in an enclosed accessory building or securely tarped in the rear yard of the premises;

(3) Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or

(4) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(Ord. No. 1990-42, § 1, 8-21-90)

Chapter 22 - STREETS AND SIDEWALKS

ARTICLE III. - CONSTRUCTION OF DRIVEWAYS

Sec. 22-66. - Permit required.

It shall be unlawful for any person to break out any street curb for the purpose of constructing a driveway entrance, or to construct any driveway across the grass plot or sidewalk, without first obtaining a written permit therefor from the city traffic engineer or his authorized representative.

(Code 1977, § 24-43)

Sec. 22-67. - Rescinding of permit.

The city council shall have the authority to rescind by resolution any permit granted for a driveway when the council finds such action to be in the public interest.

(Code 1977, § 24-57)

Sec. 22-68. - Variances.

The city traffic engineer may grant variances from the standards of this article in accord with a resolution, passed by the city council, setting forth the departure and stating the reasons for such departure.

(Code 1977, § 24-56)
Sec. 22-69. - Supervision of work.

Any and all work performed under the provisions of this article shall be done under the supervision of the city traffic engineer.

(Code 1977, § 24-44)

Sec. 22-70. - Proximity of entrance to intersections, hydrants and other public improvements.

No driveway entrance shall be permitted to intersect the radius of any street corner or be so located that it interferes with intersection sidewalks (or is closer than fifteen (15) feet to the intersection of the right-of-way lines, whichever is greater), traffic signals, lamp standards, fire hydrants or other public improvements unless specific approval is given by the public services director and necessary adjustments to public improvements or installations are accomplished without cost to the city.

(Code 1977, § 24-46)

Sec. 22-71. - Minimum size of serviced area.

The area to which a driveway provides access shall be sufficiently large to store any vehicles using the driveway completely off the right-of-way and shall be of sufficient size to allow the functions related thereto to be carried out completely on the private property.

(Code 1977, § 24-47)

Sec. 22-72. - Side clearance.

The side clearance, measured parallel to the centerline of the road, from the side property line to the nearest point of the projected edge of a driveway, shall be a minimum of five (5) feet. All portions of the driveway, including the returns, shall be between the side property lines of the property served.

(Code 1977, § 24-48)

Sec. 22-73. - Number, width of openings.

(a) Residential property generally. The width of residential driveway entrances shall be limited to eighteen (18) feet each as measured along the curbline with not more than two (2) such entrances to the same property; provided that property adjacent to both a local street and either a major or minor thoroughfare, as defined in section 2.01.6 of the subdivision ordinance, shall be permitted access only from the local street. When two (2) entrances are constructed to serve the same residence, there shall be a minimum distance of twenty-five (25) feet of curb allowed to remain between the driveway entrances measured along the curbline.
(b) **Two to four-family dwellings in a House.** The width of the driveway entrances shall be limited to eighteen (18) feet each as measured along the curbline when two (2) entrances are made to the same property, provided there shall be a minimum distance of twenty-five (25) feet of curbline allowed to remain between the driveways. The width of a single driveway entrance to serve a duplex shall be limited to twenty-four (24) feet. There shall be no more than two (2) entrances to the same property.

(c) **Multifamily dwellings.** When driveway entrances are constructed to serve a townhouse or apartment houses, such entrances may be twenty-four (24) feet in width measured at the curbline with not more than two (2) such entrances to the same property from the same street. When two (2) driveway entrances are constructed, there shall be at least twenty-five (25) feet between driveway entrances measured at the curbline.

(d) **Joint driveways.** The width of a joint driveway, as may be authorized by the public services director, serving two (2) adjacent pieces of property, shall be limited to twenty-four (24) feet along the curbline, provided no other means of driveway access is reasonably available and the permit for such driveway is signed by the owners of the adjacent property. There shall be no more than one (1) joint driveway for each two (2) adjacent pieces of general residential property and no more than two (2) joint driveways for each two (2) adjacent pieces of duplex or multifamily residential property.

(e) **Business property.** Driveway entrances and exits constructed to serve business property shall not exceed fifty (50) feet in actual width at the property line with the actual width and turning radius to be determined and approved by the public services director, or his city traffic engineer, or their designee. Not more than two (2) such curb openings shall be permitted from the same street to serve any business or combined group of businesses such as a shopping center. When two (2) openings are constructed, a minimum distance of five (5) feet of curb shall remain between the driveway entrances.

(f) **Industrial uses.** Curb openings made to provide entrances or exits to industrial plants shall not exceed fifty (50) feet in actual width at the property line with the actual width and turning radius to be determined and approved by the public services director or his designee, with not more than one (1) such entrance to the same property; except that the public services director or city traffic engineer may approve, without the concurrence of the city council, a second entrance when he deems such is in the public interest to facilitate ingress and egress to the property. When two (2) or more such industrial driveway entrances are constructed, there shall be a minimum of fifty (50) feet between such entrances as measured at the curbline.

(g) **Corner lots.** Property having frontage on two (2) intersecting streets within one hundred (100) feet of the intersection of such streets shall have access only from the minor or less intensively used street except as may be authorized under section 22-68.

(Code 1977, § 24-49)
Sec. 22-74. - Driveway approaches.

(a) **Permit for alteration or reconstruction.** Existing driveway approaches shall not be relocated, altered or reconstructed without a permit approving such relocation, alteration or reconstruction. Such driveway approaches when so relocated, altered or reconstructed shall be subject to the limitations set forth in this section.

(b) **Change in use; replacement of curbs, gutters and sidewalk.** When the use of any driveway approach is changed making any portion or all of any driveway approach unnecessary in the opinion of the traffic engineer, the owner of the abutting property shall, at his own expense, replace all necessary curbs, gutters and sidewalks within sixty (60) days after written notice from the traffic engineer.

(c) **Reconstruction of nonconforming installations.** When an existing building or structure which is served by a driveway approach not conforming to the provisions of this article is demolished, repaired or altered in such a manner that the repair or alteration exceeds fifty (50) percent of the ad valorem tax valuation of the building or structure immediately prior to the repair or alteration, the owner of the property shall, at his own expense, reconstruct the driveway approach so as to conform to the provisions of this section.

(d) **Construction standards; supervision of work.** All work done in the construction of driveway approaches shall conform to city standards for concrete sidewalk and driveway approaches as established in this article or by the city traffic engineer. The city traffic engineer or his authorized representative shall supervise and inspect all such work.

(Code 1977, §§ 24-49.1—24-49.4)

Sec. 22-75. - Paving generally.

All driveway entrances constructed or reconstructed upon the street rights-of-way of the city shall be paved in the manner described in this article.

(Code 1977, § 24-45)

Sec. 22-76. - Thickness of pavement.

Where portland cement concrete is used to pave a driveway entrance, the thickness shall not be less than six (6) inches. Where asphaltic concrete is used, the thickness shall not be less than six (6) inches including the top and stone base.

(Code 1977, § 24-50)

Sec. 22-77. - Paving materials for residential driveways.

All entrances to residential driveways constructed shall be paved with portland cement concrete for a distance of not less than twenty-four (24) inches from the back of vertical curb. If no paved sidewalk parallels the property line, the remainder of the distance to the property line
may be paved with either bituminous concrete, portland cement concrete or crushed gravel. The
foregoing requirement is subject to the provision that residential driveways from streets that do
not have vertical curbs and do not have paved sidewalks shall be constructed of crushed gravel or
bituminous or portland cement concrete from the traveled portion of the street to the property
line.

(Ord. No. 1990-74, § 1, 12-18-90)

Sec. 22-78. - Replacement of sidewalk.

(a) When any driveway entrance is constructed or reconstructed any existing four-inch sidewalk
shall be replaced with portland cement concrete of not less than six (6) inches in thickness
where the driveway crosses the sidewalk. The pedestrian walk shall be indicated by false
cracks or lines in the pavement.

(b) Where an existing driveway crosses an existing paved sidewalk of less than six (6) inches in
thickness and when the sidewalk becomes broken or otherwise dangerous, the sidewalk shall
be removed and reconstructed for the entire width of the driveway using portland cement
concrete not less than six (6) inches thick. The newly constructed section of sidewalk shall
be at an elevation or grade approved by the city engineer.

(Code 1977, § 24-51)

Sec. 22-79. - Driveways from state highway streets.

Where the property is to be served by a driveway opening into a state highway street, a
permit as required by the state highway commission manual on driveway entrance regulations
shall be first submitted to the public services director for his review and approval. The
requirements of this article or those of the manual on driveway entrance regulations, whichever
are greater, shall be the minimum standards for development.

(Code 1977, § 24-54)

Sec. 22-80. - Cleanup of work site; safety requirements; liability of city.

The property owner shall be responsible for removing all debris and surplus materials upon
completion of the work regulated under this article, and shall maintain the premises in a safe
manner providing adequate barricades and lights at own expense to protect the safety of the
public using the adjacent street or sidewalk and shall hold the city free and harmless from all
damages for liability incurred.

(Code 1977, § 24-55)

Sec. 22-81. - Maintenance and repairs.

Responsibility for maintenance and repairs to driveway entrances or exits shall rest with the
property owner. Upon receipt of a notice to repair damaged pavement, the property owner shall
make the necessary repairs within sixty (60) days in accordance with the requirements set forth in this article.

(Code 1977, § 24-53)

Secs. 22-82—22-100. - Reserved.
Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: W. Lane Bailey, City Manager

Name of Presenter(s): W. Lane Bailey, City Manager

Requested Agenda Item: Council to consider adopting a RESOLUTION to approve an agreement regarding the Fibrant system.

Description of Requested Agenda Item: Council to consider adopting a RESOLUTION to approve an agreement regarding the Fibrant system.

Attachments: ☑Yes ☐ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Once the referendum passes, the lease approval and subsequent refinancing will be contingent on the LGC's approval. At this time, the exact fiscal amount is unknown until we have completed the refinancing.

Action Requested of Council for Agenda Item: Council to consider adopting a RESOLUTION to approve an agreement regarding the Fibrant system.

Contact Information for Group or Individual: W. Lane Bailey, City Manager

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☑ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

______________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved ☐ Declined
MEMORANDUM

DATE: March 27, 2018

TO: Mayor Al Heggins, Mayor Pro Tem David Post, Councilmembers Karen Alexander, Brian Miller and Tamara Sheffield

FROM: W. Lane Bailey, City Manager

SUBJECT: Fibrant Management Agreement and Lease with Hotwire Communications

Attached is the proposed Management Agreement and Lease with Hotwire Communications along with an overview of the lease prepared by CTC Technology. The proposed lease will generate a positive revenue stream for the City that will reduce the amount transferred from the General Fund to support the utility. The lease also:

- Removes the City from the retail internet business, while maintaining City ownership of its fiber assets
- Brings Hotwire’s scale and expertise to the City. The current transmission agreements with cable broadcast networks are set to expire in 2020. Given its market presence, Hotwire will have significantly more leverage to re-negotiate the transmission contracts resulting in lower operating costs.
- Offers enhanced services to Salisbury residents and businesses
- Maintains Fibrant’s network performance and customer service standards
- Upgrades Fibrant’s existing electronics and delivery platform
- The City will no longer be responsible for operating expense costs for the Fibrant system, which is currently operating with a negative cash flow and requires a transfer from the General Fund to balance.

It is my recommendation that Council adopt the proposed Management Agreement and Lease with Hotwire Communications for the operation of the broadband system contingent upon approval in the May 8 referendum. This third party lease with Hotwire Communications is a positive and significant step forward to improve the financial standing of both the City and the broadband utility.

In addition to the summary, Baker Tilly is reviewing the projections and business plan, and we will provide their information to you later this week.
City of Salisbury and Hotwire Fiber Asset Lease Overview

Prepared for the City of Salisbury, NC
March 2018
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1 **Introduction**

In fall 2016, the City of Salisbury, North Carolina (City), engaged CTC Technology & Energy (CTC) to explore options for the future of Fibrant,¹ the City’s ubiquitous fiber-to-the-premises (FTTP) network. CTC aided the City in assessing Fibrant’s assets and operations, administering a formal request for proposals (RFP) process to solicit bids from qualified third-party network operators, and negotiating an agreement under which the City would maintain ownership of the fiber assets but would transfer Fibrant’s operations including network maintenance and sales to Hotwire Communications (Hotwire). This report presents an overview of industry trends, Fibrant’s mission and operations, and the City’s RFP and negotiation process.

2 **The City Followed Industry Trends When It Deployed Fibrant**

Like many municipal governments that have deployed fiber-to-the-premises (FTTP), the City “invested in building Fibrant as a municipal utility to encourage economic development, increase competitive opportunities for our existing businesses and to provide citizens globally competitive access” to state-of-the-art broadband.²

However, faced with significant competition from ever-larger national competitors (the result of merger and acquisition activity in the industry), most municipal FTTP networks, including Fibrant, are finding themselves struggling to compete. Among the challenges Fibrant faces are the increasing technological capabilities of cable networks, low overall take rates, high operational costs when compared to incumbents, and the competitive pricing of nationwide incumbents.

The impact of competition is not unique to municipal FTTP networks. Indeed, AT&T is only investing in FTTP infrastructure in selected cities and neighborhoods where its returns on investment (ROI) are almost certain. Even Google is scaling back its FTTP deployments due to the unexpectedly low “take rates” (i.e., the percentage of potential customers passed by the network infrastructure that choose to buy service) for its gigabit per second (Gbps) services, declining video margins, and uncertain ROIs. Instead, Google has shifted its focus to initiatives that offer a quicker ROI while maintaining a high demand for Gbps service (e.g., high-population-density metro markets and multiple dwelling units).

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3 **Fibrant Has a Strong Guiding Mission and Extensive Infrastructure**

Fibrant is a 100 percent fiber optic municipal broadband utility owned and operated by the City. Recognized nationally\(^3\) for bringing symmetric 10 Gbps connection speed capabilities to local businesses and residents, the Fibrant FTTP network passes all businesses and residences in the Salisbury service area.\(^4\)

Fibrant was established in 2009 and signed its first customer in December 2010.\(^5\) The City currently serves commercial and residential customers with retail and dark fiber offerings.

### 3.1 Vision Statement

Fibrant’s vision is to provide a world-class community broadband infrastructure to Salisbury for the 21\(^{st}\) century and beyond.

Fibrant’s service is shaped by the values of its community. It intends to empower City residents and local businesses to be not only consumers of network information and data services, but also network economy producers. Fibrant’s vision is to:

- **Deliver ubiquitous broadband infrastructure**: Provide the infrastructure to enable every Salisbury home, business, visitor, and institution the opportunity to access affordable high-speed broadband connections to the Internet and other networks.

- **Ensure non-discriminatory access**: Demonstrate and support access to content providers and application providers via all standard commercially based devices.

- **Create a competitive local marketplace**: Facilitate a local broadband marketplace that is as competitive as reasonably possible.

- **Enable local businesses to compete globally**: Provide businesses in the community with the affordable broadband capacity they need to compete successfully in the global marketplace.

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\(^{4}\) Section 160A-340.2(b) of the North Carolina General Statutes, which governs “provision of communications service by cities,” provides that the service area for the City comprises the municipalities of Salisbury, Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, Landis, and the corridors between those cities, in addition to certain other specifically identified sites. Delivery of communications service outside these areas would result in the imposition of certain restrictions on the City’s operation of Fibrant.

3.2 Mission Statement
Fibrant is dedicated to enhancing quality of life, economic development, and delivery of City services in Salisbury. To accomplish this mission and guide planning and development, Fibrant established the following objectives:

1. Quality of Life
   - Provide affordable and accessible high-speed technology to support and enhance citizen and business interactions;
   - Provide basic connectivity throughout the community and, to the extent possible, develop opportunities to grow into a regional ubiquitous network; and
   - Provide reliable broadband and broadband-based services to the community.

2. Economic Development
   - Leverage the asset of advanced communications in economic development and community building;
   - Be an authoritative voice on Gig cities and fiber broadband;
   - Encourage innovation and enterprise through technology and communications in the local business community; and
   - Develop relationships with local organizations, businesses, other Gig cities, and neighboring communities to leverage the community broadband network.

3. City Services
   - Develop and support City infrastructure to further departmental objectives and the City’s overall mission;
   - Use advanced communications applications to improve network efficiency; and
   - Demonstrate service excellence in all operations.

4 Fibrant Has Struggled to Maintain Positive Cash Flow
From its inception, Fibrant has struggled to maintain positive cash flow. Indeed, the network’s take rate has remained at or below 21 percent—a low level compared to other overbuild networks nationwide.6

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6 Fibrant competes for broadband customers with AT&T and Spectrum (formally Time Warner Cable).
Although Fibrant has made efforts to grow its customer base, expand per-customer revenues, and restructure internal operations to reduce operating costs, these strategies have met limited success. Since 2013 Fibrant’s total subscribers increased from 2,100 to 3,500, but the network’s subscribership has remained relatively flat for the past two years.

Fibrant’s revenues almost cover its operating and maintenance (O&M) expenses. The shortfall in O&M costs and the network’s debt service payments are covered by the City’s general fund. In total, **Fibrant currently costs the City approximately $3 million annually.**

The City’s options are limited because the market value of Fibrant’s assets is less than the outstanding debt obtained to build the network, or roughly $32 million outstanding in debt\(^7\). And defaulting on this debt is not an option—the financing is secured by several City properties and default could also result in a state takeover of City operations.

We note that Fibrant is not unique in its challenges. Many municipal networks struggle with poor cash flow due to the smaller networks’ high operating costs and limited buying power. These struggles have encouraged the advent of public–private partnerships (P3s) nationwide. In a P3 structure, the public entity will often capitalize on its strengths, financing long-term assets (i.e., fiber outside plant), while the private entity capitalizes on its strengths—leveraging its larger economies of scale, operational experience, and sales and marketing functions.

Given the economy of scale issues that Fibrant faces, it is unlikely that Fibrant could achieve significant cost savings to address the dependency on the general fund.

**5 The City Released an RFP to Determine the Best Course Forward**

The City determined that it had three options to reduce Fibrant’s drain on the City’s general fund:

1. Sell Fibrant in its entirety to a third party;
2. Lease Fibrant assets to a third party; or
3. Contract Fibrant operations to a third party.

In January 2017, the City released and heavily promoted\(^8\) a formal RFP to convey its interest in entering into a contractual arrangement with a third-party provider that would enhance the operations, sales, marketing, and delivery of Gigabit-class broadband service to the community. The RFP asked respondents to articulate their proposed business models; describe their

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\(^7\) Includes the tax-exempt installment financing and an advance from the City water and sewer fund.

\(^8\) The City distributed the RFP to over 150 known providers, contacted the incumbent Salisbury providers, and promoted the RFP in industry blogs and discussion groups.
technical, transitional, and operational capabilities; affirm Fibrant’s goals; and present details on their proposed financing, funding, and payments.

Respondents that submitted letters of intent (LOI) to respond and executed non-disclosure agreements (NDAs) were given detailed information about Fibrant operations. Two onsite pre-response meetings were held in early February to allow these respondents to see Fibrant’s facilities and engage with the City. Final responses were due in early March 2017.

The City received LOIs and NDAs from 14 respondents:

- AT&T
- Axia
- Foresite
- GridWorx
- Hotwire Communications
- Network Design Decisions Inc. (NDDI)
- North State Communications
- Open Broadband
- Rapidity
- Sunset Digital Communications
- TerraPact
- Ting
- Wide Open Networks
- Wilkes TMC

The City received six formal proposals (AT&T, Fujitsu/NDDI, GridWorx/Clarus, Hotwire, TerraPact/Rapidity, and North State).

None of the responses offered a “magic” solution. Indeed, no offer removed or covered the City’s debt service in its entirety.¹⁰

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⁹ We note that the market does not have a high interest in systems “in distress” or systems that are in locations with incumbent competition. Fibrant’s financial situation, compounded with the presence of AT&T and Time Warner in the City, likely reduced the number of final responses.
Based on the responses and interviews with the respondents the City shortlisted GridWorx/Clarus, Hotwire, and North State.

6 The City Selected Hotwire’s Lease Proposal as Its Preferred Approach

After extensive consultation with the City advisory committee and CTC, and as recommended by CTC, the City Council selected Hotwire’s proposal as the most promising option and authorized negotiations. Negotiations began in September 2017 and were finalized in March 2018. The final agreement enables the City to maintain ownership of the fiber assets, while Hotwire will assume operations and maintenance of the network.

CTC advised the City that the Hotwire response offered the best value to the City and addressed all goals and objectives outlined in the RFP for several reasons.

Hotwire’s lease payments are based on a revenue share from gross receipts of data, video, and voice services. Hotwire will pay the City 30 percent of data revenues, 10 percent of video revenues, and 10 percent of voice revenues. Based on current Fibrant revenues this would result in Hotwire paying the City $944,000 in the first year, resulting in a net total of $444,000 after considering the increase of debt service costs by converting to taxable financing. To put this in perspective, Fibrant would need to increase its subscribership by roughly 570 customers (or 16 percent) without increasing operation expenses to obtain a $444,000 increase in revenue—and substantially more to also cover its total debt service obligations.

Hotwire’s offer is reasonable and represents a fair market value for use of the City’s fiber assets. A discounted present value of Hotwire’s revenue share projections over the course of a 20-year operating lease shows that the value of Hotwire’s offer is roughly equivalent to the recent sales prices for similar broadband networks in the U.S.

Hotwire’s purchasing power would provide immediate benefits to Fibrant. Hotwire is able to acquire video content, access to the internet, telephone hosting, and other services at a fraction of the City’s cost. In addition the company has a 24x7 network operations center and customer service and technical support staff.

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10 In addition, no offer could mitigate the pole attachment clearance mitigation process that the City currently is undertaking. The City must resolve the pole attachment clearance issue at its own expense regardless of what approach or respondent is selected.

11 Entering into a lease will require the City to convert from non-taxable to taxable financing because the assets will be used by a private entity rather than a public entity. The increased cost of taxable financing was estimated at $500,000 per year initially, decreasing as principal is repaid. The exact amount is dependent on market rates at the time the City refinances.

12 Assumes an aggressive $65 per month fee per data subscriber. The average fee today is closer to $45 per month.
In summary, the Hotwire lease will generate a positive revenue stream for the City that reduces the required draw from the general fund. The agreement also:

- Maintains City ownership of the fiber assets, which gives the City a greater ability to maintain Fibrant’s focus on achieving the City’s core goals and objectives
- Brings Hotwire’s scale and expertise to the City
- Offers enhanced services to Salisbury residents and businesses
- Maintains Fibrant’s network performance and customer service standards
- Upgrades Fibrant’s existing electronics and delivery platform
- Lets the City avoid an equipment refresh that will be required to keep the network at industry standards (estimated at a minimum of $5 million in the next five to seven years)

Lastly, Hotwire backs the agreement in its entirety—not a limited liability company (LLC) set up for the lease.
RESOLUTIONS TO APPROVE AGREEMENT REGARDING FIBRANT SYSTEM

WHEREAS:

A. The City owns and operates, through a City division providing services under the name “Fibrant,” an optic-fiber-to-the-premises communications network that provides telephone, video, and internet services to residences, businesses, and other entities in the City and in certain other areas of Rowan County (the “Fibrant System”). The Fibrant System includes portions of the City’s (i) customer service center at 1415 S. Martin Luther King Jr. Avenue and communications building site at 310 Hill Street.

B. The City financed the construction of the Fibrant System and certain other projects through the issuance of $19,560,000 in principal amount of tax-exempt certificates of participation in 2008. The Fibrant System became operational in 2010. During a start-up period and at other times, the City utilized funds from its water and sewer fund to finance operation of the Fibrant System. In 2013 and again in 2016, the City refinanced the tax-exempt certificates of participation financing and currently is indebted in the principal amount of approximately $25 million through an Installment Financing Contract with an affiliate of Sun Trust bank dated September 4, 2016 (the “2016 Tax-Exempt Financing”).

C. Since its construction, the Fibrant System has provided high-speed and high-quality communication services to the Salisbury community and certain other communities in Rowan County; however, the Fibrant System has not achieved an operating profit and continues to incur an annual operating deficit that the City has been required to fund from its general fund balance.

D. In 2016, the City engaged CTC Technology & Energy, a nationally recognized consulting firm that specializes in advising governmental entities with respect to telecommunications issues (the “Communications Consultant”), to advise the City with respect to alternatives for improved operation of the Fibrant System.

E. In January 2017, upon the recommendation of the Communications Consultant, the City issued a Request for Proposals (the “RFP”) in which the City expressed its interest in entering into a contractual arrangement with a third-party provider that would enhance the operation, sales, marketing, and delivery of communication services from the Fibrant System. The RFP described the City’s desire for “a creative Provider Arrangement that will meet the City’s current broadband needs; will anticipate potential future needs; reduce City risks; and provide a revenue stream (or one-time payment) to the City.”

F. The City received 14 indications of interest and six proposals in response to the RFP, including a proposal from Hotwire Communications, Ltd. (“Hotwire”).

G. The City received and evaluated all indications of interest and proposals submitted in response to the RFP, including the proposal submitted by Hotwire, a major provider of
fiber-optic telecommunications services based in Florida. Upon the recommendation of the Communications Consultant, the City selected Hotwire’s proposal as providing the best economic value to the City, taking into account Hotwire’s agreement to be responsible for operating costs of, and for major capital improvements that would be required to be made to, the Fibrant System.

H. Hotwire proposed a long-term lease arrangement pursuant to which the City would continue to own the Fibrant System and lease the Fibrant System to Hotwire, which would operate the system and continue to provide communication services to residents and businesses in the City and other areas served by the System in accordance with service standards set forth in the proposed lease agreement. Hotwire proposed that it would be responsible for operating costs and certain capital improvements to the Fibrant System and pay the City rent determined as a percentage of Hotwire’s gross revenues from communication services.

I. Hotwire’s proposal also provides that Hotwire would provide interim management services to the Fibrant System, prior to the commencement of the system lease.

J. In its proposal, Hotwire included its projections (the “Hotwire Projections”) of communications revenues and rent that would be payable to the City through the proposed lease, which Hotwire prepared by analyzing the historical performance of the Fibrant System in light of Hotwire’s experience in operating similar communication systems.

K. The City Manager and his staff, with the advice of the Communications Consultant, have evaluated the Hotwire Projections and determine the assumptions used by Hotwire in preparing such projections to be reasonable. The City also engaged Baker Tilly, LLP, an independent accounting firm (the “Financial Consultant”), to evaluate the Hotwire Projections.

L. The Hotwire Projections, as with financial projections generally, are speculative in nature and based upon subjective decisions and assumptions. The projections cover multiple years and such information by its nature becomes less meaningful and reliable with each successive year. The City Manager and the City Director of Finance, and the consultants, have advised the Council that there can be no assurance that the results reflected in the Hotwire Projections will be realized, and that actual results may vary materially from those reflected in such projections.

M. Subject to the foregoing qualifications and generally to the uncertainties inherent in predicting financial performance, the City Director of Finance and the Financial Consultant have concluded that the assumptions utilized by Hotwire in preparing the Hotwire Projections were reasonable in the circumstances.

N. The City Manager and the City Director of Finance have also reported to the Council that entering into the proposed lease arrangement with Hotwire would require the City to refinance the 2016 Tax-Exempt Financing with taxable debt and that the result of such
refinancing would be significantly increased interest cost to the City.

O. The City also engaged Robinson, Bradshaw & Hinson, P.A., of Charlotte (“Special Counsel”), to assist the City Attorney and advise the City in connection with negotiation and preparation with an agreement with Hotwire for the proposed lease of the Fibrant System. With the advice of the City Attorney, Special Counsel, and the Communications Consultant, the City Manager and his staff and Hotwire have negotiated a Transition Management Agreement and Lease (the “Fibrant Lease Agreement”). The proposed Fibrant Lease Agreement provides for a lease of the Fibrant System to Hotwire for an initial term of 20 years and grants to Hotwire an option to renew such lease for an additional 20 years and sets forth the terms and conditions of such lease. A copy of the proposed Fibrant Lease Agreement has been provided to and reviewed by the Council.

P. Section 160A-321 of the North Carolina General Statutes requires that the proposal to lease the Fibrant System to Hotwire must be approved in a referendum of the City’s qualified voters. The City has requested that the Rowan County Board of Elections conduct such referendum on May 8th, 2018.

Q. The City Manager has provided to the Council a staff report, which includes reports from the Communications Consultant and the Financial Consultant. In the staff report, the City Manager has recommended that Council approve the Fibrant Lease Agreement and that the City lease the Fibrant System to Hotwire on the terms and conditions set forth in such agreement.

R. The Council has received and reviewed the City Manager’s staff report, the reports of the Communications Consultant and the Financial Consultant, and the form of the proposed Fibrant Lease Agreement furnished to the Council by the staff.

S. Based on the foregoing and such other matters as they deem material, the Council has found that entering into and performing the Fibrant Lease Agreement are in the best interests of the City of Salisbury and its residents.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Based upon the foregoing and such other matters as the Council deems material, the Council hereby finds as follows:

   a. the City has the power and authority, pursuant to Section 160A-321 of the North Carolina General Statutes, Section 9.10 of the City’s Charter, and other contracting authority, to enter into and perform the Fibrant Lease Agreement;

   b. taking into account the uncertainty inherent in financial projections and the increased borrowing expense that the City expects to incur, the consideration to be received by the City pursuant to the Fibrant Lease Agreement constitutes fair
market value to the City and otherwise is fair to the City; and

c. the execution, delivery, and performance by the City of the Fibrant Lease Agreement, upon the terms and conditions set forth in the draft of such agreement submitted to the Council, are in the best interest of the City of Salisbury and its residents.

2. That the Fibrant Lease Agreement, substantially in the form submitted to the Council prior to this at this meeting and included with the minutes of this meeting in the records of the City, be and hereby is approved and authorized, with such changes thereto not inconsistent with these resolutions as the Mayor may approve;

3. That the Mayor of the City, pursuant to the authority granted in these resolutions and in Section 3.4 of the City’s Charter, and acting singly or together with the City Manager, City Clerk, and any other officer of the City, be and hereby are authorized to execute and deliver, in the name and behalf of the City, the Fibrant Lease Agreement, substantially in the form submitted to City Council prior to this meeting, with such changes thereto not inconsistent with these resolutions as the Mayor may approve, the Mayor’s execution of such agreement with such changes being conclusive evidence of her approval thereof;

4. That the Mayor, City Manager, City Clerk, and other officers of the City be and hereby are authorized to perform and cause the City to perform all actions contemplated by these resolutions and the Fibrant Lease Agreement; to execute and deliver such further agreements, documents, and instruments; and to take and perform such further actions as such officers, or any of them, deem necessary or appropriate to further the intent of these resolutions and effect the lease of the Fibrant System upon the terms and conditions set forth in the Fibrant Lease Agreement; and

5. That the City Manager be and hereby is authorized and required to report no less than annually to the Council concerning the performance of the Fibrant Lease Agreement.

These resolutions are effective this 3rd day of April, 2018.

___________________________  
Al Heggins, Mayor

ATTEST:

___________________________  
Diane Gilmore, City Clerk
TRANSITION MANAGEMENT AGREEMENT AND LEASE

by and between

THE CITY OF SALISBURY,
a municipal corporation incorporated in the State of North Carolina

and

HOTWIRE COMMUNICATIONS, LTD.,
a Pennsylvania limited partnership

Dated April __, 2018
# ARTICLE I

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TRANSITION MANAGEMENT AGREEMENT AND LEASE

THIS TRANSITION MANAGEMENT AGREEMENT AND LEASE (this “Agreement”) is made and entered into this __ day of _____, 2018 (the “Agreement Effective Date”), by and between THE CITY OF SALISBURY, a municipal corporation incorporated in the State of North Carolina and located in Rowan County, North Carolina (the “City”), and HOTWIRE COMMUNICATIONS, LTD., a Pennsylvania limited partnership with a principal office at 3 Bala Plaza E, Suite 700, Bala Cynwyd, Pennsylvania (“Hotwire”). Each of the City and Hotwire may be referred to in this Agreement as a “Party” and together as the “Parties.”

RECITALS

A. The City owns and operates, through a City division providing services under the name “Fibrant,” an optic-fiber-to-the-premises network that provides telephone, video, and internet services to residences, businesses, and other entities in the City and in certain other areas of Rowan County. The system, as more particularly described in Appendix 1 (the “Fibrant System”), includes portions of the City’s (i) customer service center at 1415 S. Martin Luther King Jr. Avenue, Salisbury, North Carolina, and (ii) communications building site at 310 Hill Street, Salisbury, North Carolina.

B. The City originally financed the acquisition and construction of the Fibrant System and certain other projects through the issuance of its Certificates of Participation, Series 2008A, in the principal amount of $19,560,000 (the “2008 Certificates of Participation”). In 2013, the City refinanced a portion of the 2008 Certificates of Participation through the issuance of its Refunding Certificates of Participation, Series 2013, in the principal amount of $16,928,000 (the “2013 Certificates of Participation”).

C. In 2016, the City refinanced the then outstanding 2008 Certificates of Participation and the 2013 Certificates of Participation with $29,600,000 in proceeds of an Installment Financing Contract dated September 14, 2016 (the “2016 Installment Financing Contract”), between STI Institutional and Government, Inc. (“Sun Trust Institutional”), and the City. To secure its repayment obligations under the 2016 Installment Financing Contract, the City entered into a Deed of Trust and Security Agreement dated September 14, 2016 (the “2016 Deed of Trust”), pursuant to which the City granted to the trustee named therein a lien on the Customer Service Center and on all equipment financed with the proceeds of the 2008 Certificates of Participation, including splicing tools, lines, and head-end equipment.

D. In January 2017, the City issued a Request for Proposals (the “RFP”) in which the City expressed its interest in entering into a contractual arrangement with a third-party provider that would enhance the operation, sales, marketing, and delivery of communication services from the Fibrant System.

E. The City received and evaluated all proposals submitted in response to the RFP, including the proposal submitted by Hotwire, and selected Hotwire as the best candidate to enter into such a contractual arrangement. The City and Hotwire have negotiated this Agreement to implement such contractual arrangement and set forth the terms of an agreement pursuant to which
the City would appoint Hotwire to serve as manager of the Fibrant System during an interim transition period and, subject to certain conditions, lease the Fibrant System to Hotwire.

F. Pursuant to Section 160A-321(a) of the North Carolina General Statutes, the City is authorized to lease the Fibrant System on such terms and conditions as the City Council may deem best; provided, however, that the proposal to lease the system is first submitted to a vote of the people and approved by a majority of those who vote thereon (the “Referendum”). The City has requested the Rowan County Elections Board to conduct the Referendum on May 8, 2018.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms not otherwise defined in the text of this Agreement will have the meanings ascribed to them in the Definition Appendix appended to and made a part of this Agreement as Appendix 2.

ARTICLE II

MANAGEMENT AGREEMENT

2.1 Appointment and Acceptance. The City hereby appoints and engages Hotwire and Hotwire hereby accepts its appointment and engagement as manager of the Fibrant System for a transition period described in Section 2.2. Hotwire agrees to manage the Fibrant System and perform all the services required of it under this Agreement for the benefit of the City and in a manner that will enhance the operation, sales, marketing, and delivery of Communication Services from the Fibrant System, all on the terms and conditions set forth in this ARTICLE II.

2.2 Term. The term of Hotwire’s appointment and engagement as manager for the period (the “Transition Management Period”) commencing on the date hereof and continuing through and until the Lease Commencement Date as provided in Section 3.4(a); provided, however, that in the event a majority of those entitled to vote in the Referendum do not approve the proposal to lease the Fibrant System, then the Transition Management Period will end on July 31, 2018, in which case Hotwire will provide consulting services to the City as provided in Section 2.10. The Transition Management Period will be subject in any event to earlier termination as provided in this Section 2.2. In the event of a default by the other Party in the performance of its obligations under this ARTICLE II that continues beyond any applicable cure period, the City or Hotwire may terminate Hotwire’s appointment and engagement as manager under this ARTICLE II upon 10 days’ written notice.

2.3 Authority; Reporting. Hotwire will manage the Fibrant System and provide the services required of it hereunder as directed by the City Council and will report to the City Manager or to such other Person as the City Manager may designate from time to time. The City will direct
and supervise the performance of the Transition Management Services in accordance with the City’s generally applicable policies and procedures. Subject to the immediately preceding sentence and the other provisions of this ARTICLE II, Hotwire will have authority to supervise the day-to-day operations of the Fibrant System and such additional authority as may be required for Hotwire to provide the Management Services, including the Management Services described in Section 2.5. Notwithstanding the foregoing, Hotwire will not have authority to, and may not, enter into any contract or agreement with a third party that would result in any binding obligation of the City or the Fibrant System.

2.4 Transition Management Officer. During the Transition Management Period, Hotwire will provide and make available to the City a Transition Management Officer reasonably acceptable to the City (the “Transition Management Officer”) of the Fibrant System. The Transition Management Officer will work with the City Manager and the staff and managers of the Fibrant System to provide the Transition Management Services pursuant to Section 2.5. The Transition Management Officer will remain an employee of Hotwire and Hotwire will be responsible for all salary, benefits, and other compensation of the Transition Management Officer. Hotwire will have authority to discipline or terminate the Transition Management Officer; provided, however, that Hotwire will remove the Transition Management Officer upon the reasonable request of the City. In the event the initial Transition Management Officer is so removed or becomes unavailable for any other reason, including as the result of termination for any reason of such officer’s employment by Hotwire, Hotwire will provide and make available to the City a substitute Transition Management Officer who will be reasonably acceptable to the City, on the terms and conditions set forth in this ARTICLE II. The Transition Management Officer will exercise day-to-day management oversite of the Fibrant System; provided, however, that the City Manager may reject and overrule any management decision made by the Transition Management Officer, in which case the effects of such rejection or overruling will not be attributed to Hotwire with respect to satisfaction of its obligations pursuant to Section 2.5(a).

2.5 Transition Management Services.

(a) General; Standard of Performance. Hotwire will manage and have authority over the day-to-day operations of the Fibrant System and provide the services described in this Section 2.5 (the “Transition Management Services”)

(i) in a professional, diligent, careful, and vigilant manner equivalent in character, quality, and quantity with the operation, management, and marketing of other communication networks operated by Hotwire or its Affiliates;

(ii) to achieve, to the extent reasonably possible, the Service Level Standards set forth in Appendix 3 (the “Service Level Standards”); and

(iii) in compliance with all Legal Requirements.

(b) Employees. The City will continue to employ the management and staff personnel employed in its Fibrant Division prior to the date of this Agreement; provided, however, that the City retains full authority to hire, terminate, and discipline such
management and staff employees in its discretion and that all City policies applicable to its employees will be applicable to such employees.

(c) **Hotwire Personnel.** In addition to the Transition Management Officer, Hotwire will make available for the performance of Transition Management Services such personnel as Hotwire reasonably determines to be necessary for the performance thereof to the standards set forth in this ARTICLE II. Hotwire will employ and compensate all personnel providing Transition Management Services. Hotwire employees, other than the Transition Management Officer, will not be required to devote all or any minimum portion of their time and services to Transition Management Services and may perform other services for Hotwire so long as such other services do not unreasonably interfere with such employee’s performance of Transition Management Services. Hotwire employees providing Transition Management Services, other than the Transition Management Officer, will act solely at the direction of Hotwire and the City will have no authority to select, hire, direct, discipline, or terminate any such Hotwire Employee.

(d) **Hotwire Resources.** Hotwire will provide such additional Hotwire resources as Hotwire reasonably determines to be necessary to provide the Transition Management Services;

(e) **Specific Transition Services.** Hotwire will provide the following specific services, *inter alia*, as part of the Transition Management Services:

(i) supervision of sales, marketing, pricing, branding, and promotion of Communication Services to customers (including recommendations as to rate sheets, channel line-ups, and product offerings, and recommendations for contracts with new and existing business customers);

(ii) procurement, as representative of the Fibrant System but subject to Section 2.3, of cable television content, internet, video, and telephone service; provided, however, that Hotwire will not be the agent of the City or have authority to enter into any contract or agreement or otherwise incur any binding legal obligation on behalf of the City;

(iii) supervision of billing and collection from Fibrant System customers;

(iv) supervision of customer service functions;

(v) supervision of the NOC, including the monitoring of Communication Services, and maintenance of other components and equipment of the Fibrant System;

(vi) supervision of installation of Drops and Customer Premises Equipment;

(vii) supervision of the Fibrant Division’s collection and submission of payment to applicable taxing authorities of all sales, use, privilege, other taxes related to operation of the Fibrant System;
(viii) supervision of the Fibrant Division’s maintenance of books and records, including financial reporting and including the preparation and maintenance of Outside Plant Maps and System Maintenance Records; and

(ix) such other services with respect to the Fibrant System as the City may reasonably request.

(f) **Special Reports.** Hotwire will prepare and submit to the City, from time to time, such financial and other reports as the City may reasonably request.

(g) **Compliance with Law; Licenses, Permits etc.** Hotwire will:

   (i) comply, and use its commercially reasonable efforts to cause the Fibrant System to comply, with all Legal Requirements;

   (ii) apply for, obtain, and maintain, in its name or in the name of the Fibrant Division, as applicable, all Required Licenses; and

   (iii) comply, and use its commercially reasonable efforts to cause the Fibrant System to comply, with all System Insurance Requirements, System Contract Requirements, Manufacturer’s Recommendations, and Prudent Communication Service Industry Practice.

(h) **Insurance Requirements.** During the Transition Management Period, Hotwire will, at its expense, maintain the insurance coverage required under Sections 10.3 and 10.4

2.6 **Expenses to be Borne by Hotwire.** Hotwire will be responsible for and pay, from its own funds and without reimbursement from the City:

   (a) All compensation expense of Hotwire employees, including the Transition Management Officer;

   (b) All expenses and fees in connection with any licensing, registration, qualification, approval, or permit, obtained or required to be obtained by Hotwire in its name;

   (c) All premiums and other expenses in obtaining and maintaining the insurance required to be maintained by Hotwire pursuant to Section 2.5(h); and

   (d) All other expenses of Hotwire in providing the Transition Management Services, including all overhead and general expenses of Hotwire and all travel expenses of Hotwire employees.

2.7 **Office Space; Support.** The City will furnish, at no cost to Hotwire, such office space in the NOC, administrative assistance, and logistical support as Hotwire may reasonably request for the performance of Transition Management Services.
2.8 **Management Fee.** The City will pay to Hotwire, monthly in arrears, as compensation for the Transition Management Services during the Transition Management Period, a monthly Management Fee equal to the sum (i) of $25,000 and (ii) 50 percent of Third-Party-Contract Savings actually realized by the City for such month. The Management Fee will be payable on or before the 10th day of each calendar month with respect to the preceding calendar month. The Management Fee will be prorated, based on the number of days in which Transition Management Services are performed, for any period in which Transition Management Services were not performed for a full calendar month. “Third-Party-Contract Savings” means the actual reduction in monthly payments made by the City during the Transition Management Period to third-party providers (including Momentum and Minerva) to the Fibrant System, as compared to the monthly payment to such third-party provider during the last full calendar month prior to the Agreement Effective Date, as reflected in invoices and other documentary evidence; provided, however, that Third-Party-Contract Savings will not include any portion of any such reduction attributable to reduction in the number of subscribers or customers of the Fibrant System or to any change or reduction in level or quality of service from such third-party provider.

2.9 **Tax Safe Harbor.** The City and Hotwire acknowledge and agree that the management contract set forth in this ARTICLE II is intended to meet and comply with the safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under Section 141(b) of the Internal Revenue Code as provided in Revenue Procedure 2017-13. If the City at any time determines in its discretion that the provisions of this ARTICLE II fail to comply with such safe harbor conditions, then the Parties will amend this Agreement, effective immediately, in such manner as the City may reasonably request to ensure compliance with such safe harbor conditions; provided, however, that if Hotwire determines in its discretion that the modifications effected by such amendment are materially adverse to Hotwire, then Hotwire may terminate this ARTICLE II upon 30 days’ written notice to the City.

2.10 **Alternative Consulting Arrangement.**

(a) In the event the Transition Management Period expires on July 31, 2018, as set forth in the proviso to the first sentence in Section 2.2, then the City will engage Hotwire, and Hotwire will agree to perform, consulting services to the City for a consulting period commencing on August 1, 2018, and ending on July 31, 2021, subject to the right of either Party to terminate the consulting agreement at any time after December 31, 2019, upon 90 days’ written notice to the other Party. During such consulting period, Hotwire will consult with the City and assist the City in contract negotiations, marketing of Communication Services, and development of competitive strategies. Hotwire will provide such resources as the City and Hotwire reasonably agree to be necessary for Hotwire to provide such consulting services; provided, however, that Hotwire will not be required to devote more than 15 hours of the services of Hotwire employees during any calendar month. Hotwire will perform such consulting services to the standards set forth in Section 2.5(a). In the event of a default by the other Party in the performance of its obligations under this Section 2.10 that continues beyond any applicable cure period, the City or Hotwire may terminate Hotwire’s appointment and engagement as consultant upon 10 days’
written notice.

(b)  The City will pay to Hotwire, monthly in arrears, as compensation for the consulting services described in Section 2.10(a) a monthly consulting fee equal to the sum (i) of $5,000 and (ii) 50 percent of Third-Party-Contract Savings actually realized by the City for such month. The consulting fee will be payable on or before the 10th day of each calendar month with respect to the preceding calendar month and will be prorated, based on the number of days in which such consulting services are performed, for any period in which consulting services were not performed for a full calendar month.

ARTICLE III

SYSTEM LEASE

3.1 Lease. Subject to and conditioned upon satisfaction of the Lease Conditions Precedent as provided in Section 3.3, and upon and subject to the terms and conditions set forth in this Agreement, the City exclusively leases to Hotwire and Hotwire leases from the City (such lease, the “System Lease”) all of the City’s right, title, and interest in and to the Fibrant System (collectively, the “System Assets”), including the following:

(a) that certain area of approximately 5,144 square feet on the main level of the office building owned by the City located on Rowan County tax parcel 01707101 with an address of 1415 S. Martin Luther King Jr. Avenue, Salisbury, North Carolina (the “Customer Service Center”), which certain area is more particularly described and shown in Appendix 4, that houses the NOC (the “NOC Premises”), together with a non-exclusive license to use the corridors, restrooms, stairwells, and other areas identified as “Common Areas” in Appendix 4;

(b) that certain area of approximately 2,552 square feet on the main level of the Customer Service Center, more particularly described and shown in Appendix 4, that houses the Head End (the “Head-End Premises”), subject to the reservation of a license in favor of the City to continue sharing space for certain of its “data center” equipment (which is not a part of the System Assets), and having access thereto on a 24/7/365 basis;

(c) all furnishings, fixtures, and equipment used to operate the NOC, including computers, terminals, monitors, servers, video walls, desks, chairs, and other furnishings, located within the NOC Premises as shown on the drawing made a part of Appendix 4, including the furnishings and equipment described in Schedule 3.1 (c) (collectively, “NOC Furnishings and Equipment”);

(d) all central control devices used to provide centralized functions to the Fibrant System, such as remodulation, retiming, message accountability, contention control, diagnostic control, and access to gateways, middleware, servers, and other equipment in the Head End Premises, including the equipment set forth in Schedule
3.1(d) (collectively, the “Head End”);

(e) all antennae, satellite dishes, and related electronics and equipment used in or for the receipt and interjection of video program into the Fibrant System and the Thermobond Building (the “Thermobond Building”), all as more particularly described and shown in Appendix 4 (the “Satellite Dish Equipment”), including the equipment set forth in Schedule 3.1(e);

(f) those certain land and building areas on or in which the Satellite Dish Equipment is located and appurtenant easements, more particularly described and shown in Appendix 4 (the “Satellite Dish Premises”);

(g) all fiber optic cable, conduits, attachment hardware (including bolts and lashing), guy wires, anchors, pedestals, concrete pads, amplifiers, and such other fixtures, and other items of property, including all components thereof (such as optical splitters, fiber taps, network interface devices, optical line cards, fiber termination panels, splice enclosures, fiber drips, cross connect cabinets, cabinets, outside plant mini-cabinet mounting posts, fiber distribution hubs, fiber access terminals, and first entry fiber-splice cases), used in connection with the Fibrant System and located between the two demarcation points shown on the Demarcation Drawings as shown in Appendix 5, together with all replacements, modifications, alterations and additions thereto (collectively, the “Outside Plant”); provided, however, that Outside Plant does not include any Retained Dark Fiber as provided in Section 3.2;

(h) all easements, rights and appurtenances relating to the System Assets described in paragraphs (a) through (g), and including any Easements, Permits and Pole Agreements;

(i) all maps, drawings, blueprints, and similar records of the Outside Plant (the “Outside Plant Maps”);

(j) all terminals, modems, including optical network terminals, electronic equipment, and internal premises wiring necessary for the provision of Communication Services to the residence, business, or other premises of a customer or subscriber of Communication Services (“Customer Premises Equipment”);

(k) all automobiles, trucks, and other vehicles used as of the Lease Commencement Date by Fibrant Employees in connection with operation of the Fibrant System or marketing of Communication Services, as more particularly described in Schedule 3.1(k) (the “Fibrant Vehicles”);

(l) all Capital Improvements to the Fibrant Systems that are conveyed to the City or otherwise become System Assets during the Lease Term, as provided in ARTICLE VIII; and
(m) all other equipment used by the City as of the date of this agreement in the provision of Communication Services to customers of the Fibrant System, including the Test Equipment described in Schedule 3.1(k).

3.2 Retention of Dark Fiber for City Use. The City will retain ownership of, and the System Assets will in no event include, the “dark fiber” used by the City as of the date of this Agreement for its internal purposes, including to connect the City and certain City facilities, as more particularly shown in Schedule 3.2 (the “Retained Dark Fiber”). Hotwire will maintain the Retained Dark Fiber to the same extent and in the same manner as the Outside Plant, including any Required Capital Improvements thereto.

3.3 Lease Conditions Precedent.

(a) The respective obligations of the Parties to effect and perform the System Lease, as applicable, are subject to and conditioned upon the satisfaction or waiver of the following conditions (the “Lease Conditions Precedent”):

(i) On May 8, 2018, the City’s proposal to enter into and perform the System Lease is submitted to a vote of the people of the City and approved by a majority of those who vote thereon as provided in Section 160A-321(a) of the North Carolina General Statutes;

(ii) SunTrust International or its successor as Bond Financing Party to the Bond Refinance Contract (described in Section 3.3(b)(i) will have consented to the System Lease and the City, Hotwire, and SunTrust International or such successor will have entered into a subordination, non-disturbance, and attornment Agreement in customary form and containing terms and conditions reasonably reasonable acceptable to Hotwire and the Bond Financing Party to the Bond Refinance Contract, and which provides, inter alia, that (i) such Bond Financing Party’s interest in the System Assets is superior to Hotwire’s leasehold interest pursuant to the System Lease, and (ii) if such Bond Financing Party at any time succeeds to the interest of the City in the System Assets, Hotwire will be bound to such Bond Financing Party under all the terms, covenants, and conditions of this Agreement for the balance of the Lease Term after such succession;

(iii) No judgment, order, decree, statute, law, ordinance, rule or regulation, whether preliminary, temporary, or permanent, entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity of competent jurisdiction or other legal restraint or prohibition (collectively, “Restraints”) will be in effect that prohibits, prevents, or makes illegal the performance of the System Lease;

(b) The obligations of the City to effect and perform the System Lease are further subject to and conditioned upon the satisfaction or waiver of the following conditions (the “City Lease Conditions Precedent”):
(i) The City will have completed the refinancing of all amounts outstanding under the 2016 Installment Financing Contract on terms and conditions acceptable to the City in its sole discretion and entered into a replacement financing contract (the “Bond Refinance Contract”) with respect thereto on terms and conditions acceptable to the City in its sole discretion;

(ii) The representations and warranties of Hotwire contained in Section 20.2 will be true and correct in all material respects as of the Lease Commencement Date as though made on the Lease Commencement Date (except to the extent such representations and warranties expressly relate to a specific date or the Agreement Effective Date, in which case such representations and warranties will be true and correct in all material respects as of such date);

(iii) Hotwire will have performed in all material respects all obligations required to be performed by it under this Agreement prior to the Lease Commencement Date;

(iv) No Material Adverse Event will have occurred with respect to Hotwire; and

(v) The City will have received an officer’s certificate duly executed by the Chief Executive Officer and Chief Financial Officer of Hotwire to the effect that the conditions set forth in clauses (ii), (iii), and (iv) have been satisfied and certifying as to the due and valid execution of this Agreement by Persons authorized to do so.

(c) The obligations of Hotwire to effect and perform the System Lease are further subject to and conditioned upon the satisfaction or waiver of the following conditions (the “Hotwire Lease Conditions Precedent”):

(i) The representations and warranties of the City contained in Section 20.1 will be true and correct in all material respects as of the Lease Commencement Date as though made on the Lease Commencement Date (except to the extent such representations and warranties expressly relate to a specific date or the date of this Agreement, in which case such representations and warranties will be true and correct in all material respects as of such date);

(ii) The City will have performed in all material respects all obligations required to be performed by it under this Agreement prior to the Lease Commencement Date;

(iii) No Material Adverse Event will have occurred with respect to the City; and

(iv) Hotwire will have received an officer’s certificate duly executed by the City Manager of the City to the effect that the conditions set forth in clauses (i), (ii), and (iii) have been satisfied and certifying the due and valid execution of this Agreement by Persons authorized to do so.
3.4 **Term.** The term of the System Lease (the “Lease Term,” as more specifically defined in paragraph (a)(ii) hereinafter), will commence as of the Lease Commencement Date and continue through the end of the Lease Term, unless earlier terminated as provided for in this Agreement, in accordance with the following provisions:

(a) **Term Definitions.**

(i) **Lease Commencement Date** means the date of commencement of the Lease Term, determined in accordance with the following provisions:

(A) except as otherwise provided in this Agreement, the Lease Commencement Date will be the later of (A) July 1, 2018, and (B) the date 30 days after satisfaction or waiver of all Lease Conditions Precedent, City Lease Conditions Precedent, and Hotwire Lease Conditions Precedent; and

(B) the Parties will confirm the Lease Commencement Date by the execution of a Confirmation of Lease Term in the form attached hereto as Exhibit 1. If Hotwire fails to execute or object to the Confirmation of Lease Term within 10 days of its delivery by the City, the City’s determination of the Lease Commencement Date will be deemed accepted by Hotwire.

(ii) **Lease Term** means the time period that commences on the Lease Commencement Date and continues through the end of the Initial Term or the Renewal Term, as applicable, unless earlier terminated as provided for in this Agreement.

(iii) **Initial Term** means the time period that commences on the Lease Commencement Date and continues through the date 20 years after the Lease Commencement Date, unless earlier terminated as provided for in this Agreement.

(iv) **Renewal Term** means the time period that commences at the end of the Initial Term and continues through the date 40 years after the Lease Commencement Date, unless earlier terminated as provided for in this Agreement.

(b) Subject to and conditioned upon the satisfaction or waiver of the following conditions (the “Renewal Conditions Precedent”), Hotwire will have the option to have the Lease Term end at the end of the Renewal Term instead of the end of the Initial Term:

(i) this Agreement is in full force and effect, the System Lease has not been terminated for any reason, and Hotwire has, during the 36-month period ending on the date 30 days prior to the end of the Initial Term (the “Renewal Reference Period”), met all Service Level Standards in at least three Calendar Quarters during any period of four consecutive Calendar Quarters;
during the Renewal Reference Period, Hotwire has paid to the City aggregate Rent at least equal to sum of the Quarterly Rent Targets for such period;

(iii) Hotwire, at the time of exercise of this renewal and as of the end of the Initial Term, (A) is not in default with respect to any terms, covenants or conditions of this Agreement, (B) has cured any past defaults; and (C) any such cured defaults did not include more than two in which the monetary damages related thereto exceeded $100,000; and.

(iv) Hotwire will have delivered to the City written notice of its intent to renew no later than the end of the 216th calendar month of the Initial Term, time being of the essence.

ARTICLE IV

RENT, ADDITIONAL CHARGES

4.1 Rent and Additional Charges. For the use and occupancy of the System Assets, during the Lease Term, Hotwire will pay to the City (or as otherwise directed by the City) the Rent, as provided in this Section 4.1, and Additional Charges, as provided in Section 4.6.

4.2 Rent. Hotwire will pay Rent, as provided in this Section 4.2, in consecutive quarterly installments on the 15th day after the end of each Calendar Quarter with respect to the preceding Calendar Quarter. The following definitions will be applied in determining such Rent:

(a) “Rent” means, for each Calendar Quarter or prorated portion thereof, an amount equal to the applicable percentage (the “Revenue Percentage”) of Communication Service Revenue set forth in the table below of all Communication Service Revenue received by Hotwire during such quarter or portion thereof, subject to credits for the Drop Installation Charge, Retained Dark Fiber maintenance, Data Center Capital Improvements, and any other credit against Rent to which Hotwire is entitled under this Agreement:
<table>
<thead>
<tr>
<th>Communication Service</th>
<th>Revenue Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Video Service</td>
<td>10%</td>
</tr>
<tr>
<td>Internet Service</td>
<td>30%</td>
</tr>
<tr>
<td>Voice Service</td>
<td>10%</td>
</tr>
<tr>
<td>Data Center Service</td>
<td>20%, subject to Section 4.5</td>
</tr>
<tr>
<td>Data Transport Service</td>
<td>25%</td>
</tr>
<tr>
<td>Dark Fiber Service</td>
<td>30%</td>
</tr>
<tr>
<td>Other Services</td>
<td>10%, subject to Section 4.6</td>
</tr>
</tbody>
</table>

(b) “Communication Service Revenue,” with respect to each Communication Service, means all moneys or things of value collected or received by Hotwire during an applicable period from all subscribers and customers of Hotwire in the Grandfathered Fibrant Service Area (subject to Section 9.2) in respect of connection to or use of the Fibrant System or any part thereof for such Communication Service; provided, however, that Service Revenue does not mean or include (A) any amount collected by Hotwire for governmental excise, sales, or similar taxes and other governmental authorized fees and surcharges (such as local portability fees) that are invoiced to the customer or subscriber, (B) rent charged by Hotwire to a customer or subscriber for rental of equipment, and (C) non-recurring, one-time charges to a customer or subscriber.

(c) “Video Service” means any service provided by Hotwire for a fee which provides a subscriber with multi-channel video programming, over-the-top programming, or any other video programming service, and including any linear ad insertion and associated revenue from any Person.

(d) “Internet Service” means any service provided by Hotwire for a fee which enables a subscriber to access the internet and other remote sites or content over the fiber network.

(e) “Voice Service” means any service provided by Hotwire for a fee which interconnects with the public telephone switch network, digital telephone service, or otherwise enables a subscriber to connect and communicate with other voice users.

(f) “Data Center Service” means any service provided by Hotwire for a fee which interconnects with the public telephone switch network, digital telephone service, or otherwise enables a subscriber to connect and communicate with other voice users.
(g) **“Data Transport Service”** means any service provided by Hotwire for a fee which transmits data between two or more points on the fiber network, including, but not limited to switched Ethernet, Metro-E, MPLS, and “wavelength” service.

(h) **“Dark Fiber Service”** means the provision of the right to use, including by sublease or grant of indefeasible use rights, fiber optic cable that has no optronics or electronics attached and that has not been “lit” or placed in service.

(i) **“Other Service”** means any Communication Service, other than Video Service, Internet Service, Voice Service, Data Center Service, Data Transport Service, and Dark Fiber Service, provided through the Fibrant System.

4.3 **Drop Installation Charge Credit.**

(a) Hotwire will be entitled to a credit against Rent due for any quarter pursuant to Section 4.2 in an amount equal to the Drop Installation Charge incurred by Hotwire during such quarter.

(i) **“Drop Installation Charge”** means an amount equal to the sum of (i) the Contract Cost of installation of all Drops and NIDs installed by a contractor on behalf of Hotwire in the Fibrant System during such quarter in accordance with Section 8.3 and (ii) an administrative fee equal to 15 per cent of such Contract Cost.

(ii) **“Contract Cost”** means the sum of the fees and costs actually paid by Hotwire to a third-party contractor for the installation of Drops and NIDs during such quarter and the actual cost of fiber, attachment hardware, and NIDs installed during such quarter.

The Parties acknowledge that the System Assets include the City’s inventory of reels of fiber, attachment hardware, and other equipment that Hotwire will use in the installation of Drops, and that Contract Cost will not include any cost for such inventory.

4.4 **Retained Dark Fiber Maintenance Credit.** Hotwire will be entitled to a credit against Rent in an amount equal to $11,000 per quarter in consideration of Hotwire’s maintenance of Retained Dark Fiber.

4.5 **Credit for Data Center Capital Improvement Costs.**

(a) The City acknowledges that Hotwire may incur costs to construct and install capital improvements necessary to provide Data Center Service, which improvements will become System Assets immediately upon completion of installation thereof, subject to no Encumbrances, automatically and without any further action on the part of either Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may
request to confirm and evidence the City’s ownership of such Capital Improvements.

(b) Hotwire will be entitled to set off against any Rent due solely with respect to the provision of Data Center Services Hotwire’s costs incurred in constructing and installing such Capital Improvements. Hotwire will furnish to the City, from time to time, a statement of Hotwire’s costs incurred in constructing and installing such capital improvements, together with such additional information as the City may reasonably request to verify such expenditures.

4.6 “Other Service” Revenue Percentage Reopener Right. If any Other Service is provided by Hotwire during the Lease Term and either Party asserts that the provision of such Other Service reflects or results from changes in the market for Communication Services as compared to the market for Communication Services on the Agreement Effective Date such that the Revenue Percentage applicable to such Other Service results in economic relationship between the Parties with respect to such Other Service inconsistent with the economic relationship anticipated by the Parties as of the Agreement Effective Date with respect to Communication Services in the aggregate, then such Party may, by written notice to the other Party, assert that it has a Revenue Percentage Reopener Right, as described in this Section 4.6, with respect to such Other Service. Upon delivery of written notice of a Revenue Percentage Reopener Right, the Parties will negotiate in good faith with respect to an adjustment of the Revenue Percentage payable with respect to such Other Service that will result in an economic relationship between the Parties consistent with that anticipated by the Parties as of the Agreement Effective Date. If, within 90 days of delivery of such notice, the Parties have not reached agreement with respect to such an adjustment of the Rent percentage applicable to such Other Service, then the Parties will jointly engage an Independent Telecommunications Expert who will determine what adjustments, if any, to the Revenue Percentage applicable to such Other Service is appropriate in accordance with this Section 4.6. This Section 4.6 will apply only to Other Services, and will not in any event apply to Video Service, Internet Service, Voice Service, Data Center Service, or Data Transport Service.

4.7 Additional Charges. In addition to the Rent payable by Hotwire pursuant to Section 4.1, Hotwire will also, from time to time as and when due, and in any event promptly upon demand therefor by the City, pay, or reimburse the City for, as additional rent, any and all of the following that may be assessed, imposed on or in respect of, or become a lien or charge on (A) the City’s right, title, or interest in the System Assets, (B) the System Assets or any part thereof or any rent therefrom or any estate, right, title, or interest therein, or (C) any occupancy, operation, use, or possession of, or sales or services from or activity conducted on or in connection with the System Assets or the lease thereof, all of which are be referred to in this Agreement as “Additional Charges”:

(a) all \textit{ad valorem} tax, property tax, or payment-in-lieu of \textit{ad valorem} or property tax assessed against or otherwise payable by the City with respect to System Assets (including any such required to be paid by the City to itself);

(b) all franchise fees, franchise taxes (including any franchise tax imposed by Section 153A-154 or Section 160A-214 of the North Carolina General Statutes), sales taxes
(including any sales tax under Section 105-164.4 of the North Carolina General Statutes), use taxes, excise taxes, gross receipts taxes, privilege taxes, rent taxes, or similar taxes, and any payment-in-lieu of any such taxes assessed against or otherwise payable by the City in respect of the operation of the Fibrant System;

(c) all fees, charges, and other payments in respect of any Easements, Permits, Pole Agreements, and similar access agreements;

(d) all regulatory and governmental fees and charges of any kind, other than fees assessed by the City that were not assessed prior to the Lease Commencement Date, to the extent permitted by law;

(e) all penalties for failure to comply with Service Level Standards required pursuant to Section 6.3;

(f) the amount of any insurance premiums, deductibles, co-pays, or other amounts to be paid or reimbursed pursuant to Section 10.2(a);

(g) all other amounts, liabilities, and obligations that Hotwire assumes or agrees to pay under this Agreement, including in respect of Service Costs; and

(h) in the event of any failure on the part of Hotwire to promptly pay as due, or reimburse the City promptly after demand for payment, for any of the foregoing, all fines, penalties, interests, and other costs that may be added thereto for or with respect to non-payment or late payment thereof, except where such failure results from acts or omissions of the City and provided that no such amount disputed in good faith by Hotwire will be considered non-payment or late payment thereof until such dispute is resolved pursuant to Section 4.8.

4.8 Recordkeeping; Audits. Hotwire will record all transactions and entries so that Service Revenue is evidenced accurately in accordance with GAAP. Hotwire will accurately create and maintain adequate records and books of account on all business operations and Communication Services in respect of the Fibrant System, including without limitation information establishing the Drop Installation Charge, in such detail as the City may reasonably request. Hotwire will retain all books of account, financial and other records, invoices, receipts, and Federal and state income tax returns relating to Hotwire’s leasing and operation of the Fibrant System, and will make all the foregoing available for inspection by the City or its representative at all reasonable times.

(a) Within 10 days after the end of each Calendar Quarter in the Lease Term, Hotwire will deliver to the City a statement signed by the Chief Financial Officer of Hotwire accurately setting forth the Communication Service Revenues and Quarterly Drop Charges for the preceding Calendar Quarter and a computation of the Rent and Additional Charges with respect to such Calendar Quarter, itemized in such detail and accompanied by such supporting information as the City may reasonably request. Within 30 days after the end of each calendar year during the Lease Terms, Hotwire will deliver to the City a statement signed and sworn to by the same person who is to sign the monthly statement of Communication Service Revenues and Rent
and Additional Charges in accordance with the foregoing provisions, accurately setting forth the Communication Service Revenues and computation of Rent and Additional Charges for the preceding calendar year.

(b) The City may, at any time or times, cause an audit to be made of any such statement, may examine Hotwire’s books and records, and any other relevant records or information with respect to the period to which such statement applies. Acceptance of Rent tendered by Hotwire will not prejudice such audit rights or constitute a waiver or release of any claim of the City for payment of Rent. The cost of such an audit will be borne by the City unless such audit shows that Hotwire’s statement was in error by 3% or more of Communication Service Revenue reported by Hotwire for such period, in which case Hotwire will pay or reimburse the City for the cost of such audit. Any such audit may be required by the City at any reasonable time designated by the City upon three days’ prior written notice to Hotwire.

(c) If, as the result of any such audit, the City determines additional Rent or Additional Charges are due from Hotwire with respect to the audited period (an “Audit Claim”), the City will make such Audit Claim in writing within 90 days after the date written notice of such audit is delivered to Hotwire. An Audit Claim will set forth the nature and amount of such claim in reasonable detail. Hotwire will pay to the City the amount of any Audit Claim within 30 days of receipt of such Audit Claim; provided, however, that if Hotwire objects to any portion of such claim, Hotwire will pay the uncontested portion of such claim within such 30-day period and such dispute will be submitted to an Independent Accountant for determination as provided in Section 21.2. In making such determination, the Independent Accountant may determine the amount of any set-off or deduction from Rent or Additional Charges to which Hotwire asserts that it is entitled pursuant to Section 4.3 or Section 4.5; provided, however, that in no event will the Parties submit to the Independent Accountant, nor will the Independent Accountant have authority to determine, any such reduction or set-off to which Hotwire asserts that it may be entitled pursuant to Section 4.12. Any disagreement or dispute regarding any such claimed reduction or set-off under Section 4.12 will be determined pursuant to Section 22.5.

(d) If Hotwire fails to submit to the City its statement of Communication Service Revenues, Rent, and Additional Charges as provided in this Section 4.8, Rent and Additional Charges will be payable in the same amounts as during the preceding Calendar Quarter and such sum will be immediately due and payable by Hotwire to the City. Neither the payment nor acceptance of such payment will constitute waiver of, nor excuse or cure, any default under this Agreement, nor prevent the City from or limit the City in exercising any other rights and remedies available to the City under this Agreement. At any time after the date upon which such statement should have been submitted, the City will have the right to audit Hotwire’s books and records at Hotwire’s sole cost and expense and Hotwire will pay, or reimburse the City for, the cost of such audit to the City immediately upon demand therefor.
(e) Any additional Rent or Additional Charges due following any audit conducted pursuant to this Section 4.8 plus interest at the Overdue Rate will be due and payable immediately upon demand.

4.9 **Late Payments.** If any installment of Rent or any Additional Charge is not paid within five days after its due date, the amount unpaid, including any late charges previously accrued, will bear interest at the Overdue Rate from the due date of such installment or Additional Charge to the date of payment thereof, and Hotwire will pay such interest to the City on demand. Neither the payment nor acceptance of such interest will constitute waiver of, nor excuse or cure, any default under this Agreement, nor prevent the City from or limit the City in exercising any other rights and remedies available to the City under this Agreement.

4.10 **Net Lease.** The City and Hotwire acknowledge and agree that (i) the System Lease is and is intended to be a “net, net, net” or “triple net” lease, and (ii) the Rent will be paid absolutely net to the City.

4.11 **NOC Premises, Head End Premises, and Satellite Dish Equipment Utilities; HVAC; Shared Services.**

(a) The City will furnish to the NOC Premises, the Head End Premises, and the Satellite Dish Premises the following utilities and related services, all of which services may be shared with other occupants and areas of the Customer Service Center:

(i) To the NOC Premises, hot and cold running water, for drinking, lavatory, and toilet purposes, and sewer services from City water and sewer facilities 24 hours per day, seven days per week, at the points of supply operating in the NOC Premises at the Lease Commencement Date;

(ii) Electricity (“Electricity”) for lighting and operation of the NOC Premises, Head End Premises, and Satellite Dish Premises, including operation of computer servers, consoles, head-end equipment, electronics, components, and other equipment located in the NOC Premises and operation of the Satellite Dish Equipment 24 hours per day, seven days per week;

(iii) Natural gas consistent with such services provided prior to the Lease Commencement Date;

(iv) To the NOC Premises and Head End Premises, heat, ventilation, and air conditioning services (“HVAC Service”) sufficient to provide normal comfort and cooling of equipment substantially equivalent to the comfort and cooling provided by the City to the NOC Premises prior to the Lease Commencement Date during normal business hours of the Customer Service Center and to the Head End Premises 24 hours per day, seven days per week (it being understand that Hotwire will be responsible for HVAC Service to the Thermobond Building);
To the NOC Premises and Head End Premises, janitorial services, trash collection, security, and elevator operation services consistent with those provided prior to the Lease Commencement Date.

Hotwire will pay or cause to be paid, or reimburse the City promptly upon demand, for, the City’s costs ("Service Costs") of providing HVAC Services (including the cost of natural gas and Electricity used to provide HVAC Services) and Electricity attributable to Hotwire’s use and occupancy of the NOC Premises, Head End Premises, and Satellite Dish Equipment, all determined pursuant to an independent annual assessment of such costs and expenses to be reasonably agreed by the City and Hotwire. Costs for HVAC Service will include, without duplication, the actual costs of Electricity used to operate the HVAC system, supplies, including coolant, refrigerant, filters, lubricants, and other consumables, and maintenance of HVAC Equipment, but will not include any amount attributable to depreciation of HVAC equipment installed in the Customer Service Center.

The City will invoice Hotwire from time to time for any amounts to be reimbursed in respect of HVAC Services and Electricity and will afford Hotwire reasonable access to those books and records of the City supporting the determination of such amounts.

Hotwire may, at any time or times, cause an audit to be made of any such statement, may examine the relevant books and records of the City with respect to HVAC Services and Electricity. The cost of such an audit will be borne by Hotwire unless such audit shows that the City’s statement of expenses was in error by 3% or more of the charges for such period, in which case the City will pay or reimburse Hotwire for the cost of such audit. Any such audit may be required by Hotwire at any reasonable time designated by Hotwire upon three days’ prior written notice to the City.

If, as the result of any audit as provided in clause (ii) if this Section, Hotwire determines that the City’s charge for HVAC Services or Electricity is incorrect, then Hotwire will pay the undisputed portion or any charge and the Parties will resolve such disagreement through the Independent Arbiter Procedure.

The City may, at its expense, cause any Electricity Service (including Electricity used in HVAC Services) to be separately metered and charged directly to Hotwire.

Hotwire will be responsible for the furnishing, installation, and maintenance of all telephone and telecommunication services and equipment that Hotwire may require for use and operation of the NOC Premises.

The City will not be liable for any loss, injury, or damage to property caused by or resulting from any variation, interruption, or failure of water and sewer services, Electricity Services, or HVAC Services resulting from or due to any cause.
whatever, or from the City’s failure to make any repairs or perform any maintenance with respect to the NOC Premises or Head End Premises. No temporary interruption or failure of services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events will be deemed an eviction of Hotwire or relieve Hotwire, by abatement of Rent or otherwise, from any of its obligations under the System Lease. In no event will the City be liable to Hotwire for any damage to the NOC Premises or Head End Premises, or for any loss or damages to any computers, servers, electronics, or other furnishings, equipment or other property therein or thereon, occasioned by bursting, rupture, leakage, or overflow of any plumbing, or other pipes (including water, steam, and refrigerant lines), sprinklers, tanks, drains, drinking fountains, or washstands, or other similar cause in, above, upon or about the NOC Premises or Head End Premises.

4.12 **Set-Off for Discriminatory Tax or Condemnation.** Hotwire will be entitled to a reduction in the payment of Rent and Additional Charges, and will be entitled to set off the amount of such reduction against any payment due, the portion of any ad valorem tax, other tax, assessment, or fee for which Hotwire is responsible or of any taking of property by power of eminent domain or condemnation, in each case to the extent such tax, assessment, or fee, or such taking (i) not imposed generally on other commercial property owners and business Hotwires, and (ii) is taken, a primary purpose of which action is to alter or change the terms of the System Lease or the economic relationship of the Parties in a manner more favorable to the City.

4.13 **No Set-Off, Abatement, etc.** Except as provided in Section 4.12, Hotwire will remain bound by the System Lease in accordance with the terms of this Agreement and will not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent. Except as may be otherwise specifically provided in this Agreement, the respective obligations of the City and Hotwire will not be affected by reason of (i) any damage to or destruction of the System Assets or any portion thereof from whatever cause or any condemnation of the System Assets, or any Capital Improvement, or any portion thereof; (ii) other than as a result of the City’s willful misconduct, the lawful or unlawful prohibition of, or restriction upon, Hotwire’s use of the System Assets, any Capital Improvement or any portion thereof, the interference with such use by any Person or by reason of eviction by paramount title; (iii) any claim that Hotwire has or might have against the City by reason of any default or breach of any warranty by the City under this Agreement or under any other agreement between the City and Hotwire or to which the City and Hotwire are Parties; (iv) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting the City or any assignee or transferee of the City; or (v) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Hotwire from any such obligations as a matter of law. Hotwire hereby specifically waives and releases all rights arising from any occurrence whatsoever that may now or hereafter be conferred upon it by law (a) to modify, surrender or terminate the System Lease or quit or surrender the System Assets or any portion thereof, or (b) that may entitle Hotwire to any abatement, reduction, suspension, or deferment of the Rent or other sums payable by Hotwire hereunder except in each case as may be otherwise specifically provided in this Agreement. Notwithstanding the foregoing, nothing in this Section 4.13 will preclude Hotwire from bringing a separate action against the City for any matter described in the foregoing clauses (ii), (iii) or (v), and Hotwire

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does not waive or release other rights and remedies not expressly waived or released in this Section 4.13. The obligations of the City and Hotwire under this Agreement are separate and independent covenants and agreements and the Rent and all other sums payable by Hotwire under this Agreement will continue to be payable in all events unless the obligations to pay the same are terminated pursuant to the express provisions of this Agreement or by termination of the System Lease as to all or any portion of the System Assets other than by reason of an Event of Default.

**ARTICLE V**

**OWNERSHIP AND CONDITION OF SYSTEM ASSETS**

5.1 **System Lease Characterization.** The City and Hotwire acknowledge and agree that they have executed and delivered this Agreement with the understanding that (i) the System Assets are the property of the City and constitute a “public enterprise” within the meaning of Chapter 160A, Article 16, of the North Carolina General Statutes, (ii) Hotwire has only the right to the possession, use, maintenance, and operation of the System Assets upon the terms and conditions of this Agreement, (iii) the System Lease is a “true lease” and an “operating lease,” is not a financing lease, capital lease, synthetic lease, loan, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement, or other financing or trust arrangement, and the economic realities of the System Lease are those of a true lease, (iv) the System Lease is a “lease” within the meaning of Article 2A of the North Carolina Uniform Commercial Code, N.C.G.S. Sections 25-2A—101 et seq (the “UCC”), and a “lease” of an “enterprise” owned by the City within the meaning of 160A-321(a) of the North Carolina General Statutes; (v) the business relationship created by the System Lease and any related documents is and at all times will remain that of lessor and lessee, (vi) the System Lease has been entered into by each Party in reliance upon the mutual covenants, conditions, and agreements contained in this Agreement, and (vii) none of the agreements or undertakings contained in this Agreement is intended, nor will the same be deemed or construed, to create a partnership between the City and Hotwire, to make them joint venturers, to make Hotwire, agent, legal representative, partner, division, or subsidiary of the City, or to make the City in any way responsible for the debts, obligations or losses of Hotwire.

(a) Hotwire acknowledges that, subject to Section 8.10(a), it will not be entitled to any depreciation deduction or tax credit attributable to ownership of the System Assets. The City and Hotwire acknowledge that the System Assets, as property of the City, are exempt from property tax pursuant to Article 2, Section 3(2) of the North Carolina Constitution and, as a communications network owned by a city, to the extent provided in Section 160A-340.5 of the North Carolina General Statutes; provided, however, that the City may be required in certain circumstances to pay to Rowan County an amount in lieu of property taxes that would otherwise have been due Rowan County but for such exemption. Neither the City nor Hotwire will (i) file any tax return, report, or other associated documents; (ii) file any other document with or submit any document to any governmental body or authority; (iii) enter into any contractual arrangement with any Person; or (iv) publish, release, or disclose any financial statements of Hotwire, in each case in clauses (i) through (iv), that takes a position for tax purposes other than that the System Lease
is a “true lease” and an “operating lease” with the City as the owner/lessor of the System Assets and Hotwire as the lessee of the System Assets.

(b) The City and Hotwire acknowledge and agree that the Rent is the fair market rent for the use of the System Assets and was agreed to by the City and Hotwire on that basis.

(c) Hotwire hereby waives and releases any claim or defense based upon the characterization of the System Lease as anything other than a true lease and a “lease” of all of the System Assets within the meaning of the UCC.

5.2 Condition of System Assets. Hotwire confirms that it has examined and otherwise has, and had prior to the execution and delivery of this Agreement, knowledge of the condition of the System Assets and that it has found and determined the System Assets to be in good order and repair and otherwise satisfactory for its purposes under this Agreement. Notwithstanding any examination or inspection made by Hotwire and whether or not any patent or latent defect or condition was revealed or discovered thereby, Hotwire is leasing the System Assets “as is” in their condition as of the Agreement Effective Date. Hotwire hereby waives and releases any claim or action against the City in respect of or related to the condition of the System Assets, including any defects or adverse conditions not discovered or otherwise known by Hotwire as of the Lease Commencement Date. THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE SYSTEM ASSETS OR ANY PART THEREOF, EITHER AS TO FITNESS FOR USE, DESIGN, OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY HOTWIRE INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. WITHOUT LIMITING THE FOREGOING, THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE ADEQUACY OR FITNESS OF THE HVAC SYSTEM AND EQUIPMENT SERVING THE NOC PREMISES. HOTWIRE ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY RESPECTING THE CONDITION OF THE SYSTEM ASSETS. Notwithstanding the foregoing, nothing in this Section 5.2 will affect or limit the City’s obligations pursuant to Section 7.2(e).

ARTICLE VI

USE AND OPERATION OF SYSTEM ASSETS

6.1 Use of System Assets.

(a) During the Term of the System, Hotwire will have the exclusive right, subject to Section 19.12, to use, and will be required to use, the System Assets for the marketing, offering, provision, routing, and delivery of Communication Services
to businesses, residents, consumers, and other users (including governmental entities, schools, libraries and non-profit entities), or any of them, within the Grandfathered Fibrant Service Area (the foregoing, the “Intended Use”), and agrees that it will not use the System Assets for any purpose other than the Intended Use. “Grandfathered Fibrant Service Area” means the area within the corporate limits of the City as described in Sections 160A-340.2(a) and (c)(1); the service areas described in Section 160A-340.2(c)(3)b.; and any “unserved area” as determined by the North Carolina Utilities Commission in accordance with Section 160A-340.2(b), all such sections being of the North Carolina General Statutes. Hotwire will not use the System Assets or any portion thereof or any Capital Improvement thereto for any other use without the prior written consent of the City.

(b) Hotwire will not commit or suffer to be committed any waste of the System Assets (including any capital improvement thereto), any Required Capital Improvements, or any Elective Capital Improvements, or cause or permit any nuisance thereon or to, except as required by law, take or suffer any action or condition that will diminish the capacity or ability of the System Assets, Required Capital Improvements, and Elective Capital Improvements to be used for the provision of Communications Services after the expiration or earlier termination of the Lease Term.

(c) Hotwire will neither suffer nor permit the System Assets or any portion thereof to be used in such a manner as (i) might reasonably tend to impair the City’s title thereto or to any portion thereof or (ii) may make possible a claim of adverse use or possession or an implied dedication of the System Assets or any portion thereof.

(d) Except in instances of casualty or condemnation, Hotwire will continuously operate the Fibrant System and the System Assets, Required Capital Improvements, and Elective Capital Improvements for one or more of the activities constituting the Intended Use, in accordance with all Required Licenses, Legal Requirements, Prudent Communication Service Industry Practice, System Contract Requirements, and System Insurance Requirements.

(e) Hotwire will have the right to receive all rents, profits, charges, and Communication Service Revenues arising from the Intended Use of the System Assets, including: (i) contract charges and tariffed rates to third parties on a wholesale basis, (ii) payments from customer or carriers for dark or dim fiber services. Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default that is monetary in nature, the City will have, and Hotwire hereby grants and assigns to the City, the right to receive all rents, profits and charges arising from any sublease of or similar arrangement with respect to the System Assets (including any rights granted pursuant to a dark fiber agreement, a dim fiber agreement, or a co-location agreement), and all Communication Service Revenues, subject to Legal Requirements, and to apply such rents, profits, charges, and revenues to Rent as set forth in Section 13.2(d).
6.2 Communication Services. Throughout the Term of the System Lease, Hotwire will market, advertise, offer, and provide the following services ("Communication Services"): Voice Service, Data Center Service, Data Transport Service, Internet Service, Video Service, Dark Fiber Service, and other communication services to residential, business, consumer, or other customers or subscribers, and such other services and uses required to be or customarily performed or provided by the owners of distribution systems similar to the Fibrant System or as otherwise required by Legal Requirements (including the State Cable Television Franchise Act), all to the extent required to comply with Competitive Requirements and Prudent Communication Service Industry Practice and as otherwise required by Legal Requirements. All such Communication Services will be provided in compliance with Service Level Standards. Notwithstanding the foregoing, Hotwire may discontinue the provision of any Communication Service that it has determined in its reasonable judgment to be no longer economically feasible and no longer necessary to comply with Legal Requirements and Competitive Requirements; provided, however, that it may not discontinue a Communication Service without the consent of the City, which consent will not be unreasonably withheld.

6.3 Service Level Standard Penalties. Hotwire will maintain records of its compliance with the Service Level Standards in providing Communication Services and will, at the request of the City but no more frequently than quarterly, deliver to the City a Service Level Standard compliance report, which shall provide such information as the City may reasonably request to demonstrate Hotwire’s compliance with the Service Level Standards, including standards applicable to system uptime, customer hold time, and service availability. Promptly after receipt of any such compliance report, the City will advise Hotwire in writing (which may be by email communication) of any deficiency or suspected deficiency in Hotwire’s compliance with the Service Level Standards. Hotwire will acknowledge in writing (which may be by email communication) receipt of such notice from the City within two days of receipt thereof and will provide to the City, within five days of receipt of such notice, a plan to resolve any such deficiency within five business days. Hotwire will pay to the City, as an Additional Charge, a penalty of $1,000 per day for each day after such five-day resolution period that Hotwire is not in compliance with the Service Level Standards. In addition, Hotwire will provide credits to subscribers of Communication Services for any day in which a Communication Service is not available and otherwise comply with Competitive Requirements with respect to Service Level Standards.

6.4 No Management Control by City. Nothing in the System Lease gives or grants, will give or grant, or is intended to give or grant to the City, either directly or indirectly, the power to direct or cause the direction of the management and policies of Hotwire.

ARTICLE VII

MAINTENANCE, POLE AGREEMENTS, SERVICES, ETC.

7.1 Maintenance and Repair. Throughout the Lease Term:

(a) Except as required of the City in correcting pole attachments pursuant to Section 7.3 and maintenance of the Customer Service Center required of the City pursuant
to Section 8.1, Hotwire, at its expense, will maintain, and keep in good repair, the System Assets, any Capital Improvements thereto, and every portion thereof, in each instance whether or not the need for such repairs occurs as a result of Hotwire’s use, any prior use, the elements or the age of the System Assets and Capital Improvements. Without limiting the foregoing, Hotwire, at its expense, will be responsible for (i) coordinating with local, state or federal Governmental Authorities to execute moves and relocations of any System Asset, Capital Improvement, or Hotwire Property, (ii) complying with any other requirements instituted by such authorities in order to perform the Intended Use at the System Assets in accordance with Prudent Communication Service Industry Practice, (iii) repairing fiber and copper cuts on a timely basis, and (iv) replacing poles, conduits and such other System Assets as may be required from time to time in order to comply with its obligations under this Agreement.

(b) Hotwire will perform the maintenance and repair obligations under this Section 7.1 with reasonable promptness and make all reasonably necessary and appropriate repairs thereto of every kind and nature, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the Agreement Effective Date. All maintenance and repairs will be consistent with applicable Engineering Standards. In no event will Hotwire remove (except in the case of a replacement performed in accordance with the terms hereof) any System Asset (other than obsolete System Assets that are not material to the use or operation of the Fibrant System) without obtaining the prior written consent of the City, which will not be unreasonably withheld. Hotwire will not take or omit to take any action that could reasonably be expected to materially impair the value or the usefulness of the System Assets or any part thereof or any Capital Improvement thereto. Hotwire will provide, at its expense, periodic reports (no less than quarterly) to the City, as reasonably requested by the City from time to time, on operational matters in sufficient detail to enable the City to confirm that Hotwire is discharging its maintenance and other obligations under this Agreement. Without limiting the provisions of Section 7.1, the City will have the right to inspect the System Assets and Capital Improvements from time to time and to request and receive information from Hotwire, upon reasonable advance notice to Hotwire, to confirm that Hotwire is discharging its maintenance obligations under this Section 7.1.

(c) Not later than 90 days after the Lease Commencement Date, and thereafter not later than September 30 of each calendar year during the Lease Term, Hotwire will prepare and submit to the City, and review with the City, a proposed maintenance plan for the following calendar year. Such plan will include expected maintenance and repair requirements and Hotwire’s estimates of maintenance costs.

(d) Except as provided in Section 8.1, the City will not under any circumstances be required to (i) build or rebuild any improvements of the System Assets; (ii) make any repairs, replacements, alterations, upgrades, restorations, or renewals of any nature to the System Assets, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with
respect thereto; or (iii) maintain or repair the System Assets in any way. Hotwire hereby waives and releases, to the fullest extent permitted by law, the right to make repairs at the expense of the City pursuant to any law in effect at the time of the execution of this Agreement or hereafter enacted.

(e) Nothing contained in this Agreement and no action or inaction by the City will be construed as (i) constituting the consent or request of the City, expressed or implied, to any contractor, subcontractor, laborer, materialman, or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair, or demolition of the System Assets or any part thereof or any Capital Improvement thereto; or (ii) giving Hotwire any right, power, or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the City in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, claim, lien or other encumbrance upon the right, title, interest, or estate of the City in or to the System Assets, or any portion thereof or in or to any Capital Improvement thereto.

(f) Hotwire will create and maintain all System Maintenance Records in accordance with Prudent Communication Service Industry Practice and consistent with Hotwire’s creation and maintenance of such records for other communication systems operated by Hotwire or its Affiliates. Hotwire acknowledges and agrees that all System Maintenance Records, whether created by the City or by Hotwire, are and will be the property of the City and will be maintained by Hotwire within Hotwire’s engineering systems and records during the Lease Term. Hotwire will provide the City with electronic access to and hard copies of System Maintenance Records upon the request of the City at such times and places as the City may reasonably request.

7.2 Pole Agreements, etc. Throughout the Lease Term, except as provided in Section:

(a) Hotwire will, at its expense, (i) maintain (or cause to be maintained) all Easements, Permits and Pole Agreements, including any franchise or right-of-way license agreements required by any Governmental Authority in connection with such Easements, Permits, and Pole Agreements, necessary for Hotwire’s operation of the System Assets for the Intended Use, (ii) diligently perform, observe and enforce all of the terms, covenants and conditions of the Easements, Permits, and Pole Agreements on the part of the City or Hotwire to be performed, observed, and enforced in all material respects, and (iii) not terminate, cancel or surrender any material Easements, Permits or Pole Agreements without the prior written consent of the Hotwire (such consent not to be unreasonably withheld).

(b) Hotwire will have the right, on behalf of and as agent for the City, to modify any existing Easements, Permits, and Pole Agreements without obtaining the prior consent of Hotwire so long as such proposed modifications are on market terms and conditions and otherwise commercially reasonable; provided, however, that if
any such modification would result in a percentage increase in the fees payable under such agreement that exceeds the percentage increase in the CPI Index for the year in which such modification is made over the CPI Index for the year in which such agreement was executed or last modified, Hotwire will consult with the City and allow the City to participate in discussions with the other party to any such agreement, in which event any such modification will be subject to the City’s consent, which will not be unreasonably withheld, conditioned, or delayed. “CPI Index” means the Consumer Price Index – All Urban Consumers, for the South urban area, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) Hotwire will pay, or cause to be paid, all fees, rents, and other payments required to be made under the terms of such Easements, Pole Agreements, and Permits (including any right-of-way license agreements) in accordance with Section 4.7(c) and all franchise fees or other amounts that may be required pursuant to the State Cable Television Franchise Act. Without limiting the foregoing, Hotwire will be responsible for the calculation and payment of all rent or other charges due under any Easements, Pole Agreements, or Permits with respect to the System Assets and will upon request promptly furnish evidence to the City confirming payment of such amounts (together with back-up calculations and information reasonably necessary to support the determination of any payment). The City and Hotwire acknowledge that Hotwire will be obligated to pay any required franchise fees.

(d) In the event any pole owners exercise any audit rights under the Pole Agreements, Hotwire will, at its cost and expense, (x) comply with, participate and perform all of its obligations relating such audit requests, and (y) pay, or reimburse the City for, any charges and such other fees and penalties determined to be owed to a pole owner as a result of such audit, including any fees and penalties for back rent, safety violations, unauthorized attachments, and trespass. The City will, at Hotwire’s request, enter into settlements, compromises, or modifications to Pole Agreements for audit disputes provided that (i) no Event of Default then exists, (ii) Hotwire promptly and with commercially reasonable diligence negotiates a settlement, compromise, or modification relating to such audit, (iii) the terms of such settlement, compromise, or modification do not impose any obligations on the City or impair the City’s rights with respect to any System Asset, and (iv) any and all monetary amounts payable thereunder are Hotwire’s sole responsibility and such amounts are paid in accordance with the terms of such settlement, compromise, or modification. Notwithstanding the foregoing, the City will not be required to accept or enter into a settlement, compromise, or modification of a Pole Agreement in connection with an audit dispute involving amounts equal to or greater than $100,000; provided, however, that the City will not unreasonably withhold its acceptance or approval of any such settlement, compromise, or modification.

(e) Hotwire will maintain and make available to the City adequate books and records of all Permits, Easements, and Pole Agreements and all payments (and supporting documentation relating to such payments) made thereunder for no less than five years after the end of each calendar year with respect to the books and records
maintained during such calendar year. Hotwire will maintain the books and records for the Permits, Easements, Pole Agreements in a manner consistent with the manner in which Hotwire or its Affiliates maintain similar books and records in other locations where Hotwire or such Affiliates offer Communications Services and in accordance with Prudent Communication Service Industry Practice. The City will have the right from time to time during normal business hours upon reasonable notice to Hotwire to examine and audit such books and records at the office of Hotwire or other Person maintaining such books and records and to make such copies or extracts thereof as Hotwire may request.

(f) Notwithstanding any other provision of this Agreement,

(i) Hotwire will have the right to modify any existing Pole Agreements, or enter into new Pole Agreements, in its own name and behalf without obtaining the prior consent of Hotwire, so long as such proposed modifications are on market terms and conditions and otherwise commercially reasonable and that any such modified or new Pole Agreement specifically provide that it would be assignable, without the need for consent from the pole owner party thereto and at no cost to the City, to the City upon the expiration or termination of the System Lease; and

(ii) The City will have no liability to Hotwire, under this Agreement or otherwise, with respect to any Pole Agreement, or the termination of any Pole Agreement, including any such liability resulting from the System Lease, except to the extent any such liability results from the Pole Attachment Dispute (as defined in Section 7.3) or the subject matter thereof.

7.3 Pre-Lease Pole Attachment Liability. The City and Hotwire acknowledge that the City is a party to ongoing litigation in respect of claims that certain pole attachments were installed by the City’s third-party design-builder in a manner inconsistent with applicable Legal Requirements (the “Pole Attachment Dispute”). Notwithstanding any other provision of this ARTICLE VII, the City will be responsible for, and will take such actions as the City in its sole discretion deems necessary, or as may be required by the pole owner, at the City’s expense, to correct, re-locate, repair, or otherwise replace and pole attachments that were attached or installed prior to the date of this Agreement in a manner not in compliance with the applicable Pole Agreement and Legal Requirements. Hotwire will permit the City such access to the Fibrant System and System Assets as are required to accomplish any such corrections, re-locations, repairs, or replacements, as provided in Section 19.12(b) . The City will have the right to enter into such settlements or compromises of the Pole Attachment Disputes, and effect such modifications to Pole Agreements, as it deems desirable in connection with the foregoing. The City will, and will cause any contractor engaged to effect the correction, re-location, repair, or replacement contemplated in this section, to cooperate with Hotwire with respect to scheduling of such work and other matters related thereto, so as not to cause any material interruption of,
interference with, or disturbance of Hotwire’s use and occupancy of the System Assets and operation of the Fibrant System for the Intended Use. The City will use commercially reasonable efforts in connection with any settlement or compromise of the Pole Attachment Dispute to afford Hotwire the opportunity to contract for or supervise the making of any such corrections, re-locations, repairs, or replacements. Nothing in this Section 7.3 will be deemed to grant to Hotwire any right to require the City to perform any work to correct, re-locate, repair, or otherwise replace pole attachments not otherwise required by the pole owner.

7.4 **No Encumbrances.** Hotwire will not directly or indirectly create or allow to remain and will promptly discharge at its expense any Encumbrance upon the System Assets or any Hotwire Capital Improvement.

7.5 **Encroachments.** If any of the System Assets will, at any time, encroach upon any property, street or right-of-way, or shall violate any restrictive covenant or other agreement affecting the System Assets, or any part thereof or any Capital Improvement thereto, or will impair the rights of others under any easement or right-of-way to which the System Assets are subject, or the use of any of the System Assets or any Capital Improvement thereto is impaired, limited, or interfered with by reason of the exercise of the right of surface entry or any other provision of a lease or reservation of any oil, gas, water or other minerals and such encroachment or violation does not result from a breach by Hotwire of its obligations under this Agreement, then promptly upon the request of the City, each of Hotwire and the City, subject to their right to contest the existence of any such encroachment, violation or impairment, will protect, indemnify, save harmless and defend the other party hereto from and against 50 percent of all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys’, consultants’ and experts’ fees and expenses) based on or arising by reason of any such encroachment, violation or impairment. In the event of an adverse final determination with respect to any such encroachment, violation or impairment, either (a) each of Hotwire and the City will be entitled to obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect the City or Hotwire or (b) Hotwire at the shared cost and expense of Hotwire and the City on an equal basis will make such changes in the System Assets, and take such other actions, as the City in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment or to end such violation or impairment, including, if necessary, the alteration of any of the System Assets, and in any event take all such actions as may be necessary in order to be able to continue the operation of the System Assets for the Intended Use substantially in the manner and to the extent the System Assets were operated prior to the assertion of such encroachment, violation or impairment.

**ARTICLE VIII**

**CAPITAL IMPROVEMENTS**

8.1 **City Responsibility for Capital Improvements to Customer Service Center**

(a) Subject to and except as set forth in ARTICLE XI and ARTICLE XII, the City will keep and maintain the roof and Structural Portions of the Customer Service Center including the Structural Portions of the NOC Premises and the Head End Premises
and the HVAC equipment ("HVAC Equipment") serving the Customer Service Center, including the HVAC Equipment described on Schedule 8.1(a); provided, however, provided that Hotwire will give the City prior notice of the necessity for such repairs and that any damage thereto will not have been caused by any act or negligence of Hotwire, its employees, agents, invitees, subtenants, assignees or contractors, in which event the cost of the repair of such damage will be borne solely by Hotwire. "Structural Portions" means and will consist only of the foundation and members supporting the roof but will not include, by way of example, any of the following to the extent a part of or contained in the NOC Premises or Head End Premises: interior partition walls, the interior side of the building perimeter walls, doors, molding, window frames, trims, door frames and plate glass. Hotwire will promptly give the City written notice of any damage to the NOC Premises or Head End Premises requiring repair by the City pursuant to this Section 8.1(a). The City will not be liable for any damages resulting from its failure to make such repairs or improvements, unless such failure continues beyond a reasonable time after receipt of notice of the necessity for such repairs or improvements. In no event will the City be liable to Hotwire for any damages incurred by Hotwire resulting from any damage that the City is required to repair under this Section 8.1(a). Except as expressly set out in this Lease, the City will have no obligation to repair, maintain, alter, replace, or modify the Customer Service Center, or any part thereof, or any mechanical installation therein or serving same, or any other System Asset or Capital Improvement.

(b) The City will be responsible only for the cost of making repairs and improvements required of it pursuant to Section 8.1(a) and will not be liable for any special or other damages related to such repairs or improvements.

8.2 Hotwire Responsibility for Capital Improvements. Except as required of the City in correcting pole attachments pursuant to Section 7.3 and Capital Improvements to the Customer Service Center required of the City pursuant to Section 8.1, Hotwire will be responsible, at its expense, for the construction, installation, repair, and replacement of all Capital Improvements to the Fibrant System, any System Asset, and any Capital Improvements ("Required Capital Improvements") to the extent required by and in accordance with Prudent Communication Service Industry Practice, Engineering Standards, Required Licenses, Legal Requirements, System Insurance Requirements, System Contract Requirements, and Competitive Requirements. Hotwire will be responsible for all Required Capital Improvements whether or not the making of such improvements requires structural changes or replacements to any System Asset or Capital Improvement or interferes with Hotwire’s delivery of Communications Services. All Required Capital Improvements will comprise only new or completely reconditioned equipment, components, and material.

8.3 Drops and NIDs. Without limiting the generality of Section 8.2, Hotwire will cause the installation of all Drops and NIDs to be done, by an independent, qualified third-party contractor that shall be approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed. All such installation will be done in accordance with all applicable Engineering Standards and the Drop Installation Guidelines set forth in Schedule 8.3, and subject to the terms and conditions set forth in this Section 8.3.
(a) If during any portion of the Lease Term Hotwire reasonably determines that an independent, qualified third-party contractor is not available to install Drops and NIDs, then Hotwire will install Drops and NIDs during such period in accordance with this Section 8.3 and Hotwire will be entitled to a credit against Rent in an amount equal to Hotwire’s reasonable and actual costs incurred during such period for installing Drops and NIDs, as determined from time to time by an independent assessment of such costs and expenses to be reasonably agreed by the City and Hotwire. Hotwire’s cost and expenses will include the actual cost of fiber, attachments, materials, and NIDs, and the reasonable cost of Hotwire’s compensation allocable to Hotwire employees with respect to such installation services.

(b) All Drops and NIDS will become System Assets automatically, subject to no Encumbrances, upon completion of their installation, at no cost to the City, without any further action by Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City’s ownership of such Drops and NIDs at any time after Hotwire has received a credit in full against Rent with respect thereto.

8.4 Capital Improvements to Outside Plant. Without limiting the generality of Section 8.2, Hotwire will construct and install all Capital Improvements to the Outside Plant necessary for the provision of Communication Services by the Fibrant System. All Required Capital Improvements to the Outside Plant will become System Assets automatically, subject to no Encumbrances, upon completion of their installation, at no cost to the City, without any further action by Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City’s ownership of such Capital Improvements at any time after Hotwire has received a credit in full against Rent with respect thereto.

8.5 Customer Premises Equipment. Without limiting the generality of Section 8.2, Hotwire will construct and install all Capital Improvements necessary for the repair or replacement of any Customer Premises Equipment and install Customer Premises Equipment necessary for the provision of Communication Services to new customers, all as required by and in accordance with Prudent Communication Service Industry Practices and Competitive Requirements. All such Customer Premises Equipment and related Capital Improvements thereto installed by Hotwire will remain the property of Hotwire, will not become System Assets, and will be deemed Required Capital Improvements subject to City’s option to acquire such improvements upon expiration or termination of the Lease Term and otherwise treated in accordance with Section 8.11(b).

8.6 Elective Capital Improvements. During the Lease Term, subject to Section 8.8, Hotwire will have the right, but not the obligation, to construct, install, repair, or replace any capital improvement to any System Asset or Hotwire Property that is (i) not a Required Capital Improvement and (ii) is functionally and structurally independent of other System Assets so that such improvement could be removed without materially damaging or interfering with operation
of the Fibrant System (an “Elective Capital Improvement”). All Elective Capital Improvements will comprise only new or completely reconditioned equipment, components, and material.

8.7 Public Bond Requirements; Public Bidding Requirements. Hotwire agrees that it will comply, as if it were a municipality, with all bond requirements and bidding and other requirements with respect to contracting for or procurement of goods and services that are applicable to the City in connection with Hotwire’s acquisition of or contracting for the installation and construction of Drops and NIDs, Extensions, Data Center capital improvements, and any other capital equipment or improvement that will become a System Asset upon completion of such construction or installation. Without limiting the foregoing, Hotwire will comply with:

(a) the North Carolina “Little Miller Act,” Sections 44A-25 through 44A-39 of the North Carolina General Statutes;

(b) Sections 143-129 and 143-131 of the North Carolina General Statutes/

8.8 Required City Approval. Notwithstanding any other provision of this ARTICLE VIII, Hotwire will not, at any time during the last five years of the Initial Term or the last five years of the Renewal Term, construct, install, repair, or replace any Required Capital Improvement or Elective Capital Improvement that would reasonably be expected to cost more than $500,000 without the prior written consent of the City, such consent not to be unreasonably withheld.

8.9 Capital Improvement Plan. Simultaneously with the delivery of the annual maintenance plan required pursuant to Section 7.1(c), Hotwire will prepare and submit to the City, and consult with the City with respect to, a proposed Capital Improvement plan for the following calendar year.

8.10 Capital Improvement Records; Annual Summary.

(a) Hotwire will create and maintain all Capital Improvement Records in accordance with Prudent Communication Service Industry Practice and consistent with Hotwire’s creation and maintenance of such records for other communication systems operated by Hotwire or its affiliates. Hotwire acknowledges and agrees that all Capital Improvement Records, whether created by the City or by Hotwire, are and will be the property of the City and will be maintained by Hotwire within Hotwire’s engineering systems and records or tax and accounting records, as applicable, during the Term. Hotwire will provide the City with electronic access to and hard copies of Capital Improvement Records upon the request of the City at such times and places as the City may reasonably request.

(b) Not later than March 30 of each calendar year during the Lease Term, Hotwire will prepare and submit to the City an Annual Capital Improvement Summary with respect to all Capital Improvements completed during the prior calendar year. Hotwire will consult with the City and provide such additional information as the City may request with respect to Capital Improvements described in such summary.
8.11 Ownership of Capital Improvements. Hotwire will retain ownership of all Required Capital Improvements (including improvements to NOC Furnishings and Equipment, Head End, and Satellite Dish Equipment) and Elective Capital Improvements, unless and until such improvements are conveyed or otherwise transferred to the City as provided in this Section 8.11

(a) Subject to Section 8.11(b), until any Required Capital Improvement or Elective Capital Improvement becomes a System Asset or is otherwise transferred or conveyed to the City, Hotwire will be

(i) entitled to any depreciation deduction or federal or state income tax credit attributable to ownership of Required Capital Improvements and Elective Capital Improvements installed by Hotwire; and

(ii) responsible for and pay, as and when due, all ad valorem tax, property tax, or similar tax, and any payment-in-lieu of any such tax assessed against or with respect to such Capital Improvements.

(b) Hotwire will not be entitled to any depreciation deduction or federal or state income tax credit attributable to ownership of any Drops and NIDs, any Capital Improvement to Outside Plant as set forth in Section 8.4, any Extension constructed or installed by the City, any Capital Improvement to provide Data Center Service as set forth in Section 4.5 or, upon such improvement’s becoming a System Asset as provided in this Agreement, any other Capital Improvement that becomes a System Asset.

(c) Required Capital Improvements to the Outside Plant will automatically become System Assets, subject to no Encumbrances, automatically and without any further action on the part of either Hotwire or the City, upon the expiration or earlier termination of the Lease Term; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City’s ownership of such Capital Improvements to the Outside Plant.

(d) Upon written notice to Hotwire delivered within 90 days after expiration or termination of the Lease Term, the City may purchase and Hotwire will transfer and convey to the City, free and clear of all Encumbrances and by means of written documentation satisfactory to the City, all or any portion of Required Capital Improvements and Elective Capital Improvements constructed or installed by Hotwire (other than Drops and NIDS, Extensions, Capital Improvements to provide Data Center Service as provided in Section 4.5, and Required Capital Improvements to the Outside Plant). In consideration of such conveyance, the City will pay to Hotwire an amount equal to the Fair Market Value of such purchased Capital Improvements; provided, however, that if the Parties are unable to reach agreement as to the Fair Market Value of any such improvements within 60 days of delivery the City’s written notice, such dispute will be submitted to and resolved by an Independent Appraiser as provided in Section 21.2.
(e) With respect to any Required Capital Improvement or Elective Capital Improvement, or portion thereof, as to which the City does not exercise its option to reimburse Hotwire as provided in paragraph (d), or as to which the City provides written notice to Hotwire that it will not exercise such option, Hotwire will, within 90 days of expiration of the 90-day period specified in paragraph (c) or, if earlier, the date of delivery of the written notice specified in this paragraph (e), remove such Required Capital Improvements and Elective Capital Improvements from the System Assets and, following such removal, restore the System Assets as nearly as possible to their condition prior to such removal in accordance with Prudent Communication Service Industry Practice and applicable Engineering Standards. Any Required Capital Improvement or Elective Capital Improvement not removed from the System Assets as provided in this paragraph (e) will be deemed abandoned by Hotwire and remain the property of the City, at no cost to the City.

8.12 Removal of System Assets; Assistance in Selling Removed System Assets. Except to the extent provided in Section 7.1(b) or as provided in paragraph (a) hereinbelow, Hotwire will in no event remove or detach any System Asset or any Hotwire Property (other than an Elective Capital Improvement), whether or not such System Asset is replaced by a Required Capital Improvement or Elective Capital Improvement.

(a) On or before the date six months after the Lease Commencement Date, Hotwire may, in its discretion, remove any Head End component that is a System Asset as of the Lease Commencement Date; provided, however, that Hotwire promptly replaces such removed Head End component in accordance with applicable Engineering Standards and that such replacement Head End component will be deemed a Required Capital Improvement.

(b) In connection with removing any System Asset that it is permitted to remove under the System Lease, Hotwire will restore the remaining System Assets and any Capital Improvement as nearly as possible to their condition prior to such removal in accordance with applicable Engineering Standards.

(c) Hotwire will use commercially reasonable efforts to effect the removal of any System Asset with the minimum damage or destruction to such removed System Asset and will, at the request of the City, store such removed System Asset in an appropriate storage facility (at the expense of the City), and advise and assist the City in selling, trading in, or otherwise disposing of such removed System Asset.

ARTICLE IX
EXTENSIONS TO NEW GEOGRAPHIC AREA; ADDITIONAL COMMUNICATION SERVICES

9.1 Extensions Within Grandfathered Fibrant Service Area.

(a) At any time during the Lease Term, the City may, in the complete discretion of and at the expense of the City, construct and install as part of the Fibrant System one or more extensions (an “Extension”) of the Fibrant System to a geographic area or
areas completely within the Grandfathered Fibrant Service Area in which Communication Services cannot be provided on an economically feasible basis at the Lease Commencement Date, in order to facilitate Communication Services to new residential subdivisions, business or industrial parks, commercial or industrial facilities, and other customers. The City will construct and install any such Extension in accordance with applicable Engineering Standards and cooperate with Hotwire and use commercially reasonable efforts to cause such construction and installation to be performed without materially interfering with Hotwire’s providing of Communication Services. Any such Extension will automatically become a System Asset, subject to no Encumbrances, immediately upon its completion, without any further action by the City or Hotwire; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City’s ownership of such Extensions. Upon completion of the installation of any such Extension, Hotwire will configure and incorporate such extension into the existing Outside Plant in accordance with Prudent Communication Service Industry Practice and Engineering Standards.

(b) At any time during the Lease Term, Hotwire may propose to the City that the City construct and install an Extension completely within the Grandfathered Fibrant Service Area. If the City declines so to construct and install such a proposed Extension, Hotwire may construct and install such Extension at its expense, in accordance with applicable Engineering Standards; provided, however, that Hotwire will not construct or install such Extension without the written consent of the City, which consent will not be unreasonably withheld, conditioned, or delayed. Any such Extension so constructed and installed by Hotwire will remain the property of Hotwire and will be deemed an Elective Capital Improvement for all purposes under the System Lease.

9.2 Extensions Outside Grandfathered Fibrant Service Area. In the event the City determines, in its sole discretion, that a change in applicable law, or in judicial interpretation of applicable law, permits the use of the System Assets for the provision of Communication Services to any geographic area outside the Grandfathered Fibrant Service Area, then the City and Hotwire agree to negotiate in good faith with respect to any proposal by either the City or Hotwire to construct and install an Extension or otherwise use the System Assets for provision of such services outside the Grandfathered Fibrant Service Area.

9.3 Installation of Capacity for Wi-Fi, Additional Communication Services. At any time during the Lease Term, the City may propose to Hotwire that Hotwire construct and install such facilities and equipment as may be necessary to support the provision of “Wi-Fi” services pursuant to the federal or North Carolina “E-Rate” program or any similar program that the City deems beneficial to the residents of the Grandfathered Fibrant Service Area (such as Lifeline or USAC). If Hotwire constructs and installs such facilities and equipment at Hotwire’s expense, such facilities and equipment will be deemed an Elective Capital Improvement. If Hotwire declines to construct and install such facilities and equipment at Hotwire’s expense, Hotwire will, at the request of the City, construct and install such facilities at the City’s expense, in which case such facilities and equipment will automatically become System Assets, subject to no
Encumbrances, upon completion of their installation, without any further action by Hotwire or the City; provided, however, that, following payment in full by the City therefor, Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City’s ownership of such facilities and equipment.

ARTICLE X

RISK OF LOSS; INSURANCE

10.1 Risk of Loss. Hotwire hereby assumes and agrees to bear the risk of loss or of decrease in the enjoyment and beneficial use of the System Assets (other than the Customer Service Center), Required Capital Improvements, and Elective Capital Improvements as a consequence of damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by the City and Persons claiming from, through or under the City), at any time during the Lease Term. Except as otherwise provided in this Agreement, no such event will entitle Hotwire to any abatement of Rent.

10.2 Casualty Insurance. Except as set forth in this Section 10.2, Hotwire will not be required to obtain and maintain insurance against loss or damage to any System Asset or any Hotwire Property.

(a) If at any time (i) the City does not maintain insurance on the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, or Fibrant Vehicles pursuant to the City’s option to maintain such insurance pursuant to Section 10.6 and (ii) Hotwire’s Tangible Net Worth is less than 200% of the full replacement cost of all NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, and Fibrant Vehicles, then Hotwire will, promptly upon request by the City, obtain and pay all premiums with respect to a policy or policies covering such risks as are ordinarily insured against for similar properties and in compliance with Prudent Communication Service Industry Practice and all Legal Requirements. Such insurance will in any event include “all risk coverage” and be in an amount not less than the full replacement cost of the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, and Fibrant Vehicles; provided, however, that such policy may have a deductible amount of not more than $100,000. Full replacement cost will be determined at least once every three years by an insurance consultant selected and paid for by the City, who is reasonably acceptable to Hotwire. “Tangible Net Worth” means the total consolidated assets of Hotwire and its wholly owned subsidiaries, less intangible assets, and less total consolidated liabilities of Hotwire and its wholly owned subsidiaries, all as reflected in Hotwire’s financial statements as described Section 19.5(a)19.4(d)(ii). Hotwire will, from time to time upon the request of the City, certify to the City the amount of its Tangible Net Worth. Each insurance policy obtained in accordance with this Section 10.2(a) will contain a replacement cost endorsement acceptable to the City. No such policy of insurance will be written so that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent of the City.
(b) During such time as Hotwire is constructing, installing, replacing, or repairing any Required Capital Improvements or Elective Capital Improvements, Hotwire will obtain and maintain a completed operations endorsement to the liability insurance policy referred to in Section 10.3(a).

(c) Except to the extent required to comply with Prudent Communication Service Industry Practice in existence at any time during the Lease Term, Hotwire will not be required to obtain insurance with respect to the Outside Plant under this Section 10.2.

10.3 Liability Insurance. At all times during the Lease Term, at its own expense, Hotwire will obtain and maintain the following insurance to the extent required by Prudent Communication Service Industry Practice, but with coverage amounts no less than set forth in this Section 10.3:

(a) insurance against loss or damage insuring claims for personal injury or property damage under a policy of comprehensive general liability insurance and contractual liability (including coverage insuring the obligations of Hotwire under the terms of the System Lease) with amounts not less than $1,000,000 each occurrence, $1,000,000 damage to rented premises, $10,000 medical expense (any one person), $1,000,000 personal and advertising injury, $2,000,000 general aggregate, $2,000,000 products-completed operations aggregate, all the foregoing with umbrella liability coverage on an occurrence (as opposed to claims-made) basis in the amount of not less than $15,000,000 each occurrence and $15,000,000 aggregate; and

(b) insurance against automobile liability, covering all owned autos, hired autos and non-owned autos (including any such that is a System Asset) with amounts not less than $1,000,000 combined single limit (each accident) and $1,000,000 uninsured motorist.

10.4 Workers’ Compensation Insurance. At all times during the Lease Term, at its own expense, Hotwire will obtain and maintain worker’s compensation insurance covering all employees of Hotwire working at the Fibrant System, including any employees working on the construction, installation, repair, or replacement of any Capital Improvement, in such amounts as are required by Legal Requirements and Prudent Communication Service Industry Practice but in no event less than $1,000,000 employer’s liability each accident, $1,000,000 employer’s liability disease – each employee, and $1,000,000 employer’s liability disease – policy limit.

10.5 Policy Requirements. All of the policies of insurance referred to in this ARTICLE X will be written in a form reasonably acceptable to the City, and be issued by insurance companies with a minimum policyholder rating of “A-” and a financial rating of “VII” in the most recent version of Best’s Key Rating Guide, or a minimum rating of “BBB” from Standard & Poor’s or equivalent.

(a) Hotwire will deliver to the City, on or before the Lease Commencement Date, and on or before each anniversary of the Lease Commencement Date, copies of all required policies of insurance or certificates of insurance, in form reasonably
satisfactory to the City, confirming that all such policies remain in force, including all endorsements and declarations required under the System Lease.

(b) All policies will contain an endorsement prohibiting cancellation or failure to renew unless the insurer first gives the City 30 days’ prior written notice of such proposed action.

(c) All policies provided under Section 10.2 will expressly waive any right of subrogation on the part of the insurer against the City and any System Bond Financing Party and will name the City and any System Bond Financing Party as insureds or loss payees, as their respective interests may appear.

(d) All policies provided under Sections 10.3 will name the City and any Bond Financing Party as additional insureds.

(e) If Hotwire obtains and maintains the liability insurance described in Section 10.3(a) on a “claims made” basis, Hotwire will provide continuous liability coverage for claims arising during the Lease Term. In the event such “claims made” basis policy is canceled or not renewed for any reason whatsoever (or converted to an “occurrence” basis policy), Hotwire will either obtain (a)”tail” insurance coverage converting the policies to “occurrence” basis policies providing coverage for a period of at least three years beyond the expiration of the Lease Term, or (b) an extended reporting period of at least three years beyond the expiration of the Lease Term.

(f) Hotwire will pay all of the premiums for such insurance policies, and deliver copies of such policies or certificates thereof to the City prior to their effective date (and with respect to any renewal policy, prior to the expiration of the existing policy), and in the event of the failure of Hotwire either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to the City, at the times required, the City will be entitled, but will have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue Rate, will be reimbursed by Hotwire to the City upon demand therefor as an Additional Charge. Hotwire will obtain, to the extent available on commercially reasonable terms, the agreement of each insurer, by endorsement on the policy or policies issued by it, or by independent instrument furnished to the City, that it will give to the City 30 days’ (or 10 days’ in the case of non-payment of premium) written notice before the policy or policies in question will be altered, allowed to expire or cancelled; provided however, that if such endorsement cannot be obtained, then Hotwire will be required to deliver written notice of any cancellation to the City promptly following Hotwire having obtained knowledge of such cancellation (but in no event later than 10 days prior to the date of cancellation).

(g) Notwithstanding anything to the contrary contained in this Section 10.5, Hotwire’s obligations to obtain and maintain the insurance provided for herein may be brought within the coverage of a “blanket” policy or policies of insurance carried and
maintained by Hotwire; provided that the requirements of this Section 10.5 (including satisfaction of any Bond Financing Party’s requirements and the approval of the Bond Financing Party required under any System Bond Finance Contract) are otherwise satisfied, and provided further that Hotwire maintains specific allocations with respect to such blanket policies acceptable to the City.

10.6 **Optional Insurance Obtained by City.** The City may, at its expense, procure and maintain insurance covering fire and such other risks as are from time to time included in standard extended coverage endorsements, insuring in amounts reasonably determined by the City to be the full insurable value of the Customer Service Center, Head End, NOC Furnishings and Equipment, Satellite Dish Equipment, and Fibrant Vehicles (including to the extent such insurance may be available any of the foregoing that constitutes Required Capital Improvements or Elective Capital Improvements and including insurance of the type described in Section 10.2(b)) or such greater coverage as may be required under any System Bond Finance Contract.

**ARTICLE XI**

**CASUALTY**

11.1 **Property Insurance Proceeds.** All proceeds payable by reason of any property loss or damage to System Assets, Required Capital Improvements, and Elective Capital Improvements, or any portion thereof, including under any policy of insurance required to be carried under this Agreement, will be paid to the Bond Financing Party as required under a System Bond Finance Contract and, to the extent not required to be paid to the Bond Financing Party, to the City. Except with respect to proceeds payable by reason of property loss or damage to the Customer Service Center, the City will make such proceeds available to Hotwire upon request for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction, replacement, and repair, as the case may be, of any damage to or destruction of the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment and, to the extent the City has insured same any Required Capital Improvements and Elective Capital Improvements. Hotwire will repair, reconstruct, or restore such damaged System Assets, Required Capital Improvements, and Elective Capital Improvements as required in Section 11.2. Any excess proceeds of insurance remaining after completion of such repair, or reconstruction, or restoration will be delivered to the City. All salvage resulting from any risk covered by insurance for damage or loss to the System Assets, Required Capital Improvements, or Elective Capital Improvements will be the property of the City. The City will have the right to prosecute and settle or compromise property insurance claims, provided that Hotwire will consult with Hotwire and keep Hotwire informed regarding the process of adjusting any insurance claims and any final settlement or compromise with the insurance company will be subject to Hotwire’s consent, such consent not to be unreasonably withheld, conditioned, or delayed.

11.2 **Hotwire’s Obligations Following Casualty.**

(a) If during the Lease Term any of the System Assets (other than the Customer Service Center) or any Required Capital Improvements are materially damaged, whether or not by or from a risk covered by insurance carried by the City or Hotwire, Hotwire will promptly restore such damaged System Asset or Required Capital
Improvement as nearly as possible to the condition of such asset immediately prior to the casualty, in accordance with Prudent Communication Service Industry Practice, Engineering Standards, and otherwise reasonably satisfactory to the City;

(b) If Hotwire restores the System Assets or Required Capital Improvements and the cost of the repair or restoration exceeds the amount of proceeds received from the insurance required to be carried under this Agreement, Hotwire will provide to the City evidence reasonably acceptable to the City that Hotwire has available to it sufficient liquid funds to restore such System Asset;

(c) If Hotwire has not completed the restoration of any affected System Asset or Required Capital Improvement and the full provision of Communication Services has not resumed or recommenced in a manner substantially equivalent to the provision of such services prior to the date of any casualty by the date that is the third anniversary of the date of such casualty, all remaining insurance proceeds and the unpaid deductibles will be paid to and retained by the City free and clear of any claim by or through Hotwire, together with interest on such amounts at the Overdue Rate from the date that the casualty occurred until paid.

11.3 City’s Obligations Following Casualty. If during the Lease Term the Customer Service Center is materially damaged, whether or not by whether or not by or from a risk covered by insurance carried by the City, the City will promptly restore such damaged portion of the Customer Service Center as nearly as possible to the condition of such asset immediately prior to the casualty.

11.4 No Abatement of Rent. The System Lease will remain in full force and effect following any such casualty or damage to a System Asset and Hotwire’s obligations to pay Rent and Additional Charges will remain unabated during the period required for adjusting insurance and completing repair and restoration. HOTWIRE HEREBY WAIVES AND RELEASES ANY STATUTORY OR OTHER RIGHT OF TERMINATION OF THE SYSTEM LEASE THAT MAY ARISE BY REASON OF ANY DAMAGE OR DESTRUCTION OF SYSTEM ASSETS.

11.5 Insurance Proceeds Payable to Bond Financing Party. Notwithstanding anything in this ARTICLE XI to the contrary, if and to the extent any Bond Financing Party is entitled to any insurance proceeds, or any portion thereof, pursuant to a System Bond Finance Contract, such proceeds will be disbursed, held, and applied in accordance with the terms of the System Bond Finance Contract.

ARTICLE XII
CONDEMNATION

12.1 Total and Partial Takings; Restoration.

(a) If the System Assets, or substantially all of the System Assets, are totally and permanently taken by Condemnation (a “Total Taking”), the System Lease will terminate as of the day before the date of completion of such Total Taking.
(b) If a portion, but less than substantially all, the System Assets are taken by Condemnation (a “Partial Taking”), the System Lease will remain in effect.

(c) If there is a Partial Taking of System Assets, and the System Lease remains in force and effect, the City will make available to Hotwire the portion of any Condemnation Award necessary for restoration of the System Assets subject to such Partial Taking. Whether or not such Condemnation Award is sufficient for such restoration, Hotwire will promptly restore such taken System Assets as nearly as possible to the condition of such taken System Assets immediately prior to such Partial Taking, in accordance with Prudent Communication Service Industry Practice and Engineering Standards and otherwise reasonably satisfactory to the City.

12.2 Allocation of Condemnation Award. Except as set forth in Section 12.1(c), the total amount of any Condemnation Award will belong to and be paid to the City; provided, however, that Hotwire will be entitled to pursue its own claim with respect to any Partial Taking or Total Taking for Hotwire’s lost profits value and relocation expenses.

12.3 Temporary Taking. The taking of any System Asset will constitute a taking by Condemnation only when the use and occupancy by the taking authority has continued for longer than 180 consecutive days. During any shorter period, which will be a temporary taking, all the provisions of the System Lease will remain in full force and effect and any Condemnation Award allocable to the Lease Term will be paid to Hotwire.

12.4 Condemnation Awards Payable to Bond Financing Party. Notwithstanding anything in this ARTICLE XII to the contrary, in the event that any Bond Financing Party is entitled to any Condemnation Award, or any portion thereof, under the terms of any System Bond Finance Contract, such award will be applied, held and disbursed in accordance with the terms of the System Bond Finance Contract.

ARTICLE XIII

DEFAULT

13.1 Events of Default. Any one or more of the following will constitute an “Event of Default”:

(a) Hotwire fails to pay

   (i) any installment of Rent when due and such failure is not cured by Hotwire within 10 business days after written notice from the City of Hotwire’s failure to pay such installment of Rent when due, or

   (ii) any Additional Charge when due and such failure is not cured by Hotwire within 30 days after notice from the City of Hotwire’s failure to pay such Additional Charges when due;

(b) Hotwire:
(i) admits in writing its inability to pay its debts generally as they become due;

(ii) files a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) makes an assignment for the benefit of its creditors (provided, however, that any assignment, transfer, or conveyance permitted under Section 15.1 will not constitute a default);

(iv) consents to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(v) files a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

(c) Hotwire is adjudicated as bankrupt or a court of competent jurisdiction enters an order or decree appointing, without the consent of Hotwire, a receiver of Hotwire or of the whole or substantially all of Hotwire’s property, or approving a petition filed against Hotwire seeking reorganization or arrangement of Hotwire under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree is not vacated or set aside or stayed within 60 days from the date of the entry thereof;

(d) Hotwire is liquidated or dissolved other than as otherwise expressly permitted by Section 15.1;

(e) the estate or interest of Hotwire in the System Assets or any part thereof is levied upon or attached in any proceeding relating to more than $100,000 and the same is not vacated, discharged, or stayed pending appeal (or bonded or otherwise similarly secured) within the later of 60 days after commencement of such levy or attachment or 30 days after receipt by Hotwire of written notice from the City, provided that such notice will be in lieu of and not in addition to any notice required under Legal Requirements;

(f) except as a result of material damage, destruction or Condemnation of System Assets, Hotwire ceases operation of the System Assets or any substantial portion thereof for the Intended Use;

(g) any of the representations or warranties made by Hotwire in this Agreement or in any officer’s certificate provided to the City pursuant to this Agreement proves to be untrue when made in any material respect; provided however, that if the condition causing the representation or warranty to be untrue is susceptible of being cured, then such untrue representation will be an Event of Default hereunder only if such condition is not cured within 30 days of receipt of written notice of such breach by Hotwire from the City;
(h) any Required License or any System Contract, in either case material to the operation of the System Assets for the Intended Use, is at any time terminated or revoked or suspended for more than 30 days and such termination, revocation, or suspension is not stayed pending appeal;

(i) Hotwire, by its acts or omissions, causes the City to

(i) be in violation of Chapter 160A, Article 16 of the North Carolina General Statutes or any other Legal Requirement, and, if curable, such violation is not cured within 90 days of receipt by Hotwire of written notice by the City of such violations, or

(ii) lose the benefit of any exemption from the application of Sections 160A-340.1, 160A-340.4, 160A-340.5, or 160A-340.6 of the North Carolina General Statutes, including any determination by any Governmental Authority that any such acts or omissions by Hotwire result in the City’s failing to limit the provision of Communication Service to the Grandfathered Fibrant Service Area, or

(iii) the occurrence of a default or event of default under any provision (to the extent Hotwire has knowledge of such provision and the City’s obligations with respect thereto) of any System Bond Finance Contract, if the effect of such default or event of default is to cause, or to permit any Bond Financing Party (or any trustee, receiver, or agent acting on behalf of such Bond Financing Party) with respect to such System Bond Finance Contract, to cause, such System Bond Finance Contract (or the indebtedness secured thereby) to become or be declared due and payable (or redeemable) prior to its stated maturity;

(j) any event or condition occurs that

(i) results in any Hotwire Material Indebtedness becoming due prior to its stated maturity, or

(ii) enables or permits (with all applicable grace periods, if any, having expired) the holder or holders of any Hotwire Material Indebtedness or any trustee, receiver, or agent on its or their behalf to cause any Hotwire Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or exercise any other remedy (other than in the case of clauses (i) and (ii) any prepayment, repurchase, or redemption, arising out of or relating to a change of control or asset sale or any redemption, repurchase, conversion or settlement with respect to any indebtedness convertible into equity interests pursuant to its terms, provided that failure to consummate any such required prepayment, redemption, repurchase, conversion or settlement under any Hotwire Material Indebtedness will constitute an Event of Default), or
(iii) Hotwire fails to pay the principal of any Hotwire Material Indebtedness at the stated final maturity thereof (provided that this clause (iii) will not apply to secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness if such sale or transfer is not prohibited by this Agreement or by the documents providing for such indebtedness);

(k) one or more judgments for the payment of money in an aggregate amount in excess of $1,000,000 (other than as covered by insurance to the extent a claim therefor has been made in writing and liability therefor has not been denied by the insurer) is issued or rendered against Hotwire or any Affiliate of Hotwire or any combination thereof and the same will remain undischarged for a period of 60 consecutive days, if at the end of such period execution will not be effectively stayed;

(l) Hotwire fails to observe or perform any other term, covenant, or condition of this Agreement in any material respect that adversely affects the City and such failure is not cured by Hotwire within 30 days after written notice thereof from the City, unless such failure cannot with due diligence be cured within a period of 30 days, in which case such failure will not be deemed to be an Event of Default if Hotwire proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within 120 days after such written notice from the City; provided, however, that such notice will be in lieu of and not in addition to any notice required under applicable law;

(m) if (i) the Surety Bond is no longer in force and effect in accordance with its terms or (ii) if the City receives notice from the issuer of the Surety Bond that such bond will cease to remain in full force and effect in accordance with its terms and Hotwire has provided to the City evidence reasonably satisfactory to the City that such notice has been rescinded within 10 days of the City’s receipt thereof; and

(n) an Assignment or attempted Assignment, or a Sublease or attempted Sublease, of Hotwire’s interest in the System Lease will have occurred without the consent of the City (except in respect of an Assignment to which the City’s consent is not required under this Agreement such as the granting of rights to use a portion of the “dark fiber” in the Outside Plant for the provision of Data Transport Services).

13.2 City’s Default Remedies. Upon the occurrence of any Event of Default as provided in Section 13.1, the City will have the option, exercisable in its sole discretion, to pursue and obtain any one or more of the following remedies, without any notice or demand whatsoever in addition to, and not in limitation of, any other remedy or right permitted it by law or equity or by the System Lease:

(a) The City may terminate the System Lease, in which event Hotwire will immediately surrender the System Assets (including any Capital Improvements) to the City and otherwise perform all actions and undertakings required of Hotwire pursuant to Section 17.3, and if Hotwire fails to surrender the System Assets, the City may, without prejudice to any other remedy that it may have for possession or arrearage
in Rent, enter upon and take possession of the System Assets, and lock out, expel, or remove, in accordance with the law, Hotwire and any other person who may be occupying all or any part of the System Assets, including the NOC Premises and the Network Operations Center, without being liable for prosecution of any claim for damages. The System Lease and the Lease Term, as well as all of the right, title, and interest of Hotwire under this Agreement, will wholly cease and expire in the same manner and with the same force and effect as if the date of expiration were the date originally specified in this Agreement for the expiration of the System Lease and the Lease Term, and Hotwire will then quit and surrender the System Assets to the City. Upon such termination, Hotwire hereby agrees to pay to the City on demand, as liquidated damages:

(i) all Rent and Additional Charges accrued to the date of such termination, and:

(ii) an amount equal to the greater of (A) the Rent payable for 12 full Calendar Quarters immediately preceding such termination (adjusted as set forth in clause (iii), and (B) the maximum amount payable under the Surety Bond.

For purposes of computing Hotwire’s liability under the foregoing provision,

(iii) For purposes of determining the amount payable pursuant to Section 13.2(ii)

(A) if such termination occurs prior to December 31, 2021, the amount set forth in Section 13.2(a)(ii)(A) will be the quotient obtained by dividing (I) the total of all the amounts of Rent that Hotwire was obligated to pay during the Lease Term prior to termination by (II) the number of full Calendar Quarters in such period; and

(B) if such termination occurs less than 12 Calendar Quarters prior to the expiration of the Initial Term or Renewal Term, as applicable, the amount set forth in Section 13.2(a)(ii)(A) will be the product of the Rent payable for 12 full Calendar Quarters immediately preceding such termination and a fraction, the numerator of which is the number of Calendar Quarters or portions thereof remaining in the Initial Term or Renewal Term, as applicable, and the denominator of which is 12.

**HOTWIRE ACKNOWLEDGES AND CONFIRMS, AND HOTWIRE AND THE CITY AGREE, THAT THE CITY WILL HAVE NO DUTY TO MITIGATE DAMAGES AND THAT THE CITY WILL NOT BE RESPONSIBLE OR LIABLE TO HOTWIRE FOR ANY FAILURE TO RE-RENT OR RE-LET THE SYSTEM ASSETS OR TO RESUME OPERATION OF THE FIBRANT SYSTEM. IF THE CITY DOES SO RE-RENT OR RE-LET THE PREMISES OR RESUME OPERATION OF THE FIBRANT SYSTEM, THE CITY WILL HAVE NO OBLIGATION OR LIABILITY TO HOTWIRE TO COLLECT ANY RENT OR OTHER PAYMENT DUE IN**
CONNECTION WITH ANY SUCH RE-RENTING OR RE-LETTING OR PROVIDE HOTWIRE ANY CREDIT OR OFFSET AGAINST LIQUIDATED DAMAGES PURSUANT TO THIS PARAGRAPH (a) FOR OR IN RESPECT OF ANY SUCH RENT OR ANY AMOUNT RECEIVED BY THE CITY FROM OR IN CONNECTION WITH THE CITY’S OPERATION OF THE SYSTEM ASSETS OR FIBRANT SYSTEM.

HOTWIRE AND THE CITY ACKNOWLEDGE, CONFIRM, AND AGREE THAT PAYMENT OF THE FOREGOING LIQUIDATED DAMAGES IS COMPENSATORY AND NOT PUNITIVE OR A PENALTY, SUCH AMOUNT BEING THE PARTIES’ REASONABLE ESTIMATION OF THE ACTUAL LOSS THAT THE CITY WOULD INCUR AS A RESULT OF ANY SUCH EVENT OF DEFAULT. HOTWIRE AND THE CITY ALSO ACKNOWLEDGE THAT THE CITY’S ACTUAL DAMAGES IN RESPECT OF SUCH EVENT OF DEFAULT WOULD BE DIFFICULT TO DETERMINE.

(b) Notwithstanding anything in Section 13.2(a) to the contrary, if at any time a court of competent jurisdiction determines that the waiver set forth in such section of the City’s duty to mitigate damages or to be responsible or liable to Hotwire for any failure to re-rent or re-let the System Assets or to resume operation of the Fibrant System is invalid or unenforceable, in whole or in part, and whether as a result of the adoption of a statute or otherwise, then the City and Hotwire agree that Section 13.2(a)(ii) will automatically, and without any further action by either the City or Hotwire, be deemed modified and amended to read as follows: “an amount equal to the present value of the excess of (A) the stream of Rent and Additional Charges that the City would have received under the System Lease from the date of termination to the expiration date of the then-current Lease Term, determined as provided hereinbelow, minus (B) the amount of such Rent loss that Hotwire can prove was reasonably avoidable by the City, taking into consideration the reasonable costs of re-letting the System Assets or the City’s resuming operation of the Fibrant System, including, without limitation, reasonable brokerage commissions, the costs of any repairs necessary to the System Assets that otherwise would be or would have been Hotwire’s responsibility under the System Lease, together with interest on such present value at the Overdue Rate, and any reasonable attorney’s fees and expenses actually incurred. For the purpose of computing stream of Rent pursuant to clause (A) hereinabove, the quarterly Rent for which Hotwire will be liable after termination of the System Lease will be the quotient obtained by dividing (x) the total of all the amounts of Rent that Hotwire was obligated to pay during the entire period before such termination by (y) the number of full Calendar Quarters in such entire time. Hotwire will also pay a pro rata portion of such quarterly Rent, based upon the length of time between the previous payment of Rent and the date of such termination, and any Additional Charges with respect to such pro rata portion of a Calendar Quarter; and upon such termination Hotwire will be obligated to submit to the City a statement accurately showing
Communication Service Revenue, Rent, and Additional Charges for such portion of a quarter, together with such additional supporting financial records as the City may require.”

(c) Without terminating the Lease and without being liable for prosecution of any claim of damages therefor, the City may enter and take possession of the System Assets and perform whatever covenants Hotwire is obligated to do under the terms of the System Lease; and Hotwire agrees to reimburse the City on demand for any expenses including, without limitation, reasonable attorneys’ fees, that the City may incur in thus effecting compliance with Hotwire’s obligations under the System Lease. Hotwire further agrees that the City will not be liable for any damages resulting to Hotwire from such action, whether caused by negligence of the City or otherwise.

(d) Without terminating the System Lease and without being liable for prosecution of any claim of damages therefor, the City may enter upon and take possession of the System Assets and expel or remove Hotwire and any other person who may be occupying the System Assets, or any part thereof including the Customer Service Center, by entry, dispossessory suit or otherwise, without thereby releasing Hotwire from any liability under the System Lease, and without being liable for prosecution or any claim of damages therefor and, if the City so elects, make such alterations, modifications, and repairs as in the City’s sole judgment may be necessary to re-let the System Assets or permit the City to resume operation of the Fibrant System, including the offering and provision of Communication Services. The City may, but will be under no obligation to do so (except as may be provided by Legal Requirements), (i) re-let the System Assets or any portion thereof in the City’s or Hotwire’s name, but for the account of Hotwire, for such term or terms (which may be for a term extending beyond the Lease Term) and at such rental or rentals and upon such other terms as the City may deem advisable, with or without advertisement, and by private negotiations, and receive the rent therefor, or (ii) resume the operation of the System Assets and the Fibrant System, including the offering and provision of Communication Services, and collect and receive all revenues from or related to the provision of Communication Services. Hotwire hereby agrees to pay to the City the deficiency, if any, between all Rent reserved hereunder and the total rental applicable to the Lease Term actually obtained by such re-letting, if any, or the net revenues (after deduction of all applicable expenses, including all interest and finance cost incurred pursuant to any System Bond Finance Contract) actually received by the City from such resumed operation of the Fibrant System. In no event will Hotwire be entitled to any rentals received by the City or any amounts received by the City in respect of the operation of the Fibrant System in excess of the amounts due by Hotwire under the System Lease.

(e) In the event the City terminates the System Lease, Hotwire will, upon demand, pay or reimburse the City for all costs incurred by the City in recovering the System Assets. Further, the City, in addition to all other rights and remedies it may have, will have the right to remove all or any portion of Hotwire’s property (including any Hotwire Capital Improvements) from the System Assets and any property
removed may be disposed of, at Hotwire’s expense, in any manner the City deems reasonable or store such property at any public warehouse or elsewhere at the cost of and for the account of Hotwire, and the City will not be responsible for the care and safekeeping thereof. Hotwire hereby waives, and releases the City from any claim with respect to, any and all loss, destruction and/or damage or injury that may be occasioned by any of the aforesaid acts and agrees to indemnify the City for any loss, cost or liability incurred in connection with the exercise of the City’s rights under this paragraph (e).

(f) Hotwire hereby waives (to the extent legally permissible) any and all notices otherwise required under statutory or common law. To the extent of any inconsistency between this Agreement and any statutory or common law, it is the agreement of the Parties that this Agreement will prevail.

13.3 No Waiver; No Election of Remedies, No Acceptance of Surrender. Pursuit of any of the foregoing remedies will not preclude pursuit of any other remedy provided in this Agreement or any other remedy provided by law or at equity, nor will pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Rent or Additional Charges payable by Hotwire and due to the City under this Agreement or of any damages accruing to the City by reason of violation of any of the terms, covenants, warranties, and provisions of this Agreement. No re-entry or taking possession of the System Assets by the City or any other action taken by or on behalf of the City will be construed to be an acceptance of a surrender of the System Lease or an election by the City to terminate the System Lease unless express written notice of such intention is given to Hotwire. An election by the City to terminate Hotwire’s right of possession without terminating the System Lease will not preclude the City from terminating the System Lease at any time thereafter by giving Hotwire written notice of intention to terminate the System Lease. Forbearance by the City from enforcing one or more of the remedies provided in Section 13.2 will not be deemed or construed to constitute a waiver of any Event of Default.

13.4 Remedies Cumulative. Any and all rights, remedies, options, and elections given in this Agreement to the City are and will be cumulative and in addition to any other right, remedy, option, or election under this Agreement, at law, or otherwise, without waiver of or in derogation of any right or remedy given to it under any law now or hereafter in effect.

13.5 Default by City. In the event of any default by the City under this Agreement, Hotwire’s exclusive remedy will be an action for damages and Hotwire hereby waives and releases the benefit of any law granting it a lien upon or security interest of any kind in any property of the City or upon rent due the City. Prior to any such action, Hotwire will give the City written notice specifying such default with particularity, and the City will thereupon have a reasonable period, but in no event less than 30 days, in which to commence to cure any such default. Unless and until the City fails so to commence to cure any default after such notice or having so commenced thereafter fails to exercise reasonable diligence to complete such curing, Hotwire will have no remedy or cause of action by reason thereof. All obligations of the City under this Agreement will be construed as independent covenants and not as conditions.
ARTICLE XIV
HOTWIRE BANKRUPTCY

14.1 Adequate Protection. The City and Hotwire agree that, if Hotwire at any time becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding (a “Bankruptcy Proceeding”) under the Federal Bankruptcy Code, 11 U.S.C. Paragraph 101 et seq., as now enacted or hereafter amended (the “Bankruptcy Code”), then “adequate protection” of the City’s interest in the System Assets pursuant to the provisions of Sections 361 and 363 (or their successor sections) of the Bankruptcy Code prior to assumption and/or assignment of the System Lease by Hotwire will include, but not be limited to all (or any part) of, the following:

(a) The continued payment by Hotwire of Rent, quarterly as and when due, of an amount equal to the greater of Rent for such quarterly period as provided in Section 4.2, and (ii) the Quarterly Rent Target (as defined in Section 17.1(b)) for such quarterly period, together with all Additional Charges and all other sums due and owing under the System Lease and the performance of all other covenants and obligations under the System Lease by Hotwire; and

(b) The furnishing of a security deposit or Surety Bond by Hotwire in the amount of the Quarterly Rent Target for the quarter in which such proceeding was initiated.

14.2 Adequate Assurance of Future Performance. The City and Hotwire agree that, if Hotwire at any times becomes the subject of a Bankruptcy Proceeding, then “adequate assurance of future performance” by Hotwire and/or any assignee of Hotwire pursuant to Bankruptcy Code Section 365 (or its successor section) will include (but not be limited to) payment of an additional, new security deposit in the amount of the Quarterly Rent Target for the quarter in which such proceeding was initiated.

14.3 Assignment in Bankruptcy.

(a) Any Person to which the System is assigned pursuant to the provisions of the Bankruptcy Code will assume, and will be deemed without further act or deed to have assumed, all of the obligations of Hotwire arising under the System Lease on and after the effective date of such assignment. Any such assignee will, upon demand by the City, execute and deliver to the City an instrument confirming such assumption of liability.

(b) If this Agreement or the System Lease is assigned to any Person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment will be paid or delivered to the City, will be and remain the exclusive property of the City and will not constitute property of Hotwire or of the Estate of Hotwire within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting the City’s property under the preceding sentence not paid or delivered to the City shall be held in trust by Hotwire (or any trustee or...
debtor-in-possession with respect to Hotwire) for the benefit of the City and will be promptly paid to or turned over to the City.

(c) If in any Bankruptcy Proceeding Hotwire assumes the System Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any Person who will have made a *bona fide* offer to accept an assignment of the System Lease on terms acceptable to Hotwire, then notice of such proposed offer, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided to the City to ensure such Person’s future performance under the System Lease, including without limitation the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, will be given to the City by Hotwire no later than 20 days after receipt by Hotwire, but in any event no later than 10 days prior to the date Hotwire will make application to a court of competent jurisdiction for authority and approval to enter into such assumption and assignment, and the City will have the prior right and option, to be exercised by notice to Hotwire given at any time prior to the effective date of such proposed assignment, to accept an assignment of the System Lease upon the same terms and conditions and for the same consideration, if any, as the *bona fide* offer made by such Person, less any brokerage commissions, finder’s fees, or similar expenses that may be payable out of the consideration to be paid by such Person for the assignment of the System Lease.

(d) Notwithstanding anything in this Section 14.3 to the contrary, nothing in this section will limit, modify, or affect the City’s rights under Section 15.1.

14.4 **Payments Constitute Rent.** Notwithstanding anything in this Agreement to the contrary, all amounts payable by Hotwire to or on behalf of Hotwire under this Agreement, whether or not expressly denominated as “rent”, shall constitute “rent” for the purposes of Section 502(b)(7) of the Bankruptcy Code.

**ARTICLE XV**

**ASSIGNMENT AND SUBLETTING; CHANGE OF CONTROL**

15.1 **Prohibition.** Without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed, Hotwire will not assign, transfer, or convey the System Lease, or its leasehold interest, or any other right, title, or interest of Hotwire in the System Assets or any part thereof, or sublease the System Assets or any part thereof; or mortgage, pledge, hypothecate, grant a security interest in or deed of trust or charge of any kind upon, its leasehold interest under the System Lease or grant any concession or license to use the System Assets or any part thereof; or enter into any assignment or sublease, except to a wholly owned subsidiary of Hotwire or any Affiliate of Hotwire. Any attempt by Hotwire to do any of the foregoing will be void and of no effect. The City will be deemed to have consented to any such assignment, transfer, conveyance, sublease, or grant if the City has not, within 60 days’ of a written notice from Hotwire requesting the City’s consent to such transaction, notified Hotwire that it would not so consent.
15.2 Sale or Assignment by The City. Except as and to the extent provided in Section 15.3, nothing in this Agreement will in any manner prohibit the City from (i) selling, assigning, transferring, or conveying (including as security) all or any part of its interest in the System Assets, or (ii) selling, assigning, transferring, or conveying (including as security) this Agreement or the System Lease. In the event the City sells, assigns, transfers, or conveys its entire ownership in the System Assets, the City will be relieved of and released from all further obligations under this Agreement. The covenants, conditions, and agreements contained in this Agreement will inure to the benefit of and be binding upon the City, its successors and assigns, and will be binding upon Hotwire, its successors and assigns, and inure to the benefit of Hotwire, and only such assigns of Hotwire to whom the assignment by Hotwire has been consented to by the City as provided in Section 15.1.

15.3 Right of First Refusal. The City hereby grants and conveys to Hotwire a right of first refusal (the “Right of First Refusal”) to purchase the System Assets in accordance with the terms and subject to the conditions set forth in this Section 15.3. Except as otherwise expressly provided in Section 15.3(e) below, the City will not sell or convey all or substantially all of the System Assets (the “Sale Assets”) at any time during the period commencing on the Lease Commencement Date and ending on the date 12 years after the Lease Commencement Date (the “First Refusal Period”), except in accordance with the terms and conditions of this Section 15.3:

(a) If, during the First Refusal Period, the City receives a bona fide offer, or an acceptance of a bona fide offer made by the City (each, a “Purchase Offer”) from any Person (the “Offering Purchaser”) to acquire the Sale Assets and the City desires to accept such Purchase Offer, then the City will promptly provide written notice (a “Refusal Offer Notice”) of such proposed Purchase Offer, together with a copy of such Purchase Offer, to Hotwire.

(b) If, during the period commencing on the date of delivery of the Refusal Offer Notice and ending 60 days thereafter (the “Refusal Consideration Period”), Hotwire delivers written notice (a “Refusal Exercise Notice”) to the City that Hotwire elects to exercise its Right of First Refusal, accompanied by a binding, irrevocable offer to purchase the Sale Assets for the same price and on and subject to terms and conditions substantially the same in all material respects as set forth in the Refusal Offer Notice (which conditions may include the requirement of obtaining the approval of the City’s voters in a referendum and satisfy other conditions precedent) and requiring Hotwire to purchase the Sale Assets for such price and on such terms and conditions within 180 days of its Refusal Exercise Notice.

(c) If either (i) Hotwire delivers written notice (a “Decline Notice”) to the City of its intent not to exercise its Right of First Refusal as to such Refusal Offer Notice, or (ii) Hotwire does not deliver its Refusal Exercise Notice prior to expiration of the Refusal Consideration Period, then the City may, at any time during the one-year period commencing on the earlier of the Decline Notice and the expiration of the Refusal Period (the “Free Sale Period”), effect such sale for the same purchase price and upon terms and conditions substantially the same in all material respects.
as set forth in the Refusal Offer Notice, or on terms and conditions no less favorable to the City than those set forth in the Refusal Offer Notice. The City may, in its discretion, extend the Free Sale Period for an additional period of no more than 180 days to permit satisfaction of conditions with respect to any required referendum, regulatory or other legal requirements, or third-party approval right.

(d) If such Fibrant System sale is not completed within the Free Sale Period, as and if extended by the City as provided in Section 15.3 (c), then the Right of First Refusal will be reinstated and the Sale Assets will continue to be subject to the Right of First Refusal and may not be transferred by the City thereafter except in compliance with this Section 15.3.

(e) The Right of First Refusal and this Section 15.3 will not be applicable to any mortgage, deed of trust, conveyance or assignment as security, or any other conveyance or transfer, to a Bond Financing Party or to any sale or transfer of System Assets by a Bond Financing Party (or any trustee, collateral agent, or representative of a Bond Financing Party), whether pursuant to foreclosure, deed-in-lieu, or any other method, or to any Person who acquires System Assets, directly or indirectly, from a Bond Financing Party (or any trustee, collateral agent, or representative of a Bond Financing Party).

15.4 **Attornment.** If the City, at any time during the Lease Term, enters into a System Bond Finance Contract that grants a security interest in or deed of trust, lien, charge, pledge, or other encumbrance upon the System Assets or any part thereof, and should the Bond Financing Party to any such System Bond Finance Contract succeed to the interest of the City in the System Assets, whether by foreclosure or enforcement of such security interest, by operation of law, or otherwise, Hotwire will be bound to such Bond Financing Party under all the terms, covenants, and conditions of this Agreement for the balance of the Lease Term after such succession. Hotwire agrees that, should any Bond Financing Party at any time require a separate agreement of attornment regarding the matters covered by this Agreement, then Hotwire will, within five days after request therefor, enter into any such “attornment agreement,” provided the same does not materially and adversely modify any of the provisions of this Agreement and has no material adverse effect upon Hotwire’s continued occupancy and operation of the System Assets.

15.5 **Subordination.** At any time during the Lease Term, upon request of the City, Hotwire will, within five days after such request, subordinate its rights under the System Lease to the lien, charge, pledge, or security interest of any System Bond Finance Contract with respect to the System Assets or any part thereof, and to all advances made or hereafter to be made upon the security thereof, and will execute a document evidencing such subordination. In connection with any such subordination, the City will use its reasonable efforts to obtain from any Bond Financing Party a non-disturbance agreement that provides that, so long as Hotwire is not in default in the payment of Rent or Additional Charges, or in the performance of any of the other terms of the System Lease, Hotwire’s possession of the System Assets and Hotwire’s rights under this Agreement will not be disturbed, diminished, or interfered with by such Bond Financing Party or by the purchaser of the System Assets in any foreclosure proceedings,
provided that Hotwire agrees in writing to attorn such Bond Financing Party as provided in Section 15.4.

15.6 Notice to Bond Financing Party. If the System Assets are at any time during the Lease Term subject to any lien, charge, security interest, or pledge pursuant to a System Bond Finance Contract, then, in any instance in which Hotwire gives notice to the City alleging default by the City in performance of any covenant or obligation under this Agreement, Hotwire will also simultaneously give a copy of such notice to the Bond Financing Party under such System Bond Finance Contract (in the manner and at the address specified in any attornment agreement entered into by Hotwire with respect to such System Bond Finance Contract or as otherwise specified by the City in a written notice to Hotwire) and such Bond Financing Party will have the right (but no obligation) to cure or to remedy such default of the City during the same time that is permitted to the City under this Agreement for the remedying or curing of such default, plus an additional period of 30 days. Hotwire will accept such curative or remedial action taken by a Bond Financing Party with the same effect as if such action had been taken by the City, and Hotwire will not seek damages from the City or any other relief by reason of any such default of the City if such Bond Financing Party will have cured or remedied such default within the time allowed in this Section 15.6 (including the aforesaid additional 30-day period) or is then attempting to foreclose its lien upon or obtain possession of the System Assets.

15.7 Estoppel Certificate. Within 10 days of delivery from the City to Hotwire of such agreement, Hotwire will execute an estoppel agreement, in customary form, as requested by any Bond Financing Party or existing or proposed purchaser of the System Assets.

ARTICLE XVI

SURETY BOND

On or before the Lease Commencement Date, Hotwire will deliver to the City a surety bond in the amount of $3,000,000 and substantially in the form of Appendix 7 (the “Surety Bond”), as security for the faithful performance and observance by Hotwire of the terms, provisions, and conditions of the System Lease and the payment of Rent, Additional Charges, and other amounts payable by Hotwire under the System Lease. The Surety Bond will be issued by a surety licensed for the issuance of such bonds in the State of North Carolina and otherwise acceptable to the City. In the event of any Event of Default under this Agreement on the part of Hotwire, including any Event of Default resulting from the nonpayment of Rent or Additional Charges, the City may exercise any or all of its rights under the Surety Bond, including with respect to the payment of any Rent or Additional Charges and with respect any sum that the City may expend or may be required to expend by reason of Hotwire’s default in respect of any of the terms, covenants, and conditions of this Agreement. If Hotwire will have fully and faithfully complied with all the terms, provisions, covenants, and conditions of this Agreement, the Surety Bond will be returned to Hotwire upon the occurrence of both of (i) the expiration or earlier termination of the System Lease and (ii) delivery of entire possession of the System Assets to the City as required under this Agreement.
ARTICLE XVII

OPTIONAL EARLY TERMINATION; TRANSITION ARRANGEMENTS

17.1 Optional Termination by City. The City will have the right to terminate the System Lease prior to the Expiration of the Lease Term, by written notice as provided in this Section 17.1, upon the occurrence of any of the following (the “Optional Termination Conditions”):

(a) At any time after December 31, 2018, upon 10 days’ written notice to Hotwire (which notice may be given prior to December 31, 2018), if all Lease Conditions Precedent and City Lease Conditions Precedent have not been satisfied prior to such date;

(b) At any time after December 31, 2020, upon 180 days’ written notice to Hotwire if Hotwire fails to pay to the City, as Rent (net of Drop Installation Charges and any other credit against Rent to which Hotwire is entitled under this Agreement), amounts at least equal to the applicable Yearly Rent Target for any two Reference Years in any 3-Year Annual Reference Period.

(i) “Reference Quarter” means any Calendar Quarter during the Lease Term that commences after December 31, 2018.

(ii) “Reference Year” means any period of four consecutive Reference Quarters.

(iii) “3-Year Annual Reference Period” means any period of 12 consecutive Reference Quarters.

(iv) “Quarterly Rent Target” means, with respect to any Reference Quarter, the amount set forth in the table on Appendix 7 with respect to such quarter.

(v) “Yearly Rent Target” means, with respect to any Reference Year, the amount set forth in the table on Appendix 7 with respect to such Reference Year.

(c) At any time during the Renewal Term, upon 365 days’ written notice to Hotwire, if the City demonstrates that the continued performance of the System Lease could reasonably be expected to result in significant economic hardship to the City, become commercially impractical for the City, or otherwise make it practically impossible for the City to achieve the community and economic development purposes for which the Fibrant System was originally constructed; provided, however, that in no event will the City be permitted to terminate the System Lease if a principal purpose of such termination is to permit the City to enter into lease or sale of the Fibrant System on terms more favorable to the City than the System Lease; and, provided, further, that in the event Hotwire does not agree that the City has demonstrated such commercial impracticality or impossibility, then the City and Hotwire will submit such disagreement to an Independent Telecommunications Expert for resolution in accordance with the Independent Arbiter Procedure;
(d) At any time during the Lease Term if a court of competent jurisdiction determines, in a final non-appealable order or judgment, that the execution or performance of any material term, covenant, or condition of this Agreement by the City would result in a material violation by the City of any Legal Requirement or would result in the City’s loss of the benefit of any exemption from the application of Sections 160A-340.1, 160A-340.4, 160A-340.5, or 160A-340.6 of the North Carolina General Statutes, whether resulting from a change in law, any act or omission by Hotwire, for any reason; provided, however, that the City and Hotwire will use commercially reasonable efforts to modify the System Lease in a manner that would cure or eliminate such material violation or loss of benefits; and

(e) Upon written notice given after the occurrence of an Incumbent Provider Change of Control, as determined pursuant to the following procedure:

(i) Hotwire will give the City written notice of the occurrence of any Incumbent Provider Change of Control or proposed Incumbent Provider Change of Control;

(ii) The City will be deemed to have consented to such Incumbent Provider Change of Control unless the City notifies Hotwire in writing, within 60 days after receipt of such written notice, that the City does not consent thereto because the City has determined that such Incumbent Provider Change of Control could reasonably be expected to result in significant economic hardship to the City, cause the System Lease to become commercially impractical for the City, or otherwise make it practically impossible for the City to achieve the community and economic development purposes for which the Fibrant System was originally constructed;

(iii) If the City provides notice of its decision not to consent to such Incumbent Provider Change of Control as provided in paragraph (ii), then Hotwire will be deemed to have consented to the City’s objection and agreed not to complete such Incumbent Provider Change of Control unless Hotwire notifies the City within 30 days after receipt of the City’s written notice of its determination not to consent that Hotwire disputes such determination;

(iv) If Hotwire provides timely notice that it disputes the City’s determination, then the Parties will submit the disagreement to an Independent Telecommunications Expert for a determination of whether the City’s refusal to consent to such Incumbent Provider Change of Control is reasonable, such determination to be made in accordance with the Independent Arbiter Procedure;
If the Independent Telecommunications Expert determines that the City’s refusal to consent was reasonable and Hotwire nonetheless completes such Incumbent Provider Change of Control, then the City, upon written notice to Hotwire given within 30 days after the Independent Telecommunications Expert delivers its final determination, terminate the System Lease upon 180 days’ written notice.

“Incumbent Provider Change of Control” means any transaction or transactions as a result of which Persons controlling, directly or indirectly, any other provider of Communication Services within the Grandfathered Fibrant Service Area obtain Control, directly or indirectly, of Hotwire.

Optional Termination by Hotwire. Hotwire will have the right to terminate the System Lease prior to the Expiration of the Lease Term at any time after December 31, 2018, upon 10 days’ written notice to the City (which notice may be given prior to December 31, 2018), if all Lease Conditions Precedent and Hotwire Lease Conditions Precedent have not been satisfied prior to such date.

Transition Arrangements. Upon expiration or termination of the Lease Term for any reason, including a termination upon an Event of Default, at the request of the City, Hotwire will cooperate with the City and take all actions reasonably necessary (including providing all assistance reasonably requested by the City in effecting a transfer of the System Assets and operational control of the Fibrant System to the City or to any successor Hotwire of the Fibrant System, and delivering to the City originals or copies of all Customer Records), all in an orderly manner so as to limit and reduce to the extent possible any disruption to the continued orderly operation of the Fibrant System and the provision of Communication Services through the System Assets. Without limiting the foregoing:

(a) Except with respect to Required Capital Improvements and Elective Capital Improvements as to which the City elects to reimburse Hotwire pursuant to Section 8.11(d), Hotwire will promptly vacate and surrender the System Assets (including all Capital Improvements that have been conveyed to or otherwise become System Assets) to the City in the condition in which such System Assets were originally received from the City and Capital Improvements were originally installed in the Fibrant System, except as repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Agreement and except for ordinary wear and tear.

(b) Hotwire will, promptly upon exercise by the City of its rights to acquire such Capital Improvements, transfer and convey to the City such Required Capital Improvements and Elective Capital Improvements as the City may elect to acquire, as provided in Section 8.11(d).
(c) Hotwire will assign and transfer to the City or such successor Hotwire such Fibrant System Contracts to which Hotwire is a party, including Subscriber Agreements, Easements, Permits, Pole Agreements, and agreements with third-party providers of content and services, as the City may request, to the extent such contracts may be assigned under their terms, and the City will assume all liabilities under such assigned contracts.

(d) At the request of the City, Hotwire will enter into a transition management agreement (the “Post-Term Transition Agreement”), in a form reasonably acceptable to both Parties, pursuant to which Hotwire will agree to continue to operate, or assist the City in the operation of, the Fibrant System in accordance with all Required Licenses, Legal Requirements, System Contract Requirements, System Insurance Requirements, Competitive Standards, and Prudent Communication Service Industry Practice; provided, however, that such standards will not in any case impose on Hotwire any cost or burden greater than the standards applicable during the Lease Term.

(i) The Post-Term Transition Agreement will be consistent with transition services provided by Hotwire in other dispositions and will include, as may be reasonably agreed by the Parties, limited licenses of non-transferable intellectual property, indemnification, limitations of liability, force majeure, and confidentiality provisions.

(ii) The term of the Post-Term Transition Agreement will be 18 months, subject to the earlier termination of any service or of the entire agreement by the City, on 30 days’ written notice. The Post-Term Transition Agreement will require the City to pay to Hotwire, as a management fee, 110 per cent of the reasonable and documented operating costs and expenses of providing services under such agreement, including Hotwire’s standard allocated costs (applied consistently with Hotwire’s allocation of costs to its other facilities) and any license fees paid by Hotwire for use of equipment, all of which costs and expenses will be evidenced by such back-up records and information as the City may reasonably request). Hotwire will license or otherwise make available to the City during such transition period, for no consideration other than the management fee provided in this Section 17.3(d)(ii), all Capital Improvements, including any Elective Capital Improvements, not previously transferred and conveyed to the City.

(iii) Hotwire will make available to the City during such transition period such third-party programming and content and other third-party services used, offered, or provided by Hotwire during the 12-month period prior to such termination or expiration as the City may request, except to the extent prohibited by Legal Requirements or the terms of any agreement with such third-party providers binding on Hotwire. In the event Hotwire is prohibited from providing such services by Legal Requirements or such agreement terms, Hotwire will use its commercially reasonable efforts to procure
similar services for the City from such third-party providers on the best terms and conditions reasonably available from such providers.

(iv) The scope of transition services provided pursuant to such agreement will be those services reasonably requested by the City, including the following:

(A) Customer service and support including call center services;

(B) Network operations support;

(C) Accounting, accounts payable, accounts receivable, billing and collections;

(D) Recordkeeping; and

(E) Contract administration, including with respect to Pole Agreements.

(e) During the transition period, at the request of the City, Hotwire will continue to employ, and make available to the City, all or substantially all of Hotwire’s employees who had devoted a material amount of their time and efforts to the operation of the System Assets or the marketing, offering, and provision of Communication Services from the System Assets during the 12-month period prior to such termination or expiration.

(f) Hotwire will, upon the request of the City, accept the resignation of any Hotwire employee who agrees to accept employment with the City in connection with the operation of the System Assets following such transition period.

ARTICLE XVIII

EMPLOYEE TRANSITION MATTERS

18.1 Interim Period Employee Lease. The City will use its commercially reasonable efforts to continue to employ those City employees who devote their primary time and efforts to the Fibrant System (the “Fibrant Employees”) and make the Fibrant Employees available during the period commencing on the Lease Commencement Date and ending on the date six months after the Lease Commencement Date (such period, the “Employee Lease Period”) to provide services consistent with those services provided by such employees to the Fibrant System prior to the Lease Commencement Date as Hotwire may reasonably request. The City will be responsible for all wages, salaries, and other compensation earned by Fibrant Employees during the Employee Lease Period and will continue to comply with its general employment policies and procedures with respect to such employees. The City acknowledges that Hotwire’s agreement to enter into the System Lease and pay Rent as provided in this Agreement constitute full and adequate consideration for the lease of the Fibrant Employees. Hotwire will cooperate and consult with the City with respect to the need for the continuation of Employee Leased Services during the Employee Lease Period, and will advise the City whenever it determines, in its reasonable discretion, that the Employee Lease Services of any Fibrant Employee are no longer essential to Hotwire during the Employee Lease Period, or that any Fibrant Employee’s
services will not be required by Hotwire after termination of the Employee Lease Period. Hotwire agrees that the City may terminate or transfer any such Fibrant Employee during the Employee Lease Term.

18.2 Offers to City Employees.

(a) At any time during the Employee Lease Period Hotwire may, and on or before the date one month prior to the end of the Employee Lease Period Hotwire will, offer employment, at compensation and upon terms and conditions reasonably acceptable to such employees but subject to standard conditions of employment applicable to Hotwire’s employees generally, to those Fibrant Employees selected by Hotwire in its reasonable discretion to continue providing services to the Fibrant System as Hotwire employees. Hotwire will offer to such employees, to the extent permitted by law and Hotwire’s benefit plans, credit for prior service under the City’s benefit plans and such other measures to facilitate the transfer of benefits as are in accordance with Prudent Communication Service Industry Practice. On or before the end of the Employee Lease Period, Hotwire will employ those Fibrant Employees who have accepted such offer of employment.

(b) On or before the end of the Employee Lease Period, Hotwire will make available to all qualified Fibrant Employees who have not received, or who have not accepted, such an offer the opportunity to apply for employment by Hotwire or an Affiliate of Hotwire at Hotwire facilities other than the Fibrant System.

(c) The City will provide or make available to Hotwire such records relating to the Transferred Employees as Hotwire may reasonably request, subject to any applicable laws and regulations including laws and regulations with respect to the privacy of personal information.

ARTICLE XIX
CERTAIN COVENANTS

19.1 State Cable Television Franchise Act. Throughout the Lease Term, Hotwire will keep and maintain its authority to construct and operate a cable system pursuant to Chapter 66, Article 42 of the North Carolina General Statutes (the “State Cable Television Franchise Act”), and will comply with all provisions and requirements of such Act, and of any agreement with respect to the provision of Communication Services entered into pursuant to or permitted by such Act.

19.2 Parking Facilities. The City hereby grants to Hotwire, for the Lease Term, the nonexclusive right to use up to 10 parking spaces in the City’s parking lot adjacent to the Customer Service Center. Hotwire will cause its employees to park only in the parking spaces designated by the City for Fibrant System employees.
19.3 **Referendum.** On or before May 8, 2018, the City will take such actions as it reasonably determines necessary to permit the conduct of a “vote of the people” on the City’s proposal to lease the System Assets to Hotwire, all as provided in Section 160A-321(a) of the North Carolina General Statutes.

19.4 **Assignment and Assumption of Existing Fibrant Contracts.**

(a) On or before the Lease Commencement Date, the City will assign to Hotwire its rights pursuant to the Assigned Contracts, and Hotwire will assume and agree to perform all liabilities and obligations arising under or relating to the Assigned Contracts that are required to be performed on or after the Lease Commencement Date. Hotwire will indemnify the City and hold the City harmless from all such assumed liabilities and obligations.

(b) On or before the Lease Commencement Date, the City and Hotwire will enter into an assignment and assumption agreement to effect such assignment and assumption, which agreement will contain such terms and conditions as are customary for similar transactions.

(c) To the extent that the City’s rights under any contract or agreement that would constitute an Assigned Contract may not be assigned to Hotwire without the consent of another Person that has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. The City will use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible and Hotwire will cooperate with the City in such efforts. If any such consent will not be obtained or if any attempted assignment would be ineffective or would impair Hotwire’s rights under such contract or agreement, the City, to the maximum extent permitted by Legal Requirements and such contract or agreement, will act after the Lease Commencement Date as Hotwire’s agent in order to obtain for it the benefits thereunder and will cooperate with Hotwire in any other reasonable arrangement designed to provide such benefits to Hotwire.

(d) “Assigned Contracts” means the following:

(i) Traffic Agreement executed as of July 12, 2010, between the North Carolina Department of Transportation and the City; and

(ii) all Subscriber Agreements.

19.5 **Financial Statements.**

(a) Hotwire will make available to the City for its review, from time to time upon request by the City and in such manner as the City and Hotwire reasonably agree, its audited consolidated balance sheet as of the end of its most recently completed fiscal year such calendar year and its unaudited consolidated balance sheet as of the end of its most recently completed fiscal quarter.
(b) The City acknowledges that the foregoing balance sheets and the financial statements provided by Hotwire pursuant to Section 20.2(h) (collectively, the “Financial Statements” are “trade secrets” as defined in Section 66-152(3) of the North Carolina General Statutes that are being furnished to the City in connection with Hotwire’s performance of a “public contract” and an “industrial development project” as described in Section 132-1.2(1)c. of the North Carolina General Statutes; and that Hotwire hereby designates all such Financial Statements as “confidential” within the meaning of Section 132-1.2(1)d of the North Carolina General Statutes. Hotwire agrees to mark each of such Financial Statements “confidential” at the time of their initial disclosure to the City. The City will treat all such Financial Statements as Hotwire’s “Confidential Information” in accordance with Section 19.7.

19.6 Customer Records. The City will deliver to Hotwire at or prior to the Lease Commencement Date originals or copies of all customer records, including customer billing records, reasonably requested by Hotwire in connection with the delivery of Communications Services (“Customer Records”). Hotwire will retain and preserve all Customer Records in accordance with Prudent Communication Service Industry Practice.

19.7 Confidential Information.

(a) “Confidential Information” means all financial, technical, proprietary, confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, know-how, statements (written or oral) or other documents of any kind, that contain information concerning the business and affairs of a Party, which such party provides to the other Party, whether furnished before or after the date of this Agreement, and regardless of the manner in which it was furnished, and any material prepared by a Party, in whatever form maintained, containing, reflecting or based upon, in whole or in part, any such information; provided, however, that “Confidential Information” will not include information that: (i) was or becomes generally available to the public other than as a result of a disclosure by the other Party in breach of this Agreement; (ii) was or becomes available to the other Party on a non-confidential basis prior to its disclosure under this clause (ii) as evidenced by the written records of the other Party, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal or fiduciary duty; (iii) was independently developed by the other Party without the use of any Confidential Information, as evidenced by the written records of the other Party; or (iv) was disclosed to the City as System Maintenance Records pursuant to Section 7.1(f), Capital Improvement Records pursuant to Section 8.10(a), or as books and records of Easements, Permits, and Pole Agreements pursuant to Section 7.2(e). This Agreement, including the terms and conditions of the System Lease, is not Confidential Information.
(b) The Parties recognize and acknowledge that they may receive certain Confidential Information of the other Party. Each Party agrees that neither such Party, during the period commencing on the date hereof and ending on the date five years after the term of the termination or expiration of the System Lease, directly or indirectly use any Confidential Information of the other Party or disclose Confidential Information of the other Party to any person for any reason or purpose whatsoever, except as reasonably required in order to comply with the obligations and provisions of this Agreement.

(c) Notwithstanding anything to the contrary set forth in paragraph (b), in the event that a Party is requested or becomes legally compelled (pursuant to any legal, governmental, administrative or regulatory order, authority or process, including pursuant to Chapter 132 of the North Carolina General Statutes) to disclose any Confidential Information of the other Party, it will, to the extent reasonably practicable and not prohibited by law, provide the Party to whom such Confidential Information belongs prompt written notice of the existence, terms, or circumstances of such event so that the Party to whom such Confidential Information belongs may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 19.7. In the event that such protective order or other remedy is not obtained or the Party to whom such Confidential Information belongs waives compliance with this Section 19.7, the Party compelled to disclose such Confidential information will furnish only that portion of the Confidential Information or take only such action as, based upon the advice of its legal counsel, is legally required and will use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. The Party compelled to disclose the Confidential Information will cooperate with any action reasonably requested by the Party to whom such Confidential Information belongs to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

(d) The Parties agree that, except as required by law, no Party hereto will issue any press release relating to the terms of this Agreement without the prior written approval of the other Party, which approval may be granted or withheld in such Party’s sole discretion.

(e) Notwithstanding anything to the contrary in this Section 19.7:

(i) The City may include financial information and such information concerning the operation of the System Assets and, to the extent approved in writing by Hotwire, such approval not to be unreasonably withheld, Financial Statements furnished pursuant to Section 19.5(a), in offering memoranda, official statements, prospectuses, confidential information memoranda, or similar publications or marketing materials, rating agency presentations, investor presentations, or disclosure documents in connection with syndications, private placements, or public offerings of the City’s debt securities, installment financing obligations, or other indebtedness,
including any proposed System Bond Finance Contract. Hotwire agrees to provide such other reasonable information and, if necessary, reasonable participation in “road shows” and investor presentations at the City’s sole cost and expense, with respect to Hotwire and the System Assets to facilitate a public or private debt offering or syndication by the City. The City will provide to Hotwire a copy of any information prepared by the City to be published in connection with the foregoing, and Hotwire will have a reasonable period of time (not to exceed three business days) after receipt of such information to notify the City of any corrections;

(ii) In addition to any disclosures permitted under clause (i), the City may disclose Confidential Information of Hotwire contained in the Financial Statements to any Bond Financing Party or proposed Bond Financing Party with respect to any existing or proposed System Bond Finance Contract, and to actual or prospective arrangers, underwriters, investors, or lenders with respect to an existing or proposed System Bond Finance Contract, and to rating agencies, accountants, attorneys and other consultants in connection with any existing or proposed System Bond Finance Contract; provided, however, that such Persons are advised of the confidential nature of such information and agree, to the extent such information is not publicly available, to maintain the confidentiality thereof pursuant to this Section 19.7 hereof or pursuant to confidentiality provisions substantially similar thereto and to comply with all federal, state and other securities laws applicable with respect to such information;

(iii) The City may disclose Confidential Information regarding the System Lease and the operation of the System Assets, and to the extent the City determines it is reasonably necessary to do so, contained in Financial Statements to the City’s independent auditors or to the Local Government Commission or any other agency or authority of the State of North Carolina with jurisdiction over the City.

19.8 **Hazardous Substances.**

(a) Hotwire will not allow any Hazardous Substance to be stored or located in, on, under, or about any of the System Assets or incorporated in any way into any System Asset.

(b) Hotwire will provide to the City, within five business days after Hotwire’s receipt thereof, a copy of any notice, or notification with respect to, (i) any violation of an Legal Requirement relating to Hazardous Substances stored or located in, on, or under the System Assets or any adjacent property; (ii) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed or threatened with respect to the System Assets; (iii) any claim made or threatened by any Person against Hotwire or the System Assets relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substance; and (iv) any reports made to any federal, state or local
environmental agency arising out of or in connection with any Hazardous Substance in, on, under or removed from the System Assets, including any complaints, notices, warnings or assertions of violations in connection therewith.

(c) If Hotwire becomes aware of a material violation of any Legal Requirement relating to any Hazardous Substance in, on, under or about the System Assets or any adjacent property, or if Hotwire, the City, or the System Assets become subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise remediate the System Assets, Hotwire will immediately notify the City of such event and, at its sole cost and expense, cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. If Hotwire fails to implement and diligently pursue any such cure, repair, closure, detoxification, decontamination or other remediation, the City will have the right, but not the obligation, to carry out such action and to recover from Hotwire, as Additional Charges, all of the City’s costs and expenses incurred in connection therewith.

(d) Hotwire will indemnify, defend, protect, save, hold harmless, and reimburse the City for, from and against any and all costs, losses (including, losses of use or economic benefit or diminution in value), liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, “Environmental Costs”) (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on the City) incurred in connection with, arising out of, resulting from or incident to, directly or indirectly, before (except to the extent first discovered after the end of the Lease Term) or during (but not after) the Lease Term or such portion thereof during which the System Assets are leased to Hotwire (i) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Substances from, in, on or about the System Assets, including the effects of any of the foregoing on any Person or property within or outside the System Assets, (ii) the presence of any Hazardous Substances in, on, under or about the System Assets, and (iii) the violation of any Legal Requirement with respect to environmental matters.

19.9 Indemnification.

(a) In addition to the other indemnities contained in this Agreement, and notwithstanding the existence of any insurance carried by or for the benefit of the City or Hotwire, and without regard to the policy limits of any such insurance, Hotwire will protect, indemnify, save harmless and defend the City from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys’, consultants’ and experts’ fees and expenses (collectively, “Claims”), imposed upon or incurred by or asserted by third parties against the City by reason of: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the System Assets; (ii) any use, misuse, maintenance or repair by Hotwire of the System Assets; (iii) any failure on the part of Hotwire to perform or comply with any of the terms of this
Agreement; (iv) the non-performance by Hotwire of any of the terms and provisions of any and all existing and future contracts and agreements with respect to the System Assets; (v) any claim for malpractice, negligence or misconduct committed by any Person on or working from the System Assets; and (vi) the violation by Hotwire of any Legal Requirement.

(b) Subject to and to the extent permitted by Legal Requirements, including Sections 160A-321 and 160A-485 of the North Carolina General Statutes, the City will, to the fullest extent permitted by law, protect, indemnify, save harmless and defend Hotwire from and against all Claims imposed upon or incurred by or asserted by third parties against Hotwire by reason of: (i) any failure on the part of the City to perform or comply with any of the terms of this Agreement, including without limitation its obligations under Section 7.3; (ii) any claim for malpractice, negligence or misconduct committed by any employee or agent of the City on or working from the System Assets; and (iii) the violation by the City of any Legal Requirement.

(c) Any amounts that become payable under this Section 19.9 will be paid within 10 days after liability therefor is determined by a final non-appealable judgment of a court of competent jurisdiction or settlement, compromise, or other agreement of the Parties, and if not timely paid will bear interest at the Overdue Rate from the date of such determination to the date of payment. The indemnifying Party, at its sole cost and expense, will contest, resist and defend any such claim, action or proceeding asserted or instituted against the indemnified Party. Neither Party will enter into any settlement or compromise with respect to any claim, action or proceeding for which the other Party has an obligation to indemnify such Party under this Section 19.9 without obtaining the prior consent of the indemnifying Party, which consent will not be unreasonably withheld. For purposes of this Section 19.9, any acts or omissions by a Party, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of such Party (whether or not they are negligent, intentional, willful or unlawful), will be attributable to such Party.

19.10 Special and Consequential Damages. **IN NO EVENT WILL THE CITY OR HOTWIRE BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, DAMAGES BASED UPON A MULTIPLE OF REVENUES OR EARNINGS, OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES.**

19.11 Force Majeure. No Party will be deemed in default of this Agreement for any delay or failure to fulfill any obligation (other than payment of Rent and any other payment obligation) so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) will be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision will, as soon as reasonably practicable after the
occurrence of any such event, (i) provide written notice to the other Party of the nature and extent of any such *Force Majeure* condition; and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement, as soon as reasonably practicable. *Force Majeure* means with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which event (1) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (2) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any significant and prolonged failure in electrical or air conditioning equipment, or, solely to the extent the same was unavoidable and not in the control of a Party or the result of actions or omissions by a Party, interruptions or failures in service by a third-party service provider.

19.12 **City Access to System Assets.** Hotwire will permit the City or the City’s agents

(a) to inspect or examine the System Assets at any reasonable time, with 48 hours’ advance notice;

(b) to take such actions as the City determines to be necessary to address an emergency health or safety hazard or circumstance that threatens material damage to the System Assets; and

(c) at any time, during regular business hours of Hotwire, with 48 hours’ advance notice, to enter upon and show the System Assets to any prospective purchaser or successor Hotwire of the System Assets.

No such entry, construction, inspection, or examination will be construed as an eviction of Hotwire in whole or in part, and the Rent will in no manner abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the business of Hotwire because of the prosecution of such work.

19.13 **Quiet Enjoyment.** So long as the System Lease is in full force and effect, Hotwire will peaceably and quietly have, hold, and enjoy the System Assets for the Lease Term, free of any claim or other action by the City or anyone claiming by, through or under the City, but subject to all covenants, conditions, restrictions, easements, encumbrances and other matters affecting the System Assets as of the Lease Commencement Date or thereafter provided for in the System Lease or consented to by Hotwire. No failure by the City to comply with the foregoing covenant will give Hotwire any right to cancel or terminate the System Lease or abate, reduce, or make a deduction from or offset against the Rent, any Additional Charges, or any other sum payable under the System Lease, or to fail to perform any other obligation of Hotwire under this Agreement. Notwithstanding the foregoing, Hotwire will have the right, by separate and independent action, to pursue any claim it may have against the City as a result of a breach by the City of the covenant of quiet enjoyment contained in this Section19.13.
19.14 Memorandum of Lease. Upon the request of either Party, the City and Hotwire will (i) record this Agreement in the office of the Register of Deeds of Rowan County, North Carolina, or (ii) enter into a short-form memorandum of this Agreement, in form suitable for recording, and record such memorandum in such office. The Parties will share equally the out-of-pocket costs and expenses of recording this Agreement and/or any such memorandum. The Parties will fully cooperate with the City in removing from record any such memorandum upon the expiration or earlier termination of the Lease Term.

ARTICLE XX

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of City. The City represents and warrants to Hotwire as follows:

(a) The City is a municipal corporation organized and existing under the Constitution and laws of the State of North Carolina;

(b) The Constitution and laws of the State of North Carolina authorize the City to (i) execute and deliver this Agreement, and, subject to fulfillment of the conditions set forth in this Agreement, (ii) enter into the System Lease and other transactions contemplated by this Agreement, and (iii) carry out its obligations under this Agreement;

(c) This Agreement has been duly and validly authorized, approved, executed, and delivered by the City, and, subject to fulfillment of the conditions set forth in this Agreement, the performance by the City of its obligations under this Agreement has been approved and authorized under all Legal Requirements and, assuming due authorization, execution, and delivery of this Agreement by Hotwire, constitute valid, legal, and binding obligations of the City, enforceable in accordance with their terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency, and other laws affecting the enforcement of creditors’ rights generally. A resolution relating to the performance by the City of this Agreement and the transactions contemplated by this Agreement has been duly adopted by the City Council of the City, is in full force and effect, and has not been in any respect amended, modified, revoked, or rescinded;

(d) Neither the execution and delivery of this Agreement, or any other documents related hereto or thereto, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions, or provisions or any charter provision or restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing; and

(e) Except for the Pole Attachment Dispute, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City (i) challenging the validity or
enforceability of this Agreement or any other documents relating hereto or thereto or the performance of the City’s obligations hereunder and thereunder, or (ii) either individually or in the aggregate, could reasonably be expected to have a material adverse effect on the City.

20.2 Representations and Warranties of Hotwire. Hotwire represents and warrants to the City as follows:

(a) Hotwire is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania, and is duly qualified to transact business as a foreign limited partnership and in good standing in the State of North Carolina;

(b) Hotwire has all requisite limited partnership power and authority to enter into this Agreement, to perform the System Lease and each of its obligations under this Agreement, and to consummate the transactions contemplated in this Agreement;

(c) Hotwire has complied with all requirements for the award of a cable television franchise and commencement of cable television service under the State Cable Television Franchise Act; holds a valid franchise from the Secretary of State of the State of North Carolina granted under Section 66-351 of the North Carolina General Statutes; and otherwise has full power and authority to offer and provide Communication Services under this Agreement;

(d) The execution and delivery of this Agreement by Hotwire, the consummation by Hotwire of each of the transactions contemplated in this Agreement, and the performance by Hotwire of each of its obligations under this Agreement have been duly and validly authorized by all necessary partner action on the part of Hotwire in compliance with the limited partnership agreement of Hotwire and all Legal Requirements. This Agreement has been duly executed and delivered by Hotwire, and, subject to fulfillment of the conditions set forth in this Agreement and, assuming due authorization, execution, and delivery of this Agreement by the City, constitute valid, legal, and binding obligations of Hotwire, enforceable in accordance with their terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency, and other laws affecting the enforcement of creditors’ rights generally;

(e) The execution and delivery of this Agreement by Hotwire and the consummation of each of the transactions and the performance of each of the obligations contemplated by this Agreement (i) do not conflict with, violate or breach (whether with or without notice a lapse of time or both), require the consent of any Person to or otherwise result in a material detriment to Hotwire under, (A) its limited partnership agreement and other organizational documents or (B) any agreement to which it is a party or by which its assets or property is bound or any Legal Requirement applicable to it;

(f) No approval or consent is required from any Governmental Authority with respect to the entering into or performance by Hotwire of this Agreement or any other
documents related hereto or thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained;

(g) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting Hotwire (i) challenging the validity or enforceability of this Agreement or any other documents relating hereto or thereto or the performance of Hotwires obligations hereunder and thereunder, or (ii) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on Hotwire.

(h) Hotwire has heretofore made available to the City its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2016, audited by and accompanied by the opinion of RSM US, LLP, independent public accountants, and its unaudited consolidated balance sheet and related statements of income, stockholder’s equity and cash flows as of the end of and for the fiscal year ended December 31, 2017, and the then elapsed portion of the fiscal year, certified by its Director of Finance. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Hotwire Borrower and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP, in the case of the unaudited statements subject to normal year-end audit adjustments and the absence of footnotes. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of Hotwire and its consolidated subsidiaries as of the date thereof.

(i) There has not occurred since December 31, 2016, any event, occurrence, change, state of circumstances or condition that, individually or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect on Hotwire, its business, or operations, or on its ability to perform its obligations under this Agreement.

ARTICLE XXI

INDEPENDENT ARBITER PROCEDURE

21.1 Certain Defined Terms. The following terms will have the meanings set forth below for all purposes of this Agreement:

(a) “Independent Arbiter Procedure” means the procedure described in Section 21.2.

(b) “Independent Accountant” means an independent certified public accounting firm of recognized national or regional standing, which has experience and accounting expertise in Communication Services, and which has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.
(c) “Independent Appraiser” means an appraiser or appraisal firm of recognized national or regional standing, which has experience and appraisal expertise in valuing and appraising equipment of the type included in Required Capital Improvements and Elective Capital Improvements, and which has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.

(d) “Independent Arbiter” means an Independent Accountant, and Independent Appraiser, or an Independent Telecommunications Expert.

(e) “Independent Telecommunications Expert” means a Person (including a consulting firm) of recognized national standing, who has experience and expertise in the providing of Communication Services by broadband fiber-optic cable, and who has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.

21.2 Procedure. In the Parties disagree or dispute any matter that is to be submitted to an Independent Arbiter pursuant to this Agreement, including without limitation pursuant to Sections 4.3, 4.5 4.6, 8.11(d), and 17.1(c), then either Party may provide a written notice (an “Independent Resolution Notice”) to the other Party demanding that the matter will be submitted to an Independent Arbiter and determined pursuant to the following procedure (the “Independent Arbiter Procedure”):

(a) the City will promptly, and in any event within 30 days of delivery of such Independent Resolution Notice, appoint the Independent Arbiter, but such appointment will be subject to Hotwire’s consent, which consent will not be unreasonably withheld, conditioned, or delayed;

(b) the City and Hotwire will jointly engage the Independent Arbiter pursuant to an engagement agreement on reasonable and customary terms, including that the City (subject to and to the extent permitted by Legal Requirements, including Section 160A-485 of the North Carolina General Statutes) and Hotwire would jointly indemnify the Independent Arbiter against claims customarily indemnified in such engagements;

(c) the City and Hotwire will each be responsible for half of the fees and expenses of the Independent Arbiter;

(d) if the Parties have not engaged the Independent Arbiter pursuant to this Section 21.2 within 45 days of the Independent Resolution Notice, then either Party will be entitled to petition the Superior Court of North Carolina in Rowan County, North Carolina, to appoint such Independent Arbiter pursuant to Section 1-569.11 of the North Carolina Revised Uniform Arbitration Act;

(e) resolution or determination of the matter submitted to the Independent Arbiter will be effected pursuant to such procedures as the Independent Arbiter may reasonably establish pursuant to such engagement agreement; and
(f) the resolution or determination by the Independent Arbiter will be binding and conclusive on the Parties for all purposes of this Agreement, absent manifest error by the Independent Arbiter.

ARTICLE XXII

MISCELLANEOUS PROVISIONS

22.1 **Survival.** Anything contained in this Agreement to the contrary notwithstanding, all claims against, and liabilities and indemnities of Hotwire or the City arising prior to the expiration or earlier termination of the Lease Term will survive such expiration or termination.

22.2 **Severability.** If any term or provision of this Agreement or any application thereof will be held invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby.

22.3 **Successors and Assigns.** This Agreement will be binding upon the City and its successors and assigns and, subject to the provisions of Section 15.1, upon Hotwire and its successors and assigns.

22.4 **Governing Law.** THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NORTH CAROLINA, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS AGREEMENT (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) WILL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

22.5 **Jurisdiction and Venue.** The Parties agree that the Superior Court of North Carolina, in Rowan County, North Carolina, will be the exclusive jurisdiction and venue for all disputes under or related in any way to this Agreement, the performance hereof, and any transactions contemplated hereby, and that venue in such court is proper and convenient for the Parties.

22.6 **Entire Agreement.** This Agreement, and all annexes, appendices, exhibits, and schedules hereto, constitute the entire and final agreement of the Parties with respect to the subject matter hereof, and may not be changed or modified except by an agreement in writing signed by the Parties. All prior or contemporaneous written or oral understandings, agreements, or negotiations relative to the leasing of the System Assets and the other matters contemplated in this Agreement are merged into and revoked by this Agreement.

22.7 **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which will be a valid and binding original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission or transmission in portable document format (.pdf) will be as effective as delivery of an original manually executed counterpart of this Agreement.
22.8  **Interpretation.** Both Parties acknowledge that they have each been represented by counsel and this Agreement and every provision hereof has been freely and fairly negotiated. All provisions of this Agreement will be interpreted according to their fair meaning and will not be strictly construed against any Party.

22.9  **Time of Essence.** **TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED.**

22.10 **Further Assurances.** Each Party agrees to promptly execute and deliver all documents and instruments, and to take such further actions, as may be reasonably requested by the other Party to give effect to the provisions of this Agreement.

22.11 **Notice.** All notices and other communications hereunder must be in writing and will be deemed given (a) when received when sent by email or facsimile by the party to be notified, provided, however, that notice given by email or facsimile will not be effective unless either (i) a duplicate copy of such email or fax notice is promptly delivered by a nationally recognized overnight delivery service (such as Federal Express), or (ii) the receiving party delivers a written confirmation of receipt for such notice either by email or fax or by delivery by such a nationally recognized overnight delivery service, in each case to the Party to be notified at the following address:

**To the City:**

City of Salisbury  
132 N. Main Street  
Salisbury, NC 28144  
Attention: City Manager  
lbail@salisburync.gov

with a copy to:  
City of Salisbury  
132 N. Main Street  
Salisbury, NC 28144  
Attention: City Attorney  
rlawt@woodsonlawyers.com

**To Hotwire:**

Hotwire Communications, Ltd.  
3 Bala Plaza E, Suite 700  
Bala Cynwyd, PA 19004  
Attention: Jonathan Bullock  
jbullock@hotwirecommunication.com

with a copy to  
Hotwire Communications, Ltd.  
3 Bala Plaza E, Suite 700
Bala Cynwyd, PA 19004
Attention: General Counsel
[email address]

or to such other address as any Party may specify by written notice so given, and such notice will be deemed to have been delivered as of the date so telecommunicated.

22.12 **No Third-party Beneficiaries.** Each of the City and Hotwire agrees that (a) their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Party hereto, in accordance with and subject to the terms of this Agreement, and (b) this Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

CITY OF SALISBURY

By: _________________________________
   W. Lane Bailey
   City Manager

HOTWIRE COMMUNICATIONS, LTD.

By: Hotwire Communications, [xxx]
   Its General Partner

By: _________________________________
   [Authorized Signatory]

[Jonathan, what is full name?]
APPENDIX 1

DESCRIPTION OF FIBRANT SYSTEM

The Fibrant System is a fiber-optic broadband network owned and operated by the City of Salisbury, providing Internet, Video, and Voice services to approximately 3,500 residences and businesses in the Grandfathered Fibrant Service Area. The system’s Outside Plant comprises approximately 353 miles of fiber-to-the-premises infrastructure, consisting of approximately 217 miles of aerial plant and 135 miles of underground plant, as more particularly shown in the attached Fibrant Fiber Map made a part of this Appendix. The system also includes the NOC and Head End, which are housed in the City’s Customer Service Center at 1415 Martin Luther King, Jr., Boulevard, as more particularly described in Appendix 4, and certain Satellite Dish Equipment at 310 Hill Street, Salisbury, North Carolina. The system contracts with Momentum Wholesale LLC for delivery of certain telephone services and support and with NeoNova Network Services for telephone-based customer service and help desk support.
APPENDIX 2

DEFINITIONS

“3-Year Annual Reference Period” has the meaning set forth in Section 17.1(b)(iii).

“2008 Certificates of Participation” has the meaning set forth in Recital B.

“2013 Certificates of Participation” has the meaning set forth in Recital B.

“2016 Deed of Trust” has the meaning set forth in Recital C.

“2016 Installment Financing Contract” has the meaning set forth in Recital C.

“Additional Charges” has the meaning set forth in Section 4.7.

“Affiliate” means, with respect to Hotwire, any Person who or which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Hotwire.

“Agreement Effective Date” has the meaning set forth in the preamble to this Agreement.

“Annual Capital Improvement Summary” means a report showing the cost, location, completion date, and expected life of, and such other information as the City may reasonably request with respect to, each Capital Improvement installed or constructed during the preceding calendar year. Each Annual Capital Improvement Summary will identify Capital Improvements as either Replacement Capital Improvements or Elective Capital Improvements.

“Assignment,” with respect to the System Lease, means any sale, assignment, transfer, or other dispossession, including as collateral or security for any indebtedness or other liability, and including any leasehold mortgage.

“Audit Claim” has the meaning set forth in Section 4.8(c).

“Bankruptcy Code” has the meaning set forth in Section 14.1.

“Bankruptcy Proceeding” has the meaning set forth in Section 14.1

“Bond Financing Party” means Sun Trust Institutional or any other Person that provides credit to the City pursuant to any System Bond Finance Contract including the Bond Financing Party to the Refinance Contract.

“Bond Refinance Contract” has the meaning set forth in Section 3.3(b)(i).
“Calendar Quarter” means a three-month period commencing on the first day of January, April, July, and October. Rent and Additional Charges will be prorated as to any partial quarters at the beginning and end of the Lease Term.

“Capital Improvement” means any equipment or component installed in or used in the operation of the Fibrant System, any extension, expansion, improvement of, addition to, replacement of, or overbuild of the Fibrant System or any System Assets, including fiber, that would be treated as a “capital asset” under applicable accounting principles, including without limitation any Required Capital Improvements and Elective Capital Improvements.

“Capital Improvement Records” means cost records, invoices, purchase orders, construction and installation contracts, depreciation schedules, maps, drawings, and such other records as may reasonably be requested by the City to establish the cost and expected life of any Capital Improvement.

“City” has the meaning set forth in the preamble to this Agreement.

“City Council” means the council elected to govern the City pursuant to Section 160A-66 of the North Carolina General Statutes.

“City Lease Conditions Precedent” has the meaning set forth in Section 3.3(b).

“City Manager” means the manager of the City appointed by the City Council pursuant to Section 160A-147 of the North Carolina General Statutes.

“Claims” has the meaning set forth in Section 19.9(a).

“Communication Service” has the meaning set forth in Section 6.2.

“Communication Service Revenue” has the meaning set forth in Section 4.2(b).

“Competitive Requirements” means the offering and provision of Communication Services of a type and quality, and at a price, that are in all respects

(i) competitive with the services offered by providers from time to time offering Communications Services in the City of Salisbury or other areas of Rowan County served by the System Assets; and

(ii) no less favorable than the type, quality, and price of Communications Services offered by Hotwire or its Affiliates in other locations where Hotwire or such Affiliates offer Communications Services, taking into account differences in pricing of third-party content and products.

“Condemnation” means the exercise of any governmental power, whether by legal proceedings or otherwise, by a state, city, municipality, or other Governmental Authority or a voluntary sale or transfer by the City to any such condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.
“Condemnation Award” means all compensation, sums, or anything of value awarded, paid, or received as the result of a Total Taking or Partial Taking.

“Confidential Information” has the meaning set forth in Section 19.7(a).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Hotwire or the general partner of Hotwire, whether through ownership of voting securities, by contract, or otherwise.

“CPI Index” has the meaning set forth in Section 7.2(b).

“Customer Premises Equipment” has the meaning set forth in Section 3.1(j).

“Customer Records” has the meaning set forth in Section 19.6.

“Customer Service Center” has the meaning set forth in Section 3.1(a).

“Data Center Service” has the meaning set forth in Section 4.2(f).

“Data Transport Service” has the meaning set forth in Section 4.2(g).

“Decline Notice” has the meaning set forth in Section 15.3(c)

“Drop” means a fiber connection from an optical tap (whether from a pole or underground cable terminus) in the public right-of-way or other land reserved for utility construction or other public use to the premises of a customer or subscriber of any Communication Services and includes any “downlead,” and located between the demarcation point of the Outside Plant and the customer’s premises as shown on the drawing included in Appendix 1.

“Drop Installation Charge” has the meaning set forth in Section 4.3

“Easements” means all easements (whether express or prescriptive), real property licenses, rights-of-way, or similar agreements (such as railroad crossing agreements and leases of conduits) benefitting or otherwise affecting the System Assets, including any of the foregoing that afford the City the right to access and use the Outside Plant (or any portion thereof) or to locate or install Outside Plant fiber and other components and any easements in connection with Capital Improvements made by Hotwire.

“Elective Capital Improvement” has the meaning set forth in Section 8.6.

“Electricity” has the meaning set forth in Section 4.11(a)(ii).

“Electronics” means any and all electronics and electronic components that process, compress, modify and route signals along the Outside Plant, including digital subscriber line access multiplexers, digital loop carriers, routers, wave division multiplexers, and switches.
“Encumbrance” means any encumbrance, charge, security interest, pledge, mortgage, lien, hypothecation, right of others (including any right or obligation to acquire, option, right of first refusal, right of first offer, or right of pre-emption), claim, interest, easement, covenant, burden, title defect, title retention provision, surety, assignment, or other restriction or limitation of any kind whatsoever, in each case other than any Permitted Encumbrance.

“Event of Default” has the meaning set forth in Section 13.1.

“Engineering Standards” means standards and specifications for the construction, installation, repair, or replacement of Capital Improvements, and the use of materials and equipment, that are (i) in accordance with Required Licenses, Legal Requirements, Prudent Communication Service Industry Practice, System Insurance Requirements, System Contract Requirements, and Manufacturer’s Recommendations; (ii) requiring no less quality, precision, and care than the engineering standards applied by Hotwire or its Affiliates in distribution systems similar to the Fibrant System; (iii) do not degrade the structural integrity of the Fibrant System or any material System Asset, and (iv) in the case of any Capital Improvement that would reasonably be expected to cost $200,000 or more, the construction, installation, repair, or replacement thereof will be (A) effected pursuant to detailed plans and specifications approved by the City, and (B) conducted under the supervision of a qualified architect or engineer selected by Hotwire and approved by the City, such approval in each case not to be unreasonably withheld, conditioned, or delayed.

“Extension” has the meaning set forth in Section 9.1(a).

“Fair Market Value” of any asset or group of assets means, as of the relevant date of determination, the price that a willing buyer, not affiliated with the seller and under no compulsion to buy, would pay in an arms-length transaction for such assets to a willing seller, under no compulsion to sell.

“Fibrant Employees” has the meaning set forth in Section 18.2(a).

“Fibrant Vehicles” has the meaning set forth in Section 3.1(j)

“Fibrant System” has the meaning set forth in Recital A.

“Financial Statements” has the meanings set forth in Section 19.5(b).

“First Refusal Period” has the meaning set forth in Section 15.3.

“Force Majeure” has the meaning set forth in Section 19.11.

“Free Sale Period” has the meaning set forth in Section 15.3(c).

“Full Replacement Cost” means the actual replacement cost of the insured property, without deduction for physical depreciation.
“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination, applied on a basis consistent with prior periods.

“Governmental Authority” means any national, federal, state, provincial, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory, or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions.

“Grandfathered Fibrant Service Area” has the meaning set forth in Section 6.1(a).

“Head End” has the meaning set forth in Section 3.1(d).

“Head End Premises” has the meaning set forth in Section .

“Hotwire” has the meaning set forth in the preamble to this Agreement.

“Hotwire Lease Conditions Precedent” has the meaning set forth in Section 3.3(c).

“Hotwire Material Indebtedness” means any indebtedness for money borrowed, the deferred purchase price of property or services, or obligations as an account party in respect of any letter of credit, guaranty, or bond of Hotwire or any Affiliate of Hotwire in an aggregate principal amount exceeding $5,000,000.

“HVAC Service” has the meaning set forth in Section 4.11(a)(iv)

“HVAC Equipment” has the meaning set forth in Section 8.1(a).

“Incumbent Provider Change of Control” has the meaning set forth in Section 17.1(e)(vi)

“Independent Appraiser” has the meaning set forth in Section 21.1(c).

“Initial Term” has the meaning set forth in Section 3.4(a)(iii).

“Intended Use” has the meaning set forth in Section 6.1(a).

“Lease Commencement Date” has the meaning set forth in Section 3.4(a).

“Lease Conditions Precedent” has the meaning set forth in Section 3.3(a).
“Lease Term” has the meaning set forth in Section 3.4(a)(ii).

“Legal Requirements” means all Federal, state, and local laws, including common law, constitutions, statutes, ordinances, rules, regulations, policies, orders, codes, decrees and judgments, and Required License conditions or restrictions, as amended from time to time, now or hereafter in effect or promulgated.

“Manufacturer’s Recommendations” means, with respect to all Electronics, equipment, and fiber that are at any time a part of the System Assets, Required Capital Improvements, or Elective Capital Improvements, the instructions, procedures, and recommendations issued by the manufacturer relating to the operation, maintenance, or repair of such Electronics, equipment, or fiber, and any revisions or updates thereto from time to time issued by the manufacturer.

“Material Adverse Event” means, with respect to a Party, a change, event, occurrence, state of facts, or development that (i) has a material adverse effect on the financial condition, business, or results of operations of the Party, or (ii) prevents the Party from consummating the System Lease.

“NID” means any network interface device that connects the Outside Plant to Customer Premises Equipment. Each NID serves as the demarcation point between the Drop and the Customer Premises Equipment.

“NOC” means the network operations center for the Fibrant System, housed and located in the NOC Premises at the Customer Service Center.

“NOC Furnishings and Equipment” has the meaning set forth in Section 3.1(c)

“NOC Premises” has the meaning set forth in Section 3.1(a).

“Optional Termination Conditions” has the meaning set forth in Section 17.1

“Other Service” has the meaning set forth in Section 4.2(i).

“Outside Plant” has the meaning set forth in Section 3.1(f)

“Outside Plant Maps” has the meaning set forth in Section 3.1(h).

“Overdue Rate” means 1.5 percent per month simple interest.

“Partial Taking” has the meaning set forth in Section 12.1(b).

“Permitted Encumbrance” means: (a) liens for ad valorem or property taxes not yet due and payable, for which the lienor has established and maintained adequate reserves in its financial records in accordance with GAAP; (b) Encumbrances imposed by Legal Requirements, such as materialmen’s, mechanics’, carriers’, workmen’s and repairmen’s liens and other similar liens arising in the ordinary course of business and securing obligations not yet due and payable; (c) encumbrances imposed by Easements, Permits, and Pole Agreements to which the City is a
party; (d) pledges or deposits arising in the ordinary course of business to secure obligations under workers’ compensation laws or similar legislation or to secure public or statutory obligations; (e) minor survey exceptions, reciprocal easement agreements and other customary encumbrances on title to real property that (i) were not incurred in connection with any indebtedness, (ii) do not render title to the property encumbered thereby unmarketable or materially affect the value of or use of such property; and (f) Encumbrances that do not, individually or in the aggregate, materially adversely affect the value of or the use of property for its current and anticipated purposes.

“Party” and “Parties” have the meanings set forth in the preamble to this Agreement.

“Permits” means all permits, franchises, licenses, or similar agreements required for the provision, routing and operation of Communication Services to business and consumers on or from the System Assets, including permits, franchises, licenses, or similar agreements granted by Governmental Authorities (including permits from highway departments and state and county agencies, and franchise and right-of-way license agreements with local governments) that provide the City with the right to access and use public rights of way for the installation or locations of Outside Plant fiber and components.

“Person” means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, estate, joint venture, association or other organization, any division, segment or other unincorporated business, whether or not a legal entity, or a Governmental Authority.

“Pole Agreements” means all pole attachment agreements or similar arrangements with third parties (including BellSouth Telecommunications, Inc, D/B/A AT&T North Carolina, and Duke Energy Carolinas, LLC) that either own the poles to which the Outside Plant fiber and other components are affixed or that attach their lines to the poles that constitute part of the System Assets that provide the City with the right to access and use telephone or utility poles, conduits or similar facilities for the installation or location of Outside Plant fiber, lines, or components.

“Pole Attachment Dispute” has the meaning set forth in Section 7.3.

“Post-Term Transition Agreement” has the meaning set forth in Section 17.3(d).

“Prudent Communication Service Industry Practice” means the standard of operating and maintenance practice, at any particular time, methods and acts, that, in light of the relevant facts, is generally engaged in or approved by a significant portion of the owners of distribution systems that are similar to the Fibrant System, that would have been expected to accomplish the desired result consistent with good business practice, reliability and safety, and in compliance with all Manufacturer’s Recommendations.

“Purchase Offer” has the meaning set forth in Section 15.3(a).

“Quarterly Rent Target” has the meaning set forth in Section 17.1(b)(iv).

“Reference Quarter” has the meaning set forth in Section 17.1(b)(i).
“Reference Year” has the meaning set forth in Section 17.1(b)(ii).

“Referendum” has the meaning set forth in Recital F.

“Refusal Exercise Notice” has the meaning set forth in Section 15.3(b).

“Refusal Offer Notice” has the meaning set forth in Section 15.3(a).

“Refusal Consideration Period” has the meaning set forth in Section 15.3(b).

“Renewal Conditions Precedent” has the meaning set forth in Section 3.4(b)

“Renewal Reference Period” has the meaning set forth in Section 3.4(b)(i).

“Renewal Term” has the meaning set forth in Section 3.4(a)(iv).

“Rent” has the meaning set forth in Section 4.2(a).

“Replacement Capital Improvement” means any Capital Improvement that constitutes maintenance, repair, overbuild, or replacement of any System Asset, and any upgrade of a System Asset to the extent required to comply with Prudent Communication Service Industry Practice or Competitive Standards, including the replacement of fiber.

“Required License” means any license, permit, franchise, approval, finding of suitability, or other authorization issued by a federal, state or local governmental entity or regulatory agency with respect to the operation or provision of Communication Services to businesses, residences, or consumers, or otherwise required by any Legal Requirement applicable to the Fibrant System or any System Assets.

“Retained Dark Fiber” has the meaning set forth in Section 3.2.

“Revenue Percentage Reopener Right” has the meaning set forth in Section 4.6.

“RFP” has the meaning set forth in Recital D.

“Right of First Refusal” has the meaning set forth in Section 15.3.

“Sale Assets” has the meaning set forth in Section 15.3.

“Satellite Dish Equipment” has the meaning set forth in Section 3.1(e).

“Satellite Dish Premises” has the meaning set forth in Section 3.1(f).

“Service Costs” has the meaning set forth in Section 4.11(b).
“Service Level Standards” has the meaning set forth in Section 2.5(a)(ii).

“State Cable Television Franchise Act” has the meaning set forth in Section 19.1.

“Structural Portions” has the meaning set forth in Section 8.1(a).

“Sublease” means any lease, sublease, or under lease by a lessee to a sublessee or under lessee, or all or any part of the System Assets, including a license to use any such assets.

“Subscriber Agreements” means all contracts and agreements, to which either the City or Hotwire is or at any time may be a Party, for the provision of any Communications Service to any residential, business, consumer, or other user of Communications Services provided through the System Assets.

“Surety Bond” has the meaning set forth in ARTICLE XVI.

“Sun Trust Institutional” has the meaning set forth in Recital C.

“System Assets” has the meaning set forth in Section 3.1.

“System Bond Finance Contract” means any contract or agreement or any kind pursuant to which the City borrows or otherwise is extended credit, all or any part of which is used to finance, refinance, or otherwise provide funds for the finance of the Fibrant System or any part thereof, whether evidenced by notes, bonds, credit agreement, indenture, installment finance contract, or otherwise, and whether or not secured by deed of trust, mortgage, security agreement, pledge, charge, or lien on any System Assets, and including without limitation the Bond Refinance Contract.

“System Contract Requirements” means all Easements, Permits, Pole Agreements, Subscriber Agreements, and other contracts or agreements to which the City or Hotwire is or may be a Party necessary for, used in connection with, or otherwise or related in any way to the System Assets.

“System Insurance Requirements” means the terms of any insurance policy required under this Agreement and all requirements of the insurer or issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of and compliance with any such policy.

“System Lease” has the meaning set forth in Section 3.1.

“System Maintenance Records” means Outside Plant Maps, maintenance and repair logs, maintenance manuals, and other records of and for the System Assets, as are customarily created and maintained for communication systems similar to the Fibrant System and in accordance with Prudent Communication Service Industry Practice.
“Tangible Net Worth” has the meaning set forth in Section 10.2(a).

“Thermobond Building” has the meaning set forth in Section 3.1(e).

“Third-Party-Contract Savings” has the meaning set forth in Section 2.8.

“Total Taking” has the meaning set forth in Section 12.1(a).

“Transition Management Officer” has the meaning set forth in Section 2.4.

“Transition Management Period” has the meaning set forth in Section 2.2.

“Transition Management Services” has the meaning set forth in Section 2.5.

“UCC” has the meaning set forth in Section 5.1

“Video Service” has the meaning set forth in Section 4.2(c).

“Voice Service” has the meaning set forth in Section 4.2(e).

“Yearly Rent Target” has the meaning set forth in Section 17.1(b)(v).
APPENDIX 3

SERVICE LEVEL STANDARDS

Customer Service Level and Performance Standards

Hotwire’s Video Services, Internet Services and Telephone Services will comply with the following Customer Service Level and Performance Standards (the “Standards”). Initially capitalized terms used in this Exhibit have the meanings ascribed to those terms in the Installation Agreement. The following standards apply only to standard Voice Services, Video Services, and Internet Services provided to residential and business subscribers, and do not apply to business or other subscribers who enter into separate service level agreements with Hotwire.

1. Service Availability.

Service Availability is calculated separately for the Video Services, Internet Services, Voice Services, and any Other Services.

For each of the Services, “Service Availability” is calculated by dividing the difference of total number of seconds in each calendar quarter less the total number of seconds an Outage is uncured for a Service in the City by the total number of seconds in each calendar quarter and multiplying by 100.

Hotwire’s Data Service and Telephone Service will achieve at least 99.5% Service Availability each month.

Hotwire’s Video Service will achieve at least 97% monthly, 98% quarterly and 99% Service Availability annually.

Calculation of Service Availability under this Section does not include time during which any of the Services is not available due to a Force Majeure event (as defined in the Installation Agreement), or regularly scheduled or scheduled ad hoc maintenance activities. All scheduled maintenance work will be performed during off-peak hours (i.e., between midnight and 6 a.m. Eastern Standard Time, when maintenance activities will affect the fewest number of individual users).

2. Timely Response to and Cure of Trouble Reports.

A “Trouble Report” is any Service-related report, whether written or oral, made by a customer relating to any of the Services, for which a trouble ticket is opened, provided that: (a) Hotwire will open a trouble ticket for each Service-related report received by Hotwire’s Customer Service Center (as defined herein); and (b) any report of a Service-related issue that is caused by Customer error, a defect in Customer-owned equipment, or a Force Majeure event is not considered a Trouble Report. Trouble Reports must be placed in a manner consistent with Hotwire’s Customer Service procedures, which consist of calling Hotwire’s Customer Call Center at 800-355-5668 (or successor number) or via email at cs@hotwiremail.com.
A “Minor Service Problem” is the same Service-related problem affecting: (a) 10 or fewer individual customers.

A “Major Service Problem” is the same Service-related problem affecting more than 10 but fewer than 75% of the individual Customers.

An “Outage” is a Service-related problem affecting at least 75% of the Customers in the City.

Hotwire will respond to any Trouble Report relating to a Minor Service Problem by 7 p.m. Eastern Standard Time on the calendar day (excluding Sundays and Holidays) following the day on which the Trouble Report is received. Hotwire will cure the issue(s) identified in the Trouble Report no later than 7 p.m. Eastern Standard Time on the second calendar day (excluding Sundays and Holidays) after the day on which the Trouble Report is received, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Hotwire will respond to any Trouble Report relating to a Major Service Problem within 4 hours after initial receipt of the Trouble Report. Hotwire will cure the issue(s) identified in the Trouble Report within 24 hours after initial receipt of the Trouble Report, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Hotwire will respond to any Trouble Report relating to an Outage within 2 hours after initial receipt of the Trouble Report. Hotwire will cure the issue(s) identified in the Trouble Report within 12 hours after initial receipt of the Trouble Report, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Any Trouble Report relating to a Minor Service Problem or a Major Service Problem that is received after 5:00 pm will be considered as being received at 8:00 AM on the following day. A Trouble Report relating to an Outage is considered as being received at the time it is actually received.

A Trouble Report is timely cured (“Timely Cured”) if it is cured within the applicable timeframe as set forth above for Minor Service Problems, Major Service Problems and Outages.

“Trouble Reports Timely Cured” is calculated by dividing (a) the total number of Trouble Reports relating to Minor Service Problems and Major Service Problems within a calendar quarter that are cured by Hotwire within the deadlines set forth above by (b) the total number of Trouble Reports relating to Minor Service Problems and Major Service Problems received by Hotwire during the calendar quarter and (c) multiplying by 100.

Hotwire will achieve at least 90% Trouble Reports Timely Cured during each calendar quarter.

A “Service Order” is an order received by Hotwire from a Customer for new Services or to make a change in existing Services.

Hotwire will contact a Customer to schedule a Service Order appointment within 24 hours after receipt of a Service Order, and will complete all work associated with a Service Order install or change within 48 hours after the date and time the Customer was contacted to schedule an appointment time (the “Service Order Commitment Date”), unless the Customer requests a date beyond the applicable deadline. The deadlines set forth above exclude Sundays and Holidays.


“Compliance with Customer Service Order Commitment Date” is calculated by dividing (a) the total number of Service Orders completed within the deadlines set forth above by (b) the total number of Customer Service Orders received during each calendar quarter and (c) multiplying by 100.

Hotwire will achieve at least 90% Compliance with Customer Service Order Commitment Date during each calendar quarter (excluding those Service Orders for which a Customer requests a date beyond the applicable deadline).

Without limiting the generality of the foregoing, however, Hotwire shall, at all times during the Term of the Installation Agreement, (i) meet and comply with the "customer service standards" contained in the regulations of the FCC set forth in 47 C.F.R. § 76.309 (as such term is used therein), as amended and/or restated from time to time, and the customer service standards and provisions and credit terms set forth in any applicable telecommunications ordinances and other applicable legal requirements.


Hotwire will maintain and provide Customers with instructions on how to contact a Customer Service Center, which will include a Call Center located within the geographical borders of the United States, and which will be available by means of a toll-free number (currently, 800-355-5668) 24 hours per day, 7 days per week, 365 days per year to receive customer service calls and provide customer support as requested. Hotwire will at all times maintain adequate competent staff at such Call Center to ensure compliance with the Customer Service and Performance Standards set forth herein.

“Customer Hold Time Compliance” is calculated by dividing (a) the number of customer calls to Hotwire’s call center during any calendar quarter in which the customer is put on hold for more than 90 seconds by (b) the total number of customer calls during that calendar quarter and (c) multiplying by 100.
Hotwire will achieve at least 90% Customer Hold Time Compliance under normal operating conditions during each calendar quarter.


Hotwire will maintain a written or electronic record (“Customer Service Records”) of customer calls, and such Customer Service Records will at all times be sufficiently detailed to demonstrate Hotwire’s compliance or non-compliance with each material Customer Service Level and Performance Standard included herein. Specifically, Hotwire’s Customer Service Records will at a minimum identify: (a) the date and time when any Trouble Report is received, (b) the nature of the complaint, (c) the action taken by Hotwire in response to the call, (d) the results of the action taken, (e) a summary of Trouble Reports that were cured (and the time required for such cure) and that were not cured, and (f) the period of time during which any Service was unavailable due to a Force Majeure event. With respect to Service Orders, the Customer Service Records will identify: (g) the date and time when the Service Order is received, (h) the nature of the Service Order, (k) the time and date on which the Service install or change is completed.

Hotwire will make available to the City on a quarterly and annual basis or upon request by the City on a historical basis, network statistics with regard to the bandwidth being delivered to the City, Major and Minor Service Problem reporting, Outage reporting, maintenance issues and Trouble Reports. These statistics will be provided in an agreed-upon raw data format such as CSV, tab delimited, or other database file structure.

6. Emergency 911 Telephone Service Standards.

Hotwire will ensure that Emergency 911 service (hereinafter, “E-911” or successor requirement) will meet or exceed all local, state and federal requirements, including all FCC regulations.

7. Video Programming Service Standards.

The technical quality of the video signal provided by Hotwire shall be at least equivalent to the transmission and reception of cable and/or satellite-transmitted programming, and in all events, will meet or exceed the technical standards for performance of a “cable television system” contained in the regulations of the FCC set forth in 47 C.F.R. § 76.605 (as such term is used therein), as amended and/or restated from time to time.

8. Virus Protection.

Hotwire must be capable of maintaining the network during inside or outside virus attacks and will maintain a “plan of action” for management of virus and denial of service attacks and recovery there from.

Hotwire may disconnect Services to a Customer whose computer(s) are infected with viruses until the Customer demonstrates to Hotwire’s reasonable satisfaction that the viruses have been eliminated. If a Customer is disconnected from Services due to virus-related issues on more than one occasion, Hotwire must approve reactivation of the Customer’s Service, and Hotwire may
charge the Customer (for their respective infected computer(s)) a reasonable reactivation fee not to exceed $75.00. No disconnection by Hotwire due to viruses shall be counted when computing the service time percentages.

9. Internet Bandwidth and Service Availability.

Hotwire will be responsible for issues of latency (as that term is generally used in the industry) and packet delivery to each single-unit port. Hotwire will use its best efforts to minimize latencies through the use of properly configured networks and routes to ensure that minimum hops are maintained. Latency within the core network will not exceed 110 milliseconds. Packet delivery will be achieved at a ratio of 95% or greater.
APPENDIX 4

DESCRIPTION of NOC PREMISES, HEAD END PREMISES and SATELLITE DISH PREMISES

Customer Service Center Premises.

The “NOC Premises” consist of the areas on the first floor of the Customer Service Center shown Fibrant Exclusive Space on the drawing on page A4-3 of this Appendix 4.

The “Head End Premises” consist of the area on the first floor of the Customer Service Center shown as Headend (Fibrant/City Data Center) on the drawings on page A4-4 of this Appendix 4.

The premises described above are leased by the City to Hotwire with an appurtenant, non-exclusive right and license to use “Common Areas” described as follows:

(a) the corridors, restrooms, stairwells and other common facilities furnished from time to time by the City (including currently those areas of the Customer Service Center shown as Shared Space on the drawing on page A4-3 of this Appendix 4; and

(b) the entrance drives, parking areas and other common improvements furnished from time to time by the City on the Customer Service Center land described below.

The Head End Premises are leased by the City to Hotwire subject the reservation of a right and license in favor of the City to use (for its City Data Center and other purposes not related to the Fibrant System or forming a part of the System Assets) those areas of the Head End Premises (a) that are not now used as the location for the Head-End and (b) that are no longer necessary as the location for the Head End after any future reconfiguration, as designated by agreement between the parties.

The Customer Service Center is located on a tract of land identified as Rowan County tax parcel No. 01707101 and is legally described as follows:

Being all of Lots Nos. 24-32 and 42-53 as shown upon the survey and map entitled Goodman’s Melrose Heights dated February, 1947 and recorded in Book of Maps 9995, page 564, Rowan County Registry. Lot No. 53 has been reduced by that site easement granted to the City of Salisbury in that Deed recorded in Deed Book 825, page 621 shown as Tract 4 on that right of way and easement survey for the City of Salisbury recorded in Book of Maps 9995, page 3285.

Satellite Dish Premises.

The “Satellite Dish Premises” consist of (i) the “Thermobond Building” and (ii) the land on which that building and two satellite dishes are located, substantially as shown on the drawing on page A4-5 of this Appendix 4, together with all appurtenant easements in, to, and from the land necessary for (a) the location of related wiring and other facilities and (b) reasonable pedestrian and vehicular access. The premises are a portion of two contiguous tracts or parcels of land, identified as Rowan County tax parcels No. 3520560000001 and No. 3520560000002, containing 12.811 acres, and being legally described in the deed to the City recorded in Deed Book 642, page 980, Rowan County Registry. The
current address of the site is 310 Hill Street, Salisbury, North Carolina. The Satellite Dish Premises do not include any land or structures utilized by the City for communication tower structures.
Appendix 5

Demarcation Drawings

Outdoor Optical Network Terminal (ONT) Installation

Indoor Optical Network Terminal (ONT) Installation
APPENDIX 6

FORM OF SURETY BOND

CONTRACT
BOND
(Miscellaneous - Not
Construction)

Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

Bond No. _______

Date ___________

KNOW ALL MEN BY THESE PRESENTS, That we, Hotwire Communications, Ltd., a Pennsylvania limited partnership, as Principal (hereinafter called Principal), and Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut with its Home Office in the City of Hartford, Connecticut, as Surety (hereinafter called Surety), are held and firmly bound unto The City of Salisbury, a municipal corporation incorporated in the State of North Carolina, as Obligee, in the full and just sum of Three Million Dollars ($3,000,000), lawful money of the United States of America, to be paid to the said Obligee, successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered, or is about to enter, into a Transition Management Agreement and Lease, dated [xxx], with Obligee for the lease from Obligee of Obligee’s Fibrant optic-fiber-to-the premises network, as is more specifically set forth in said Agreement, a copy of which is attached hereto as Annex 1 and to which reference is hereby made.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well and truly perform, observe, and carry out the undertakings, covenants, terms, conditions and agreements of said Agreement during the Initial Term and the Renewal Term as set forth in said Agreement, and any extensions or renewals thereof granted or agreed to with or without notice to Surety, and any and all amendments and modifications of said Agreement that may hereafter be made by Principal and Obligee, notice of which amendments and modifications is hereby waived by Surety and including without limitation any and all of Principal’s payment and performance obligations under said Agreement, including any obligation of Principal to pay liquidated damages under Section 12.2 of said Agreement, then this obligation to be void; otherwise to remain in full force and effect continuously.

Principal and Surety further agree, for the benefit of Obligee, as follows:

1. Continuing Obligation. This Bond shall be a continuing one and shall remain in full force and effect until all amounts payable under said Agreement have been paid in full. Without limiting the generality of the foregoing, Surety hereby irrevocably waives any right to terminate or revoke said Agreement.

2. Waiver. Surety hereby waives all notice with respect to the present existence or future incurrence of any obligation of Principal under said Agreement. Surety hereby consents to the taking of, or failure to take, from time to time, any action of any nature whatsoever with respect to Principal’s obligation and with
respect to any rights against any person or persons or in any property including, without limitation, any renewals, extensions, modifications, postponements, compromises, indulgences, waivers, surrenders, exchanges and releases. Surety hereby specifically waives any and all rights under §26-7 through §26-9 of the North Carolina General Statutes, as amended.

3. **Governing Law and Jurisdiction.** This Bond shall be interpreted, and the rights and liabilities hereunder shall be determined, in accordance with the laws of the State of North Carolina, excluding its conflict of law rules. Principal and Surety hereby irrevocably consent to the exclusive jurisdiction of any North Carolina state court in, or the federal court for the Middle District of North Carolina for, Rowan County, North Carolina.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals as of the date indicated above, the name and seal of each party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

________________________
Witness

________, Principal

________________________
Witness

________, Attorney-in-Fact
APPENDIX 7

QUARTERLY RENT TARGETS

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## Schedule 3.1(c)

### NOC Furnishings and Equipment

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### Schedule 3.1(d)

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<td>Harmonnic Proview 7100</td>
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<td>Leitch ASI Combiner</td>
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| Digital Adware Servers (Ad-Insertion) | 2  
(1 server belongs to Prime Media) |
| Cisco 4510                        | 1        |
| Cisco 6509                        | 2        |
| Ineoquest boxes                   | 4        |
| ATX Ucrypt Servers               | 4        |
| Trilithic Easy Plus              | 1        |
| Key West Media Extreme            | 1        |
| HP KVM                            | 1        |
| Toshiba DVD Player                | 1        |
| Tandberg EN5990                   | 2        |
| Cisco ASA 5505                    | 1        |
| Comtech CMR-5975                  | 3        |
| Vubiquity 4011                    | 1        |
| International Datacasting         | 2        |
| SuperFlex Pro                     |          |
| HP Proliant DL360P                | 3        |
| Juniper SRX 240                   | 1        |
| Tandberg IPLEX                    | 24       |
| Cisco 2960                        | 6        |
| Tandberg Encoder/Transcoder       | 7        |
| Harmonic Prostream 9000           | 12       |
| Telect DC Power Box               | 14       |
| WELLAV IP/QAM                    | 1        |
| KVM                               | 1        |
| HP Server Tandberg Monitoring     | 1        |
| Zhone MXK 319 Chassis             | 1        |
| Zhone MXK 819 Chassis             | 4        |
| Zhone 10G Uplink Card             | 11       |
| Zhone 8 port GPON Line Cards      | 28       |
| Zhone 4 port GPON Line Cards      | 4        |
| Zhone Active Ethernet Line Cards  | 6        |
| Calix E7 Server                   | 1        |
| HP ProCurve                       | 1        |
| Cisco ASR 1K                      | 2        |
| Juniper SRX 3600                  | 2        |
| Cisco 4510                        | 2        |

Schedule 3.1(d) - 2
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<td>EMC VNX5300 SAN</td>
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<tr>
<td>Symmetricon GPS clocks</td>
<td>2</td>
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<tr>
<td>Dell R710</td>
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</tr>
<tr>
<td>Cisco 4506</td>
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</tr>
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<td>Power Edge 850 Server</td>
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</tr>
<tr>
<td>Cisco ASR 9K</td>
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<tr>
<td>Aberdeen SuperMicro Blade Chassis (7 blades)</td>
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<td>SuperMicro 2U server (16XDisk)</td>
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<td>Dell Server (Ineoquest)</td>
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<td>Dell PE R200 (CMS)</td>
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<td>AU Tech Room Alert 26W</td>
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<tr>
<td>Dell Precision R5400</td>
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Schedule 3.1(e)

Satellite Dish Equipment

Simulsat 5a Dish; Steerable DH 3.7 Meter Dish; 8 x 12 Thermobond Building with three 22” x 84” x 36” racks; Argus UPS System; two Bard air handlers
Schedule 3.1(k)

Fibrant Vehicles 2018

<table>
<thead>
<tr>
<th>Fleet ID</th>
<th>Year</th>
<th>Model</th>
<th>Description</th>
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<tr>
<td>FH10301</td>
<td>1997</td>
<td>F150</td>
<td>Ford 4x4 Pickup</td>
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<tr>
<td>FH10307</td>
<td>2003</td>
<td>4x4</td>
<td>Ford Ranger Pickup</td>
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<tr>
<td>FH10407</td>
<td>2004</td>
<td>E150</td>
<td>ECONOLINE VAN</td>
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<tr>
<td>FH10519</td>
<td>2005</td>
<td>E150</td>
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<tr>
<td>FH10914</td>
<td>2009</td>
<td>4X2</td>
<td>EXPLORER</td>
<td>Supervisor</td>
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<tr>
<td>FH11005</td>
<td>2010</td>
<td>F250</td>
<td>4X4 SUPERCAB</td>
<td>Spare/PromoTrl</td>
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<td>FH11009</td>
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<td>E150</td>
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<td>FH11011</td>
<td>2010</td>
<td>F550</td>
<td>AERIAL LIFT</td>
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<tr>
<td>FH11012</td>
<td>2010</td>
<td>XLT</td>
<td>TRANSIT CONNECT</td>
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<td>FH11101</td>
<td>2011</td>
<td>F550</td>
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<td>CARGO MATE PROMO</td>
<td>Promo trl</td>
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<td>FH31003</td>
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<td>FENEX SPLICING</td>
<td>Fiber splicing trl</td>
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<td>FH30402</td>
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<td>TRL</td>
<td>Trailco utility</td>
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<td>FH40503</td>
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<td>G25E3</td>
<td>DAEWOO</td>
<td>WHSE/ fork lift</td>
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(Schedule 3.1(k) continued)

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<td>Cleaver, CT-30</td>
<td>83506</td>
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<td>6</td>
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<td>LST-000-016</td>
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<td>11</td>
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<td>529734</td>
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<td>14</td>
<td>JDSU Smart Class Triple Play Meter</td>
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### Schedule 3.2

#### Retained Dark Fiber

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<td>COS</td>
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<td>1900 PM</td>
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<td>COS</td>
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<td>1900 PM</td>
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<td>COS</td>
<td>2000 PM</td>
<td>2000 PM</td>
<td>Active</td>
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</tbody>
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This document is not a complete representation of Fibrant/COS dark fiber. The .pdf was created in Nov 2014. It is the only existing document that contains a visual depiction of the dark fiber circuit.
### Schedule 8.1(a)
#### HVAC Sources

**Customer Service Center**  
1415 South Martin Luther King, Jr. Avenue

<table>
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<th>Unit#</th>
<th>Area Served</th>
<th>Type</th>
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<td>BL-1</td>
<td>Entire Building</td>
<td>Boiler</td>
<td>G/E</td>
<td>Raypack</td>
<td>H7-0850</td>
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<td>Pump 1</td>
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<td>Pump</td>
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<td>Pump</td>
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<td>Pump 3</td>
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<td>Pump</td>
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<td>JMM3313T</td>
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<td>AAON</td>
<td>RM-007-3</td>
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<td>RM-020-3</td>
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<td>OAU-3</td>
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</tbody>
</table>
Schedule 8.3

Drop Installation Guidelines

- All infrastructure (i.e. drop) installation, repairs and construction methods and implementations must meet and remain in compliance with OSHA and NESC requirements.
- (1, 2, 6 & 12) count drops are utilized for different applications as needed and specified.
- Aerial drops installed adjacent to existing stranded sheath fiber must be attached via span clamps to ensure a singular attachment point per pole.
- Aerial drops installed on poles without stranded sheath fiber must be attached via a 7/16" X 4-3/4" drive hook. These hooks should be installed perpendicular to the path of the drop whenever possible.
- Aerial drops must be installed as such not to exceed the load rating specifications for the drop being installed.
- Underground drops must be buried to a minimum depth of 12” including hand bury. All drop sub-duct must be buried to minimum depth of 24”.
- Drops must be physically tagged at each vault location. All drops must be clearly marked at all splice locations. All drop documentation must be clearly documented, illustrated and submitted to the Engineering Dept.
- When pulling excessive slack fiber cable from pole to pole or vault to vault through duct banks; slack cable should be carefully positioned into a figure 8 pattern to prevent damage.
- A minimum bend radius of 20x the cable diameter loaded and 10x the diameter unloaded is required at all times.
- Splice loss parameters: Maximum loss acceptable for any optical splice is .03 dB. (Includes drop splices)
- Nap vaults and drop vaults should be well maintained and kept free of debris to help ensure plant integrity.
CITY OF SALISBURY

Analysis of Proposed Broadband System Lease and Business Plan

FINAL REPORT

March 27, 2018
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INTRODUCTION

Project scope

Baker Tilly Virchow Krause, LLP (“Baker Tilly”) was engaged by the City of Salisbury (“City”) to perform an analysis of revenue projections and rent payments to the City under a proposed lease by the City by a third party of the City’s Fibrant fiber-optic communications system (Fibrant) and a comparison of such projected payments to the City’s own forecasted operating results if the City were to continue to operate Fibrant.

The Baker Tilly project team consisted of professionals from our Energy and Utilities Team and we were assisted by Mr. Ron Holcomb. Mr. Holcomb is a 30-year veteran of the electric and communications utility industry with extensive experience in power supply, advanced grid technologies, essential service operations, economic development and value-driven growth initiatives for combined electric and telecommunication utilities. During his career, he has lead three utilities as President/CEO and provided management consulting to utilities across the country.

The scope of services for this project included:

1. Evaluate the proposed lease agreement to identify key assumptions used in the projected cash flows available to the City.
2. Conduct a phone conference with management of the third-party lessee to assess the business plan for Fibrant including:
   - Projected revenues and expenses
   - Customer penetration rates used to develop the projected revenues in the business plan
3. Assess industry trends and Fibrant’s competitive position within the market including an assessment of proposed pricing for services and customer take rate projections compared to other markets
4. Perform a sensitivity analysis on the third-party lessee’s revenue projections and the related impact on cash flows
5. Evaluate and analyze Fibrant’s historical operating costs
6. Compare the expected lease payments to the City to projected operating results if the City were to continue to operate Fibrant and achieve the same revenues projected by the third-party lessee.

This report contains our observations resulting from the scope of services provided to the City. Where appropriate, we have noted any considerations for the City to review further and assess. The specific observations are located in each section of the report.

We would like to thank the personnel of the City, Fibrant and Hotwire for their assistance, cooperation and insights in providing information and discussions during our due diligence process. Their assistance was invaluable in completing this report.
INTRODUCTION

The services performed by Baker Tilly on this project and its Agreement with the City do not include the provision of legal advice and Baker Tilly makes no representations regarding questions of legal interpretation. The City should consult with its attorney with respect to any legal matters or items that require legal interpretation, under federal, state or other laws or regulations.
1.0 EVALUATION OF PROPOSED LEASE AGREEMENT

1.1 – Scope Task: Evaluate the proposed lease agreement to identify key assumptions used in the projected cash flows available to the City.

This portion of the scope of services centered on the initial review of the proposed lease agreement and a review of the third party’s projected cash flows available to the City based on the third party’s projection of operating the Fibrant System.

1.2 – Procedures

Baker Tilly performed the following procedures to evaluate the proposed lease agreement:

1. Reviewed the draft proposed Transition Management Agreement and Lease (lease agreement) between the City of Salisbury and the third party provider, Hotwire Communications, Ltd. (Hotwire) to verify stated revenue percentages for communication services to be provided.

2. Identify key charges or revenue percentages for different communication services that the City would receive from Hotwire through the lease agreement.

1.3 – Observations

In reviewing the stated lease agreement, we verified the revenue percentage share that Hotwire would pay the City for the current communication services being provided as:

> Internet: 30%
> Cable: 10%
> Video: 10%

These amounts would be paid to the City based on the revenues generated by customers taking each type of service.

The proposed lease agreement also states revenue percentage shares that Hotwire would pay the City for additional communication services that Fibrant currently does not provide, including:

> Data Center Service: 20%
> Data Transport Service: 25%
> Dark Fiber Service: 30%
> Dim Fiber Service: 10%
> Other Services: 10%
Further, per the proposed lease agreement, Hotwire is to pay quarterly “rents” to the City, based on the difference between (1) the applicable rent percentage from the communication service revenues and (2) the Drop/NID installation charges. The City will receive a credit against its rent payment for any drops and network interface devices (NIDs) that it installs. The lease agreement defines the following Drop/NID installation charges:

- **Aerial Path Charge**: $3.00 per linear foot of fiber drop cable installed aboveground between a NID and an optical fiber terminal port, whether self-supporting, installed in vertical risers, or attached to messenger strand, excluding cable storage loops.

- **New Underground Path Charge**: $10.00 per linear foot of fiber drop cable installed in a new underground pathway constructed between the NID and the nearest accessible point of the existing Outside Plant, whether consisting of new conduit or direct buried cable, excluding cable storage drops.

- **Existing Underground Path Charge**: $2.00 per linear foot of fiber drop cable installed underground in existing Outside Plant conduit pathway between a NID and an optical fiber terminal port, excluding storage loops.

- **Fixed Installation Charge**: $150.00 per customer installation to cover all estimated labor and material costs that are fixed relative to cable pathway length, including cable slack loops, NID installation, splicing, cable termination, and mobilization.

Since the number of drops and NID installations in the future is not known, the credit amount is currently not reflected in Hotwire’s projected cash flow.
2.0 FIBRANT BUSINESS PLAN ASSESSMENT

2.1 – Scope Task: Conduct a phone conference with management of the third-party lessee to assess the business plan for Fibrant:

   a. Projected revenues and expenses
   b. Customer penetration rates used to develop the projected revenues in the business plan

This portion of the scope of services involved documenting the key assumptions used by the third party lessee to project revenues, expenses and customer penetration rates.

2.2 – Procedures

Based on information provided by both the City and Hotwire, Baker Tilly took the following steps to assess the overall business plan for Fibrant:

1. Reviewed the third party’s proforma model
2. Discuss model assumptions with Hotwire management to gain understanding and insights
3. Identified and summarized key assumptions in Hotwire’s proforma model and overall business operations
4. Reviewed Fibrant’s current subscriber count and proposed rates
5. Reviewed Hotwire’s proposed subscriber count and proposed rates and compared against those of Fibrant

2.3 – Observations

In the review of the documents provided and in discussions with Hotwire, we identified the following key assumptions used in Hotwire’s proforma model¹ and the projected cash flows to the City:

1. Escalation and Take Rates

   a. The proforma model assumes an initial decline in the take rate for the residential sector of 12.5% during the seven month initial ramp up between September 2017 and March 2018, as Hotwire expects some of Fibrant’s current customer base will drop off during the transition.

   b. Overall broadband service rates for both the residential and commercial sectors are projected to increase 2% rate annually (starting in April 2018) across the entire customer base.²

¹ Baker Tilly did not prepare any projections or forecasts in connection with this project. We are commenting on the projection prepared by Hotwire
² It should be noted that while the overall collection of broadband service rates increase 2%, actual subscription rates for different broadband services and packages may vary.
CITY OF SALISBURY

Analysis of Proposed Broadband System Lease and Business Plan

FIBRANT BUSINESS PLAN ASSESSMENT

c. Overall residential broadband subscriber counts are projected to increase 6% in April 2018, increase 8% in April 2019, and again 8% in January 2020; subscriber counts ratchet downward from 8% in year 2021 to 1% in year 2025 at which point Hotwire projects they will have reached maximum residential customer base.
   i. Given Fibrant is the overbuilder, not the incumbent, Hotwire projects the maximum take rate at 40%.

d. The take rate for the commercial sector was based on a conservative estimate that Hotwire would be able to obtain approximately 33% of the existing Fibrant commercial sector revenue. Similar to the residential sector, subscriber counts or projected revenues increase 6% in April 2018, increase 8% in April 2019, increase only 5% in 2020 and 2021, increase back to 8% in 2022, before ratcheting downward to 1% in year 2023 at which point Hotwire projects they will have reached the maximum commercial sector customer base.

e. No security take rate was assumed.

2. Revenue Share

   a. The projected cash flows assume a revenue cost share to the City for the following broadband services:
      i. Internet: 30%
      ii. Cable: 10%
      iii. Video: 10%

3. Future Events

   a. Fibrant's current transmission agreements with cable broadcast networks are set to expire in 2020; these agreements typically last three years. Hotwire indicates municipal service providers might face challenges to re-negotiating the transmission agreements with the cable broadcast networks, but that Hotwire would have significantly more leveraging power given its larger presence in the market.

   b. With the re-negotiating of transmission agreements in 2020, projected subscription rates are not as high for this year compared to other years.

4. Expenses

   a. Hotwire anticipates it would be able to assume Fibrant’s operations with minimal additional operating costs, given its ability to share certain administrative and overhead costs across multiple markets.

   b. In some instances, Hotwire indicates that Fibrant is currently paying relatively high premiums compared to the overall broadband industry.

   c. In the proposed lease agreements, the City would not be responsible for operating expense costs for the Fibrant system.
To make observations of subscriber count and subscriber rates, Baker Tilly used residential subscriber data provided by Fibrant to compare against Hotwire’s prepared projections; as detailed subscriber data breakdown for commercial customers was not available. We feel that using Fibrant’s current subscriber data allows us to understand the variety of the broadband services that Fibrant currently provides when compared to that of Hotwire, beyond just the three main categories of broadband services (i.e., internet, cable, and video). We used Hotwire’s format from its proforma forecast to create a subscription comparison chart that is shown in Table 1.

The subscriber data provided is organized based on the type of broadband service and number of subscribers. Overall, Hotwire’s proposed subscriber count in telephone and internet service is lower compared to Fibrant’s actual subscriber counts. Consistent with our conversations with Hotwire, Hotwire’s proforma projection takes into consideration a decline in subscribers during the onset of its operations.

After reviewing Fibrant’s subscription data and Hotwire’s projections, it is noted that both providers have slightly different broadband service offerings or packages. For instance, Fibrant offers five video packages while Hotwire only offers four. Hotwire has eliminated the Basic plan and moved its consumers to the Digital Access plan. It is our understanding that Hotwire’s most basic plan is Digital Access, which is comparable to Fibrant’s current Bronze Plan. We also have observed that Hotwire’s projections do not contain subscriptions and service rates for certain Fibrant specific service offerings (e.g., additional phone line, Caller ID), which can result in slightly different pricing totals as compared to Fibrant’s pricing options.
### Table 1 – Fibrant and Hotwire Residential Subscription Comparison Chart – Fiscal Year 2018

<table>
<thead>
<tr>
<th>Proposed Hotwire Service Name</th>
<th>Fibrant Current Service Name</th>
<th>Projected Hotwire Penetration Rate</th>
<th>Hotwire Proposed Subscribers</th>
<th>Fibrant Current Subscribers</th>
<th>Notes</th>
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<tr>
<td>Retail Revenue (Video)</td>
<td>N/A</td>
<td>Basic</td>
<td>N/A</td>
<td>134</td>
<td>Fibrant currently offers a Basic package; Hotwire does not have a comparable plan.</td>
</tr>
<tr>
<td>Digital Access</td>
<td>N/A</td>
<td>Bronze</td>
<td>25%</td>
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<td>Digital Favorites</td>
<td>N/A</td>
<td>Silver</td>
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<td>Digital Premium</td>
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<td>Gold</td>
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<td>The Works</td>
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<td>Platinum</td>
<td>15%</td>
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<td>Premium Channels (Video)</td>
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<td>Showtime</td>
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<tr>
<td>Showtime</td>
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<td>Cinemax</td>
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<tr>
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<td>Starz</td>
<td>5%</td>
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<td>Starz</td>
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<td>Sports</td>
<td>7%</td>
<td>0</td>
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<td>En Espanol</td>
<td>5%</td>
<td>8</td>
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<td>Included Boxes</td>
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<td>0%</td>
<td>1423 DVR/ 1589 STB Currently Deployed</td>
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<td>HD Boxes</td>
<td>N/A</td>
<td>150%</td>
<td>2006</td>
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<td>DVR Boxes</td>
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<td>Total HD Boxes</td>
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<td>HDTV</td>
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<td>0%</td>
<td>0</td>
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<td>Multiroom DVR</td>
<td>N/A</td>
<td>20%</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Internet + Phone</td>
<td>N/A</td>
<td>40%</td>
<td>2762</td>
<td>3502</td>
<td>Fibrant offers three internet packages (Velocity, Velocity-X, 50x50 Internet); Hotwire has a single package with the presented rate.</td>
</tr>
<tr>
<td>N/A</td>
<td>Velocity</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Velocity X</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>50 x 50 Internet</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>50 x 50 Internet + Phone</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Fibrant offers packages that include internet and phone to its customers which is not outlined in Hotwire’s proposed rate structure.</td>
</tr>
<tr>
<td>N/A</td>
<td>50 x 50 Internet + Phone + Video (Bronze)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Fibrant’s packages would include internet, phone, and Bronze video (Digital Access Video Package).</td>
</tr>
</tbody>
</table>
### Proposed Hotwire Service Name

<table>
<thead>
<tr>
<th>Proposed Hotwire Service Name</th>
<th>Fibrant Current Service Name</th>
<th>Projected Hotwire Penetration Rate</th>
<th>Hotwire Proposed Subscribers</th>
<th>Fibrant Current Subscribers</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone</td>
<td>N/A</td>
<td>30%</td>
<td>1017</td>
<td>2623</td>
<td>Fibrant offers a phone line at $45.00 per month and $25 a month for each additional line. It appears that Hotwire does not specify additional phone line charges or additional service costs (e.g., Caller ID, Fax).</td>
</tr>
<tr>
<td>N/A</td>
<td>Additional Phone Line</td>
<td>N/A</td>
<td>84</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security</td>
<td>N/A</td>
<td>5%</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>N/A</td>
<td>100%</td>
<td>1822</td>
<td>1822</td>
<td>Based on the total subscription count for video services.</td>
</tr>
<tr>
<td>Wiring Maintenance</td>
<td>N/A</td>
<td>5%</td>
<td>130</td>
<td>130</td>
<td></td>
</tr>
<tr>
<td>Digital Cable Recovery Fees</td>
<td>N/A</td>
<td>100%</td>
<td>1822</td>
<td>1822</td>
<td>Based on the total subscription count for video services.</td>
</tr>
</tbody>
</table>
3.0 FIBRANT MARKET ANALYSIS

3.1 – Scope Task: Assess industry trends and Fibrant’s competitive position within the market including an assessment of proposed pricing for services and customer take rate projections compared to other markets

This portion of the scope of services involved comparing Fibrant’s position in the Salisbury market with that of Fibrant’s competitive peers.

3.2 – Procedures

The following steps were undertaken to perform a review of Fibrant’s competitive position within the market:

1. Summarized the market value proposition for each of the competitive providers
2. Reviewed pricing of broadband services from other competitive providers
3. Performed a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis of each of the providers
4. Summarized the overall competitive market

3.3 – Observations

Competitive Review

This competitive review serves as a brief discussion of market forces, cursory reviews of each major competitor, and the likely impact of competitive dynamics in the Salisbury market.

As is seen in this section, given the similarities of the communication products and services in Salisbury, no competitor is able to draw a differential advantage. As the inability to differentiate yields to commoditization, price becomes the primary differentiator. This especially holds true for residential services where the service is fairly standardized. When price is the pivotal service attribute in the market, the competitor that can deliver the product or service at the lowest cost ultimately remains while other providers either exit the market or settle for lower margins—if owners or shareholders accept that outcome.

A crucial competitive element related to managing costs is described in the widely adopted Porter’s Five Competitive Forces model. Specifically, the Bargaining Power of Suppliers is a crucial factor in the total cost-of-goods sold for any retailer. Retailers that can purchase wholesale products in bulk (reducing the bargaining power of suppliers) enjoy better pricing than retailers who have little to no market power. Therefore, in a competitive market where the primary differentiation is price, large retail service providers usually enjoy higher margins than a smaller provider who has to pay more for their cost-of-goods. Unless the smaller provider finds a non-price differential advantage, long-term market participation is unlikely.
Major Competitors in Marketplace

1. AT&T

Market Value Proposition

AT&T is one of the largest communications services providers in the marketplace with a market cap of $220 billion, with 120 million wireless subscribers, 20 million access line subscribers, and 16 million broadband subscribers constituting a nationwide 34 percent market share. AT&T is well diversified offering a wide range of services residential services including landline voice, video, data and mobile phone services, and lucrative commercial communication services including network management services, cyber-security services, and cloud services to name a few. AT&T’s scale and diverse portfolio make it a one-stop shop for consumers of communication services of any scale and/or sector. The following tables present some information on pricing of AT&T’s services.

Table 2 – AT&T Residential Internet Pricing

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 Mbps</td>
<td>$40</td>
<td>$70</td>
<td>1000 GB/month data cap</td>
</tr>
<tr>
<td>100 Mbps</td>
<td>$60</td>
<td>$80</td>
<td>1001 GB/month data cap</td>
</tr>
<tr>
<td>1000 Mbps</td>
<td>$80</td>
<td>$90</td>
<td>No data cap</td>
</tr>
</tbody>
</table>

Table 3 – AT&T Residential Video (U-Verse)

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>150 Channels</td>
<td>$35</td>
<td>$81</td>
<td>Promo Price – 12 months</td>
</tr>
<tr>
<td>470 Channels</td>
<td>$73</td>
<td>$119</td>
<td>Promo Price – 12 months</td>
</tr>
<tr>
<td>550 Channels</td>
<td>$110</td>
<td>$147</td>
<td>Promo Price – 12 months</td>
</tr>
</tbody>
</table>

AT&T offers a bundled residential phone service at $19.95 per month.

Strengths, Weaknesses, Opportunities, and Threats (SWOT):

The following are selected SWOT points for AT&T:

> Strengths
   > Ability to deliver services over a number of infrastructure platforms
   > Ability to bundle traditional triple play with wireless voice services (Quad Bundle)
   > Strong marketing and brand exposure
   > Ability to leverage scale to manage costs

3 https://www.marketing91.com/swot-analysis-att/
4 https://www.business.att.com
> Weaknesses
  – Speed to market due to organizational scale and complexity\(^5\)

> Opportunities
  – Acquisitions – strengthening negotiating power
  – Leveraging 5G network capabilities

> Threats
  – Increasingly competitive landscape squeezing market prices

Table 4 – Customer Satisfaction – AT&T

<table>
<thead>
<tr>
<th>Telecommunication Service</th>
<th>AT&amp;T</th>
<th>Average Other Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internet</td>
<td>69</td>
<td>64</td>
</tr>
<tr>
<td>TV Services</td>
<td>70</td>
<td>64</td>
</tr>
<tr>
<td>Phone Services</td>
<td>71</td>
<td>70</td>
</tr>
</tbody>
</table>

Source: American Customer Satisfaction Index Score\(^6\)

2. Spectrum

Market Value Proposition

Spectrum has 91,000 employees and provides communication services to over 26 million consumers in over 40 states.\(^7\) Charter Communications (branded Spectrum), is the 2nd largest cable provider in the US behind Comcast. In recent years, Charter has strengthened its market position through acquisitions of Time Warner Cable and Lighthouse. Customer satisfaction remains a challenge where ASCI scores are average. The following tables present some information on pricing of Spectrum’s services.

Table 5 – Spectrum Residential Internet Pricing

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 Mbps</td>
<td>$44.99</td>
<td>$64.99</td>
<td>No data cap</td>
</tr>
<tr>
<td>300 Mbps</td>
<td>$69.99</td>
<td>$89.99</td>
<td>No data cap</td>
</tr>
</tbody>
</table>

Table 6 – Spectrum Residential Video (Bundled)

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>125 Channels</td>
<td>Varies (Bundled)</td>
<td>$59.99</td>
<td>Promo Price – 12 months</td>
</tr>
<tr>
<td>175 Channels</td>
<td>Varies (Bundled)</td>
<td>$79.99</td>
<td>Includes some premiums</td>
</tr>
<tr>
<td>200 Channels</td>
<td>Varies (Bundled)</td>
<td>$99.99</td>
<td>Includes premiums</td>
</tr>
</tbody>
</table>

Spectrum offers a bundled residential phone service at $29.95 per month.

\(^7\) [https://newsroom.charter.com/company-profile/](https://newsroom.charter.com/company-profile/)
SWOT

The following are selected SWOT points for Spectrum.\(^8\)

> Strengths
  - Geographic footprint
  - Topline revenue growth – primarily through programming proceeds

> Weaknesses
  - Customer satisfaction

> Opportunities
  - Continued mergers and acquisitions

> Threats
  - Projected decline in linear video and growth of OTT video providers

<table>
<thead>
<tr>
<th>Telecommunication Service</th>
<th>Spectrum</th>
<th>Average Other Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internet</td>
<td>65</td>
<td>64</td>
</tr>
<tr>
<td>TV Services</td>
<td>63</td>
<td>64</td>
</tr>
<tr>
<td>Phone Services</td>
<td>70</td>
<td>70</td>
</tr>
</tbody>
</table>

*Table 7 – Customer Satisfaction – Spectrum*

Source: American Customer Satisfaction Index Score\(^9\)

3. Fibrant

For comparative purposes, the following tables present a summary of Fibrant’s pricing.

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 Mbps</td>
<td>Not available</td>
<td>$45</td>
<td></td>
</tr>
<tr>
<td>75 Mbps</td>
<td>Not available</td>
<td>$65</td>
<td></td>
</tr>
<tr>
<td>100 Mbps</td>
<td>Not available</td>
<td>$85</td>
<td></td>
</tr>
<tr>
<td>100 Mbps</td>
<td>Not available</td>
<td>$105</td>
<td></td>
</tr>
</tbody>
</table>

\(^8\) http://www.valueline.com/Stocks/Highlights/Charter_Communications__A_Short_SWOT_Analysis.aspx#.WrRUoJPwbOQ

\(^9\) http://www.theacsi.org/acsi-benchmarks/benchmarks-by-industry

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Table 9 – Fibrant Residential Video (Bundled)

<table>
<thead>
<tr>
<th>Service</th>
<th>Promotional Price</th>
<th>Regular Price</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td>Not available</td>
<td>$48</td>
<td></td>
</tr>
<tr>
<td>Bronze</td>
<td>Not available</td>
<td>$85</td>
<td></td>
</tr>
<tr>
<td>Silver</td>
<td>Not available</td>
<td>$111</td>
<td></td>
</tr>
<tr>
<td>Gold</td>
<td>Not available</td>
<td>$116</td>
<td></td>
</tr>
<tr>
<td>Platinum</td>
<td>Not available</td>
<td>$179</td>
<td></td>
</tr>
</tbody>
</table>

Spectrum offers a bundled residential phone service at $45 per month.

**Porters Five Forces**

Porter’s Five Forces is an analysis tool, which identifies forces that shape industry profitability. These five forces are:

- rivalry among industry competitors
- threat of new entrants
- threat of substitute products or services
- bargaining power of buyers
- and bargaining power of suppliers

This model is particularly useful as it highlights key conditions in the marketplace where Fibrant competes.

**a) Rivalry among industry competitors**

The rivalry among most telecom competitors can be described as relatively intense provided they have similar technological capabilities where service performance is relatively the same. The intensity manifests itself in singling out price as the major differentiator. Those competitors with multiple markets and sizable balance sheets are usually in an advantageous position to withstand drawn out price competition. Given their scale, Spectrum and AT&T can compete in low margin markets for extended periods of time posing significant risk to smaller operators.

**b) Threat of new entrants**

The threat of new entrants is the Salisbury market is likely low given the saturation of service providers in the market.

**c) Threat of substitutes**

In the communication marketplace, the threat of substitutes at this point and time applies primarily to products that are migrating away from traditional delivery technology and business models. The products are phone (especially residential) and linear video. Substitute IP based services can usually only be monetized by the infrastructure provider through the Internet pipe or through OTT subscriptions. All communication providers are challenged with making the transition and/or phasing out vintage delivery models and revenue streams.
**CITY OF SALISBURY**

Analysis of Proposed Broadband System Lease and Business Plan

FIBRANT MARKET ANALYSIS

**d) Bargaining power of customers**

In a communications marketplace where product/service differentiation is increasingly difficult, retail price competition works in the customer's favor. The price competition often takes the form of introductory rates and pricing gimmicks. At times, consumers bounce from one provider to the other seeking the best short-term rate.

In cases where differentiation is possible, commercial communication services for example, where advanced voice, cloud services, multiple redundant paths and other similar services are required, larger competitors with broader market recognition tend to capture most of the market. Here, while the consumer has some bargaining power, the focus is on reliability and trust. Customer bargaining is related more to the service providers' ability to offer full solution sets as opposed to a single service and price.

**e) Bargaining power of suppliers**

For backhaul, video programming, and voice management/switching, the bargaining power of the supplier decreases as the size of the retail service provider increases. For large service providers like AT&T and Spectrum, this condition creates a decisive competitive advantage in their cost to do business. For large market players, the cost of goods to serve a retail customer can be magnitudes less than the cost of goods borne by a smaller service provider. This critical telecom market attribute is often the reason smaller service providers have higher per-unit costs, higher prices and thinner margins.

**Market Summary**

- The retail prices of the competitors do not differ dramatically indicating a rather competitive residential communications marketplace with little differentiation.
- Competitive sustainability is largely dependent on each service provider’s ability to manage costs.
- The bargaining power of suppliers is significantly reduced when services providers like AT&T and Spectrum purchase for and represent the bulk of the marketplace.
- Porter's Bargaining Power of Suppliers may be the single largest factor smaller service providers have to overcome in a communications marketplace where purchasing power is concentrated within a small group of large competitors.
4.0 SENSITIVITY ANALYSIS

4.1 – Scope Task: Perform a sensitivity analysis on the third-party lessee’s revenue projections and the related impact on cash flows

In this area, we reviewed the sensitivity of Hotwire’s projection to variables in the subscriber take rate and impacts of changes in expenses.

4.2 – Procedures

Based on information provided by both the City and Hotwire, Baker Tilly took the following steps to perform a sensitivity analysis on Hotwire’s revenue projections and corollary impact to the City’s cash flows:

1. Reviewed the third-party lessee’s revenue projections
2. Based on key parameters (or drivers) to the revenue projections, performed a sensitivity analysis of changes to Hotwire’s projected revenues and the City’s cash flow

4.3 – Observations

Performing a sensitivity analysis is important in determining what impact slight changes to key drivers can have on overall revenue projections and also to the City’s cash flow.

The biggest variable in the overall revenue projections is the projected number of broadband service subscribers. Based on observations made in Section 2, the overall Hotwire projected residential subscriber counts for FY 2018 are lower than that of Fibrant’s current residential subscriber counts. With that being said, the overall broadband service subscriber count may vary in the first year of a new third party lease operations.
Hotwire’s overall FY 2018 total revenue projections (excluding bad debt) was projected to be $4,703,192. However, this figure did not include the first two months of FY 2018 (i.e., July and August 2017). As the months of September 2017 through March 2018 have the same monthly revenue projections at $459,296, we recalculated the total FY 2018 revenues to be $5,621,785 to include the two missing months (i.e., July and August 2017). This annual revenue value was used as the basis point for the sensitivity analysis as shown in Table 10.

### Table 10 – Sensitivity Analysis – Projected Hotwire Revenues – FY 2018

<table>
<thead>
<tr>
<th>Subscriber Count Targets</th>
<th>Total Projected Hotwire Revenues</th>
<th>Difference in Revenues Compared to 100% Subscriber Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>120%</td>
<td>$6,746,141</td>
<td>$1,124,357</td>
</tr>
<tr>
<td>115%</td>
<td>$6,465,052</td>
<td>$843,268</td>
</tr>
<tr>
<td>110%</td>
<td>$6,183,963</td>
<td>$562,178</td>
</tr>
<tr>
<td>105%</td>
<td>$5,902,874</td>
<td>$281,089</td>
</tr>
<tr>
<td><strong>100%</strong></td>
<td><strong>$5,621,785</strong></td>
<td><strong>$0</strong></td>
</tr>
<tr>
<td>95%</td>
<td>$5,340,695</td>
<td>($281,089)</td>
</tr>
<tr>
<td>90%</td>
<td>$5,059,606</td>
<td>($562,178)</td>
</tr>
<tr>
<td>85%</td>
<td>$4,778,517</td>
<td>($843,268)</td>
</tr>
<tr>
<td>80%</td>
<td>$4,497,428</td>
<td>($1,124,357)</td>
</tr>
</tbody>
</table>

As can be seen in Table 10, an overall range of subscriber counts from 80% to 120% can have an impact on overall Hotwire revenues between $4.5 million and $6.7 million. On the corollary, in Table 11, the same overall range of subscriber counts from 80% to 120% can have an impact on Salisbury’s share of revenues between roughly $833,000 and $1.2 million.

### Table 11 – Sensitivity Analysis – Projected Salisbury Share of Revenues – FY 2018

<table>
<thead>
<tr>
<th>Subscriber Count Targets</th>
<th>Total Projected Salisbury Share of Revenues</th>
<th>Difference in Revenues Compared to 100% Subscriber Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>120%</td>
<td>$1,249,498</td>
<td>$208,250</td>
</tr>
<tr>
<td>115%</td>
<td>$1,197,436</td>
<td>$156,187</td>
</tr>
<tr>
<td>110%</td>
<td>$1,145,374</td>
<td>$104,125</td>
</tr>
<tr>
<td>105%</td>
<td>$1,093,311</td>
<td>$52,062</td>
</tr>
<tr>
<td><strong>100%</strong></td>
<td><strong>$1,041,249</strong></td>
<td><strong>$0</strong></td>
</tr>
<tr>
<td>95%</td>
<td>$989,186</td>
<td>($52,062)</td>
</tr>
<tr>
<td>90%</td>
<td>$937,124</td>
<td>($104,125)</td>
</tr>
<tr>
<td>85%</td>
<td>$885,061</td>
<td>($156,187)</td>
</tr>
<tr>
<td>80%</td>
<td>$832,999</td>
<td>($208,250)</td>
</tr>
</tbody>
</table>

As can be seen in Table 10, an overall range of subscriber counts from 80% to 120% can have an impact on overall Hotwire revenues between $4.5 million and $6.7 million. On the corollary, in Table 11, the same overall range of subscriber counts from 80% to 120% can have an impact on Salisbury’s share of revenues between roughly $833,000 and $1.2 million.

While Baker Tilly does not give a formal opinion on the Hotwire projection, we re-calculated the amounts in their projection and based on the Hotwire assumptions of subscriber counts and rates charged for services their projection amounts are supported by those assumptions. Also, their projection amounts and pricing are consistent with similar systems as discussed in Section 3 of this report.
5.0 FIBRANT HISTORICAL OPERATING COSTS

5.1 – Scope Task: Evaluate and analyze Fibrant's historical operating costs

In this area, we summarized and commented on Fibrant’s historical and budgeted operating costs and financial results. This analysis was done to set an expected baseline of financial performance if the City continues to operate Fibrant.

5.2 – Procedures

Our procedures consisted of the following steps:

1. Read the City of Salisbury’s audited financial statements contained in its Comprehensive Annual Financial Report (CAFR) for the years ended June 30, 2011 through June 30, 2017 for the results of operations of Fibrant. These results are contained in:
   a. Schedule A-8 Statement of Revenues, Expenditures, and Changes in Funds Net Position – Proprietary Funds
   b. Schedule D-3 Broadband Services Fund – Schedule of Revenues and Expenditures – Budget and Actual (Non-GAAP)

2. Discussed the statements with the City’s Finance team to gain insights into the accounting and budgeting process for Fibrant

5.3 – Observations

For purposes of our observations, we used the statements in Schedule D-3 as the modified accrual basis of accounting is more relevant to operating a business enterprise such as Fibrant, since this basis more closely resembles the cash basis of accounting.

---

10 Schedule A-8 is prepared on the full accrual basis of accounting, which records revenues when earned and expenses when incurred, regardless and is the required accounting method under Generally Accepted Accounting Principles (GAAP) for audited financial statements.

11 Schedule D-3 is prepared on the modified accrual basis of accounting. Modified accrual accounting is an accounting method commonly used by government entities that combines accrual-basis accounting with cash-basis accounting. Modified accrual accounting recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.
The historical financial statements from Schedule D-3 for FY 2011 through FY 2017 are shown in Table 12:

### Table 12 – Fibrant System Historical Financial Results – FY 2011 through FY 2017 – Modified Accrual Basis of Accounting

<table>
<thead>
<tr>
<th>Revenues and Expenditures</th>
<th>Modified Accrual - Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY11</td>
</tr>
<tr>
<td><strong>OPERATING REVENUES</strong></td>
<td></td>
</tr>
<tr>
<td>Charges for Services</td>
<td>$610,075</td>
</tr>
<tr>
<td>Other Operating Revenues</td>
<td>-</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>610,075</td>
</tr>
<tr>
<td><strong>OPERATING EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td>Management and Administration</td>
<td>$462,523</td>
</tr>
<tr>
<td>Sales and Marketing</td>
<td>208,016</td>
</tr>
<tr>
<td>Programming</td>
<td>315,656</td>
</tr>
<tr>
<td>Broadband Services</td>
<td>650,862</td>
</tr>
<tr>
<td>Services Delivery</td>
<td>354,259</td>
</tr>
<tr>
<td>Total operating expenses other than depreciation</td>
<td>1,992,316</td>
</tr>
<tr>
<td><strong>NONOPERATING REVENUES (EXPENDITURES)</strong></td>
<td></td>
</tr>
<tr>
<td>Investment earnings</td>
<td>$1,065</td>
</tr>
<tr>
<td>Refunding bonds issued</td>
<td>-</td>
</tr>
<tr>
<td>Payment to refund bond escrow agent</td>
<td>-</td>
</tr>
<tr>
<td>Capital outlay</td>
<td>-</td>
</tr>
<tr>
<td>Payment of debt principal</td>
<td>-</td>
</tr>
<tr>
<td>Payment of inter-fund loan principal</td>
<td>-</td>
</tr>
<tr>
<td>Bond issuance costs</td>
<td>-</td>
</tr>
<tr>
<td>Interest expense and fees</td>
<td>(868,297)</td>
</tr>
<tr>
<td><strong>Net nonoperating expenditures</strong></td>
<td>(867,232)</td>
</tr>
<tr>
<td>Revenues over (under) expenditures</td>
<td>(2,249,473)</td>
</tr>
<tr>
<td><strong>OTHER FINANCING SOURCES (USES)</strong></td>
<td></td>
</tr>
<tr>
<td>Interfund Loan</td>
<td>$1,194,694</td>
</tr>
<tr>
<td>Refunding bonds issued</td>
<td>-</td>
</tr>
<tr>
<td>Payment to refunded bond escrow agent</td>
<td>-</td>
</tr>
<tr>
<td>Operating Transfers from General Fund</td>
<td>-</td>
</tr>
<tr>
<td>Total other financing sources (uses)</td>
<td>1,194,694</td>
</tr>
</tbody>
</table>

**Revenues over (under) expenditures and other financing sources (uses)**

| (1,054,779) | - | - | 229,022 | 83,168 | 24,210 | (3,323,053) |
The financial statements show a wider variance in annual expenses from year to year over the periods shown (FY 2011 – FY 2017). These variances were discussed with the City of Salisbury Finance Team in the next section.

Discussion with City of Salisbury Finance Team on Fibrant System Operating Results

We discussed the historical Fibrant System operating costs with the City of Salisbury’s Finance team (“team”). The team stated the following observations on the historical amounts:

- The team considers the costs recorded in FY 2017’s financial statements to be more reflective of a “normal year of operations” for Fibrant for the recording of all of the direct costs of operations.
- The team also considers the FY 2018 budgeted costs for Fibrant to be reflective of a normal year of operations for Fibrant for the recording of all of the direct costs of operations.
- The team stated the amounts recorded as operating costs of Fibrant do not include any allocations of indirect costs of the City’s operations.

- For example, it is a best and common practice in governmental accounting to allocate a portion of “indirect costs” for shared services, such as finance and accounting, technology, human resources, payroll, accounts payable and governance costs to all governmental funds or proprietary funds of the City based on a pre-determined and agreed-to allocation factor, such as revenues, full-time equivalent employees and other methods. The major governmental or proprietary funds of the City include:

<table>
<thead>
<tr>
<th>General Fund</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Fund</td>
<td>Sewer Fund</td>
</tr>
<tr>
<td>Broadband Services Fund</td>
<td>Stormwater Fund</td>
</tr>
<tr>
<td>Mass Transit fund</td>
<td></td>
</tr>
</tbody>
</table>

If one of the City’s funds is under-allocated its share of these indirect costs that means that another fund has been over-allocated its share of the indirect costs. Determining what the total allocated costs are and those that should be allocated to the Broadband Services Fund (i.e., Fibrant System) is outside of the scope of this engagement, so we did not determine what a proper cost allocation should be to Fibrant. But, based on the fact that indirect costs are not allocated to the Fibrant System, our conclusion is that Fibrant’s historical operating costs as reported are understated by an amount for indirect cost allocations.
Additional Comments on Fibrant Financial Results

As the City Finance Team indicated that the FY 2017 financial results are those of a normal year of operation for the recording the direct costs of operations of Fibrant, we will not comment on any of the historical operating results for years prior to FY 2017. As such, we have the following comments on the FY 2017 results:

**FY 2017 Results**

The FY 2017 financial results reflect the following observations:

1. The Fibrant System shows an operating loss (Operating Revenues less Operating Expenses) in FY 2017 of ($171,000). This means that revenues from charges for services were less than the cost of providing those services.

2. The operating costs for FY 2017 are understated by an unknown amount due to City indirect costs not being allocated to Fibrant, so the operating loss of ($171,000) would be somewhat larger by that undetermined amount.

3. In September 2016, the City refinanced the existing long-term debt on the Broadband Services Fund through a Refunding Certification of Participation (COP), which had the effect of reducing total debt service payments over a 13-year period (end of FY 2029) by approximately $2.3 million.

4. The Fibrant System was budgeted to achieve an operating profit of $558,000 in FY 2017; however, operating revenues were $1.5 million less than budgeted and operating expenses were $753,000 less than budgeted.

5. Operating revenues have declined by $1 million since their peak in FY 2015.

6. The City of Salisbury transferred $2.3 million to Fibrant during FY 2017 to aid in increasing its cash flows available to pay debt service, capital outlay, and operating costs.

7. The Fibrant System shows a negative cash flow of $5.6 million (Operating revenues less operating expenses less capital outlay less debt service) before the transfer from the General Fund.
8. The **capitalization ratio** is a measure of the proportion of debt in an organization's financial structure. A higher ratio indicates a lesser ability to utilize financial leverage for using debt in the future to finance needed long-term infrastructure investments. The capitalization ratio of Fibrant for the Fiscal Year ending on June 30, 2017 is shown in Table 13:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current portion of bonds, notes and loans payable</td>
<td>$2,030,000</td>
</tr>
<tr>
<td>Long-term portion bonds, notes and loans payables</td>
<td>25,140,000</td>
</tr>
<tr>
<td>Due to other funds</td>
<td>7,102,000</td>
</tr>
<tr>
<td>Net pension liability</td>
<td>377,000</td>
</tr>
<tr>
<td>Other post-employment benefits</td>
<td>225,000</td>
</tr>
<tr>
<td><strong>Total liabilities for calculation of capitalization ratio</strong></td>
<td>$34,874,000</td>
</tr>
<tr>
<td><strong>Total assets and deferred outflow of resources</strong></td>
<td>$26,103,000</td>
</tr>
<tr>
<td>Capitalization ratio</td>
<td>134%</td>
</tr>
</tbody>
</table>

The capitalization ratio of 134% means that Fibrant owes 34% or $8,771,000 more of these liabilities than it has in assets.

9. **Day's cash on hand** is another measure of financial strength. Common practice in a business-type operation like Fibrant is to have a minimum of 30 days cash on hand to fund operating expenses. Bond rating agencies generally give organizations with at least 90 days cash on hand a rating on their outstanding debt of “investment grade” and those with less than 30 days cash on hand a “speculative grade”. The day’s cash on hand ratio for Fibrant as of June 30, 2017 was 13 days. This is well below the minimum common best practice.

10. The **Net position** of Fibrant was a negative ($9,800,000) as of June 30, 2017. This means that Fibrant has experienced losses of $9.8 million since beginning business.

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12 Moody's subscriber information on utility methodologies accessible after setting up free user-id - https://www.moodys.com/researchandratings/methodology/003006001/rating-methodologies/methodology/003006001/---1/0/---en/global/r
13 (Available cash x 365 days)/Annual operating expenses = ($190,000 x 365)/$5,300,000 = 13 days
14 This is based on the accrual basis of accounting Schedule A-8 in the City’s CAFR.
6.0 COMPARISON OF EXPECTED LEASE PAYMENTS VERSUS CONTINUED FIBRANT OPERATIONS

6.1 – Scope Task: Compare the expected lease payments to the City to projected operating results if the City were to continue to operate Fibrant and achieve the same revenues projected by the third-party lessee.

In this area, we reviewed and commented on the comparison of the City's projection of Fibrant’s operating results to the third-party lessee’s projected results.

6.2 – Procedures

1. Baker Tilly read the City of Salisbury’s published FY 2018 budget for Fibrant.
2. Baker Tilly read the Hotwire prepared projection of revenues from operation of Fibrant for FY 2018. Baker Tilly then assigned the multiplier percentages according to the lease document.
3. Baker Tilly prepared a schedule comparing the City of Salisbury budget for FY 2018 and the Hotwire prepared projection of total revenues from each service type times the percentages for each type of service in the lease document for FY 2018.
4. Baker Tilly discussed Fibrant’s operations and future plans with the Fibrant Director and members of the Fibrant team.
5. Baker Tilly reviewed any relevant federal, state, or local legislation or regulations that could have an impact on Fibrant’s business operations or a third party lease agreement arrangement.

6.3 – Observations

The comparison of cash flows from the City of Salisbury FY 2018 budgeted results and the projected payments of revenues to be received from Hotwire for FY 2018 are shown in Table 14. The column entitled “City’s Budgeted” indicates the cash flow per the City’s filed FY2018 budget plan, which reflects continued operations of the Fibrant system; whereas the following column entitled “Third Party Lease” reflects strictly the city’s portion of revenues to be received through a third party lease arrangement with Hotwire. The last column shows the variance of these two scenarios, reflecting the fact that under a third party lease arrangement, the City would not have any operating costs tied to the Fibrant system.
The comparison in the previous table shows that if Fibrant achieves the results of the City’s FY2018 budget it will have a negative cash flow of $3.2 million after payments of operating expenses, capital outlay and debt service. The budget offsets the negative cash flow with a transfer to Fibrant from the General Fund of $3.2 million.
If Fibrant were to operate under the terms of the proposed Hotwire lease, based on the Hotwire projections, Fibrant would have a negative cash flow of $2.2 million after payment of debt service. This scenario also reflects that under a proposed Hotwire lease, the City’s annual debt service payments would be slightly higher due to a higher interest rate of 4.25% versus 2.06%. The higher interest rate of 4.25% reflects current interest rate projections and should be utilized as the City’s debt service on the bonds would be taxable under this scenario of a third party lease. Overall, the negative cash flow would still necessitate a transfer from the City’s General Fund of $2.2 million, but this would be $1.0 million less than if Fibrant continued to operate the system without the lease agreement.  

We understand that the lease terms, if accepted, will close after the close of FY 2018. However, this comparison was made using the City's FY 2018 budget as the City’s FY 2019 budget has not yet been prepared and there have been no longer-term forecasts of operations prepared by the City for Fibrant. As a forecast for Fibrant was not available FY 2018, the direct comparison to Hotwire’s third party lease arrangement was only prepared for FY 2018. Any details regarding future Hotwire revenue projections and the corollary City’s share of revenues is summarized in Section 2.3 of this report. Based on discussions with Hotwire, they indicate that it is unlikely that Fibrant could reduce its operating costs sufficiently to generate similar revenues that Hotwire is proposing to the City.

We reviewed the North Carolina House Bill 129 (HB 129) known as the “Level Playing Field Act,” which became law in 2011. The purpose of this act was to regulate local government competition with private businesses. A provision for communication services provided by cities states that municipal broadband systems may not directly or indirectly engage in competition. A City-owned communications service provider is any city that provides communications service using a communications network, whether directly, indirectly, or through an inter-local agreement or a joint agency.

Pertaining to the City of Salisbury, according to the Level Playing Field Act, Fibrant is only able to provide service to a specific service area that encompasses Salisbury and eight other municipalities in Rowan County and the corridors between those cities. The service area also includes governmental facilities and educational institutions. The governing bodies of the municipalities and institutions would have to vote to approve the service extension into each respective area before Salisbury can provide the service.

Additional observations

In connection with this task we have the following additional observations.

Comments on continued operation of Fibrant by the City

Discussions with the City’s Finance Team

Baker Tilly discussed the finances of Fibrant with the City Finance Team. They had the following comments and observations:

1. They indicated that annual budgets are prepared for Fibrant, but a longer-term forecast, or projection of the operating results of Fibrant, have not been prepared. A prepared long-term financial forecast would allow a comparison of Fibrant’s expected results to expected payments from Hotwire under the lease agreement.
2. Indirect costs from the City are not allocated to Fibrant, so operating expenses are understated in the FY 2018 budget

**Discussion with the Fibrant Team**

Baker Tilly also discussed plans for Fibrant with the Interim Director of Fibrant and members of the Fibrant team. They had the following comments to our questions:

1. Fibrant is proud of the service they provide to the Salisbury community. The technology of the Fibrant system is second-to-none and its employees work hard to provide their customers with outstanding service and a great customer experience.

2. Regarding our question on whether there are long-term financial projections for Fibrant, they stated that any long-term projections would be completed by the Finance area of the City. Note: The City Finance Team indicated that long-term financial projections have not been prepared beyond the FY 2018 budget.

3. Fibrant does have a longer term capital improvements budget for specific equipment, adding customer equipment and replacement equipment.

4. Fibrant does not have a long-term strategic plan prepared. They stated that this was requested of the City Council in 2017 but funding was not approved. They stated that the infrastructure is well maintained and built for future expansion.

5. Regarding plans to increase the subscriber base, Fibrant has the following initiatives in place:
   a. It is seeking new subscribers through direct mail, social media and referrals.
   b. They have had some success in signing new commercial customers.
   c. The goal is a 40% penetration rate for residential customers.
   d. Fibrant has 30% of the commercial market but is running into some resistance and churn on customers due to the uncertainty of the outcome of the proposed lease agreement and its perceived impact on Fibrant.
   e. They are planning to determine optimal price points to increase their competitive position.
   f. The system is state-of-the-art and built to meet current customer demands and future growth. There may need to be some additions to specific equipment – headend, video platform – to meet changes in technology and improve the customer experience with video. There will be needed buildouts to serve certain commercial customers they could attract.

6. Regarding a question Baker Tilly had on the decline in customer revenues of $1 million from their peak in FY 2015:
   a. There have been targeted marketing campaigns by competitors leading to customer churn and lack of retention.
   b. Negative publicity about the future of Fibrant is leading to issues in obtaining commercial customers.
   c. The tone with the uncertainty of the outcome and future state of Fibrant has been negative, which leads to issues in obtaining customers.
   d. Fibrant is hampered in obtaining new subscribers by not being able to offer new subscribers introductory specials for signing up for service. Their competitors can offer specials. This is
due to state legislation (i.e., HB 129) that specifically restricts municipal broadband providers from offering these introductory specials, while non-municipal providers are not bound by this provision of HB 129.

It is clear from our conversation with the Fibrant team that they take pride in the service they provide to Fibrant customers.

**Comments on information in the City’s FY 2017 audited financial statements**

Information on Fibrant is also noted in the City of Salisbury’s FY 2017 CAFR. These comments from the CAFR are as follows:

1. On page 32 of the City’s June 30, 2017 CAFR, it is stated “As mentioned in the financial highlights section of this document, the City’s bond ratings are strong and stable. In October 2013, Standard and Poor’s (S&P) upgraded the general obligation debt to AA- (from an A+). Conversely, in April 2014, Moody’s Investors Services downgraded the general obligation debt from A1 to A3 and the 2010 revenue refunding bonds from Aa3 to A3. In April 2015, Moody’s affirmed those ratings. Fitch affirmed its ratings on the revenue refunding bonds of A+ in August 2015. The ratings downgrades from Moody’s and Fitch were due to the losses incurred in the Broadband Services Fund and the inter-fund loans from the Water and Sewer Fund to the Broadband Services Fund in prior years”.

2. On page 34 of the June 30, 2017 CAFR, it is stated “The City’s Fiber-to-the-Home enterprise provides performance and reliability that are second to none. The financial performance of the system, however, faces significant challenges. The Broadband Services Fund will continue to depend on contributions from the General Fund until revenues become sufficient to cover all expenses of the fund. The FY18 budget includes $300,000 in principal payment on its inter-fund loan from the Water and Sewer Fund.”

**Additional Baker Tilly comments**

In operating a competitive business like Fibrant it is critical to have these tools in place:

1. A long-term strategic business plan that outlines the goals of the business, expected financial performance, pricing, capital improvement plans, and competitive analysis. This document should be updated annually.


3. A long-term capital improvement plan and budget for the business. While the fiber infrastructure may have up to a 20 year life (in a fiber to the premise system), changing technology renders the expected life of some of the equipment used in providing service to customers to only a 10 year useful life. This means that having a specific long-term capital improvement plan in place is critical for planning purposes to maintain customer service and subscriber retention.

These tools are needed to chart the long-term course of the business, especially in a business like broadband delivery in which there are multiple competing businesses and platforms for customers. These are not currently in place at Fibrant.

Based on discussions with Hotwire, they indicate that it is unlikely that Fibrant could reduce its operating costs sufficiently to match Hotwire’s costs and also generate similar revenues that Hotwire is proposing to the City.
The following summary describes certain material provisions of the Transition Management Agreement and Lease dated as of April __, 2018 (the “Lease Agreement”), between The City of Salisbury (the “City”) and Hotwire Communications, Ltd. (“Hotwire.”) The summary is qualified in its entirety by reference to the Lease Agreement, which may be viewed and downloaded from the following link to the City’s website: salisburync.gov/FibrantVote. Copies of the Lease Agreement may be obtained from the office of the City Clerk upon payment of a photocopying and processing fee of $ .10 per each page over 20 pages. This summary may not contain all of the information about the Lease Agreement that may be important to you. The City encourages you to read the Lease Agreement in its entirety for a more complete understanding of the lease arrangements.

Basic Lease Terms

The Lease Agreement provides, among other things, for a lease (the “Lease Agreement”) by the City, as lessor, to Hotwire, as lessee, of the City’s Fibrant optic-fiber-to-the-premises network that provides telephone, video, and internet services to residences, businesses, and other entities in the City and certain other areas. Following are certain basic terms of the lease:

- **Leased Assets** – The City will lease to Hotwire the City’s full right, title, and interest in the entire Fibrant System, including the following leased assets:
  
  - the Fibrant Network Operations Center (“NOC”) premises, occupying approximately 5,144 square feet on the main level of the City’s Customer Service Center at 1415 S. Martin Luther King Jr. Avenue, and all furnishings and equipment used by the City in operating the NOC;
  
  - all “Head End” equipment used by the City (including central control devices, “middleware,” servers, remodulation equipment, and other equipment”), and approximately 2,552 square feet on the main level of the Customer Service Center housing the Head End;
  
  - all the City’s Satellite Dish premises, occupying a portion of the City’s Communications Center property at 310 Hill Street, and the antennae, satellite dishes, and related electronics and equipment used by the Fibrant System at the site;
  
  - all “Outside Plant” of the Fibrant System, comprising fiber optic cable, conduits, and other equipment and components used in connection with the Fibrant System;
  
  - all “Customer Premises Equipment” (including terminals, modems, and certain wiring) used for providing communications services to customers and subscribers;
and

- the City’s fleet of approximately 15 vehicles used in connection with the Fibrant System.

- **Term** – The initial term of the Lease Agreement will be 20 years, commencing on July 1, 2018, or, if later, the date all conditions precedent to the Lease Agreement have been satisfied or waived. Hotwire will have the option to renew the lease for one additional 20-year term, provided that it satisfies certain conditions during the initial term, including the making of certain minimum rent payments during the three-year period prior to expiration of the initial term.

- **Rent** – Hotwire will pay rent to the City, quarterly, in an amount equal to certain agreed percentages of Hotwire’s Communication Service Revenue received in its operation of the Fibrant System. The percentages are set forth in the following table:

<table>
<thead>
<tr>
<th>Communication Service</th>
<th>Revenue Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Video Service</td>
<td>10%</td>
</tr>
<tr>
<td>Internet Service</td>
<td>30%</td>
</tr>
<tr>
<td>Voice Service</td>
<td>10%</td>
</tr>
<tr>
<td>Data Center Service</td>
<td>20%, subject to certain credits</td>
</tr>
<tr>
<td>Data Transport Service</td>
<td>25%</td>
</tr>
<tr>
<td>Dark Fiber Service</td>
<td>30%</td>
</tr>
<tr>
<td>Other Services</td>
<td>10%, subject to adjustment in certain circumstances</td>
</tr>
</tbody>
</table>

“Communication Service Revenue” means the funds received by Hotwire from subscribers and customers, but excluding (A) any amount collected for governmental excise, sales, or similar taxes and other governmental authorized fees and surcharges (such as local portability fees) that are invoiced to the customer, (B) rent charged to customers for rental of equipment, and (C) non-recurring, one-time charges to a customer.

Hotwire will be entitled to certain credits against its obligation to pay rent, including a credit for Hotwire’s cost of installing “Drops” (fiber connections from a pole or underground cable to the premises of a customer or subscriber) and NIDs (network interface devices that connect the Outside Plant to Customer Premises Equipment), plus a 15% administrative fee. Hotwire also would be entitled to a credit of $11,000 per quarter in consideration of Hotwire’s maintenance of certain dark fiber retained by the City and used for the City’s internal communications purposes
and the costs of capital improvements incurred by Hotwire to provide certain Data Center Services.

The Lease Agreement provides that either the City or Hotwire could request a renegotiation of revenue percentages allocated to “Other Services,” which would include communication services that become available in the future, if the applicable percentage in the table is inconsistent with the economic relationship of the parties at the time the Lease Agreement is executed. If the parties are unable to agree, the disagreement may be submitted to an Independent Telecommunications Expert for a determination of the appropriate percentage adjustment.

Hotwire also will be responsible for paying, or reimbursing the City, for certain charges that may be incurred by the City in connection with the Fibrant System, including fees for easements and pole attachment agreements, certain insurance premiums, certain costs for the provision of electricity and HVAC services, and certain taxes and regulatory and governmental fees.

The Lease Agreement provides certain audit rights for the City to verify rent and additional charge amounts.

THE LEASE AGREEMENT DOES NOT REQUIRE ANY MINIMUM OR GUARANTEED LEVEL OF RENT PAYMENT.

- **Use of Fibrant System Assets** – Hotwire will have the exclusive right, and will be required, to use the Fibrant System Assets for marketing, offering, provision, routing, and delivery of Communication Services to businesses, residents, consumers, and other users only within the Grandfathered Fibrant Service Area. “Grandfathered Fibrant Service Area” includes the corporate limits of the City of Salisbury (as of April 1, 2011, or as expanded through annexation); the municipalities of Salisbury, Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, and Landis and the “corridors between those cities,” as well as certain economic development sites, public safety facilities, governmental facilities, and educations schools and colleges located outside the municipalities. The Grandfathered Fibrant Service Area is defined in the Lease Agreement by reference to Section 160A-340.2 of the North Carolina General Statutes.

- **Communication Services** – The Lease Agreement provides that Hotwire will provide Voice, Data Center, Data Transport, Internet, Video, “Dark Fiber,” and other communication services. Hotwire will provide such services in accordance with Legal Requirements, Prudent Communication Service Industry Practice, Competitive Requirements, and Service Level Standards.

  - “Prudent Communication Service Industry Practice” means the standard of operating and maintenance practice, at any particular time, methods and acts, that, in light of the relevant facts, is generally engaged in or approved by a significant portion of the owners of distribution systems that are similar to the Fibrant System, that would have been expected to accomplish the desired result consistent with good business practice, reliability and safety, and in compliance with all
Manufacturer’s Recommendations.

- “Competitive Requirements” means the offering and provision of Communication Services of a type and quality, and at a price, that are in all respects (i) competitive with the services offered by providers from time to time offering Communications Services in the City of Salisbury or other areas of Rowan County served by the System Assets; and (ii) no less favorable than the type, quality, and price of Communications Services offered by Hotwire or its Affiliates in other locations where Hotwire or such Affiliates offer Communications Services, taking into account differences in pricing of third-party content and products.

- “Service Level Standards” means the customer service level and performance standards set forth in Appendix 3 to the Lease Agreement, covering, among other things, service availability, timely response to and cure of trouble reports, customer service orders, customer hold time, customer service records, emergency 911 telephone service standards, video programming service standards, virus protection, and internet bandwidth and service availability.

The Lease Agreement requires Hotwire to pay a penalty of $1,000 per day for failure to comply with Service Level Standards after a five-day resolution period and, in addition, to provide credits to subscribers for any day in which a communication service is not available.

- **System Maintenance** – Hotwire will be responsible, at its expense, for maintaining the Fibrant System Assets (except with respect to Customer Services Center roof and structure and certain pre-lease obligations regarding pole attachments), including repairing fiber cuts on a timely basis and replacing worn out or defective assets. All such maintenance, repair is to be done in accordance with Prudent Communication Service Industry Practice and with Engineering Standards set forth in the Lease Agreement.

“Engineering Standards” means standards and specifications for the construction, installation, repair, or replacement of Capital Improvements, and the use of materials and equipment, that are (i) in accordance with Required Licenses, Legal Requirements, Prudent Communication Service Industry Practice, System Insurance Requirements, System Contract Requirements, and Manufacturer’s Recommendations; (ii) requiring no less quality, precision, and care than the engineering standards applied by Hotwire or its Affiliates in distribution systems similar to the Fibrant System; (iii) do not degrade the structural integrity of the Fibrant System or any material System Asset, and (iv) in the case of any Capital Improvement that would reasonably be expected to cost $200,000 or more, the construction, installation, repair, or replacement thereof will be (A) effected pursuant to detailed plans and specifications approved by the City, and (B) conducted under the supervision of a qualified architect or engineer selected by Hotwire and approved by the City, such approval in each case not to be unreasonably withheld, conditioned, or delayed.
The City will remain responsible, at its expense, to maintain the roof and structural portions of the Customer Service Center and the HVAC Equipment serving the Customer Service Center, including any necessary capital improvements. In addition, the City will be responsible for correcting, repairing, or otherwise taking actions required to re-locate, repair, or replace certain pole attachments that may have been installed incorrectly prior to the date of the Lease Agreement.

- **Capital Improvements** – Hotwire will be responsible, at its expense, for the construction, installation, repair, and replacement of all capital improvements to the Fibrant System, to the extent required by Prudent Communication Service Industry Practice, Engineering Standards, and Competitive Requirements. Without limiting the foregoing, Hotwire will be responsible to install Drops and NIDS (subject to Hotwire’s entitlement to a credit against rent with respect to such installations), improvements to the Outside Plant, and Customer Premises Equipment. Drops and NIDS and improvements to Outside Plant and Customer Premises Equipment will automatically become the property of the City. Other capital improvements, such as improvements to the NOC, Head End, and Satellite Dish Equipment, will remain Hotwire property. The City will have the option to purchase such improvements at termination of the lease for their fair market value as agreed, or if not agreement is reached, as determined by an independent appraiser.

- **Insurance, Casualty, Condemnation** – The Lease Agreement requires Hotwire to maintain certain commercial general liability and other insurance and provides for the allocation of insurance proceeds in the event of casualty and the proceeds of any condemnation proceeding.

- **Default by Hotwire** – The Lease Agreement lists actions or occurrences that would constitute an “Event of Default” by Hotwire, some of which require notice from the City and provide Hotwire with a period of time in which to cure such Event of Default. Events of Default include, among others, the following:
  
  o Failure to pay rent or other charges required of Hotwire;
  
  o Certain bankruptcy filings or similar arrangements by Hotwire;
  
  o Attachments of Hotwire’s rights in the Fibrant System assets;
  
  o Breach by Hotwire of its representations and warranties in the Lease Agreement in any material respect;
  
  o Actions or omissions by Hotwire that cause the City to be in violation of certain North Carolina statutes, or lose the City’s exemption from the application of certain statutes, including the provision of Communication Services outside the Grandfathered Fibrant Service Area; and
Failure by Hotwire to perform any other term, covenant, or condition of the Lease Agreement in any material respect that adversely affects the City.

Upon the occurrence of an Event of Default, the Lease Agreement provides certain remedies to the City, including among others the right to terminate the Lease Agreement and recover from Hotwire liquidated damages in an amount equal to the greater of the Rent payable for 12 full calendar quarters immediately preceding such termination and the maximum amount payable under the Surety Bond ($3,000,000 as described below).

- **Default by City** – If the City defaults in its obligations under the Lease Agreement, including its obligation to make exclusive use of the Fibrant System available to Hotwire, Hotwire will be entitled to recover damages from the City in an amount determined by the Superior Court of North Carolina in Rowan County.

- **Surety Bond** – The Lease Agreement requires Hotwire to provide a Surety Bond in the form of a “Contract Bond (Miscellaneous – Not Construction)” of Travelers Casualty and Surety Company of America in the amount of $3,000,000, to be paid to the City in the event of failure by Hotwire to carry out its undertakings, covenants, and agreements in the Lease Agreement.

- **Early Termination Rights** – The Lease Agreement provides that the City may terminate the Lease Agreement in certain events, including a termination at any time after December 31, 2020, upon 180 days’ written notice to Hotwire if Hotwire fails to pay to the City Rent in amounts equal to the applicable Yearly Rent Target for any two years in a 3-year period. The Yearly Rent Targets are amounts agreed by the City and Hotwire and set forth in Appendix 7 to the Lease Agreement. A copy of Appendix 7 is attached to this summary. In addition, the City would be permitted to terminate the Lease Agreement upon the occurrence of any transaction or transactions that result in control, directly or indirectly, of Hotwire by any other provider of Communication Services within the Grandfathered Fibrant Service Area. Following any termination of the System Lease, Hotwire will, at the City’s request, provide certain transition services in respect of the Fibrant System for a period of up to 18 months. In consideration for such transition services, the City would pay to Hotwire, as a management fee, 110 per cent of Hotwire’s reasonable and documented operating costs (including Hotwire’s “standard allocated costs”) and expenses of providing such services.

- **Conditions Precedent to Commencement of Lease** – The obligations of the City and Hotwire to perform the Lease Agreement are conditioned upon the satisfaction or waiver of certain conditions, including among others the following:
o approval by a majority of those voting in a “vote of the people” (Referendum) of the City as required by Section 160A-321 of the North Carolina General Statutes;

o the City will have completed the refinancing of all amounts outstanding under its Installment Financing Contract with STI Institutional and Government, Inc., dated September 14, 2016;

o the absence of judgements, court orders, or laws that prohibit, prevent, or make illegal the performance of the System Lease;

o the absence of a “material adverse event” with respect to Hotwire.

o [consent under pole attachment contracts]

**Other Covenants, Agreements and Arrangements**

The Lease Agreement also sets forth the terms and conditions of certain other understandings between the City and Hotwire with respect to the Fibrant System, including among others the following:

- **Assignment and Subletting; Change of Control; Right of First Refusal** – The Lease Agreement prohibits Hotwire from assigning, transferring, or conveying the Hotwire Lease without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned, or delayed; provided, however, that Hotwire may assign or sublease to a wholly owned subsidiary or an Affiliate (as defined in the Lease Agreement) of Hotwire. The City may sell or convey its interest in the Fibrant System Assets; provided, however, that the City must provide to Hotwire a “Right of First Refusal” to acquire the Fibrant System Assets if the City seeks to sell or assign at any time during the first 12 years of the initial term of the System Lease. The Right of First Refusal allows Hotwire to acquire the Fibrant System Assets for the same consideration that the City would receive from any other purchaser and upon the same terms and conditions of sale.

- **Employee Transition Matters** – The Lease Agreement requires the City to use its commercially reasonable efforts to continue to employ those City employees who devote their primary time and effort to the Fibrant System and to make such Fibrant Employees available to Hotwire during the initial six months of the initial lease term.
to provide services to Hotwire. During this six-month “Employee Lease Period,” the City will be responsible for compensation of such Fibrant Employees. Prior to the end of the Employee Lease Period, Hotwire will offer employment on its standard conditions of employment to those Fibrant Employees selected by Hotwire in its reasonable discretion to continue providing services to the Fibrant System as Hotwire employees.

- **Assignment of Contracts** – The City will assign to Hotwire, and Hotwire will assume, certain contracts and agreements of the City with respect to the Fibrant System, including all agreements between residential, commercial, or other customers of the Fibrant System and the City. Certain agreements between the City and third-party providers of services will not be assigned to Hotwire and the City may be required to pay fees to such providers in connection with termination of the agreements.

- **Representations and Warranties** – The City and Hotwire make certain representations and warranties to each other in the Lease Agreement, including with respect to the due organization of each Party, authorization and valid execution of the Lease Agreement, absence of conflicts with law or other agreements, absence of pending lawsuits, and with respect to certain financial statements of Hotwire.

- **Independent Arbiter Procedure** – In the event of disagreements between the City and Hotwire as to certain matters, including the reporting of revenues used as the basis for determining rent payments, the Fair Market Value of capital improvements, and “reopeners” with respect to revenue percentages applicable to future “Other Services,” the Lease Agreement provides an “independent arbiter procedure” for the resolution of such disagreements. The decisions of the applicable independent arbiter in such matters would be binding and conclusive absent manifest error.

- **Transition Management** – During a “Transition Management Period” commencing on the date of Lease Agreement and ending on the Lease Commencement Date, the City will appoint Hotwire as manager of the Fibrant System. During such period, Hotwire will manage the Fibrant System and will provide certain services requested by the City, including supervision of sales, marketing, pricing, and branding of Communication Services, procurement of television content and other third-party services, supervision of billing and collection, and supervision of customer service functions. Hotwire will make available to the City a fulltime Transition Management Officer during this period. The City will remain responsible during the Transition Management Period for the compensation of Fibrant Employees and other operating costs of the Fibrant System. Hotwire will be responsible for compensation of the Transition Management Officer and other expenses incurred by Hotwire in providing such management services. During the Transition Management Period, the City will pay Hotwire a management
fee equal to $25,000 per month and 50 percent of any “third-party contract savings” achieved by Hotwire on the City’s behalf. If the Lease Agreement is not approved in the Referendum, then the Transition Management Period will end on July 31, 2018, in which case Hotwire will continue providing certain consulting services to the City for a period of three years, subject to the right of either Hotwire or the City to terminate the consulting agreement upon 90 days’ written notice at any time after December 31, 2019. The City will pay to Hotwire a consulting fee of $5,000 per month, plus 50 percent of the third-party contract savings achieved during such consulting period.
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Salisbury City Council
Agenda Item Request Form

Please Select Submission Category:  [ ] Public  [ ] Council  [ ] Manager  [ ] Staff

Requested Council Meeting Date:  APRIL 3, 2018

Name of Group(s) or Individual(s) Making Request:  PRESTON MITCHELL

Name of Presenter(s):  PRESTON MITCHELL (CITY)
                      RIVERS LAWTHER (CITY ATTY)

Requested Agenda Item:  DEED CLARIFICATION & RATIFICATION

Description of Requested Agenda Item:  REQUEST TO CLARIFY AND RATIFY A NC NON-WARRANTY DEED BETWEEN THE CITY OF SALISBURY AND ROBERT E. INGRAM, JR. (AND WIFE) REGARDING SALE OF PROPERTY.

Attachments:  [ ] Yes  [ ] No

Fiscal Note:  (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item:  COUNCIL TO RATIFY THE NON-WARRANTY DEED AS REQUESTED AND RECOMMENDED BY THE SALISBURY CITY ATTORNEY.

Contact Information for Group or Individual:  #5244 or preston.mitchell@salisburync.gov

Consent Agenda  (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

Regular Agenda  (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***
805 - 807 S. CALDWELL ST. | DEED RATIFICATION

TM&P: 015 00101 | DUPLEX DEVELOPMENT

SALISBURY HIGH SCHOOL

3/26/2018
This completed Zoning Application, when signed by the Salisbury Zoning Administrator, is required by the Rowan County Inspection Department when filing for any building, electrical, plumbing or heating construction permits.

DATE: July 16, 1990

ADDRESS OF PROPERTY CONCERNED: 807 S. Caldwell St.
Parcel Number: 241-1
Tax Map Number: 15
Cost of Improvement: $37,500.00
Subdivision: #5E-25-90
Zone: R-6

OWNER: Robert E. Ingram, Jr.
Address: 32 White Crane Rd., Salisbury 631-7222

CONTRACTOR: Owner

ARCHITECT:

PLUMBER:

ELECTRICIAN:

DIMENSIONS and OTHER INFORMATION:

Building or structure height, in feet above ground: 1
Total square feet of floor area of all floors based on exterior dimensions: 1400 sf
Number of off-street parking spaces: 4

FOR OFFICE USE ONLY:

First Fire District
Second Fire District
Flood Fringe
Floodway
Historic District
Redevelopment Area
Site Plan

FOR ZONING ADMINISTRATOR ONLY:

Zoning Application is hereby Approved

Comments OR Special Conditions: Docks will encroach into required setbacks.

(Signature of Zoning Administrator) 7-16-90

I, the undersigned, certify that the information furnished by me is complete and accurate to the best of my knowledge. The use of this property, including all alterations and/or modifications, shall be as stipulated in this application and/or as shown on the site plan with this application. All proposed structures and/or existing structures that are under construction shall NOT be occupied until said structure is in compliance with the North Carolina Building Code and a Certificate of Occupancy has been issued by the Salisbury Zoning Administrator for the use specified in this application.

Signature of Applicant

Date: 7/16/90
Address: 32 White Crane Rd., Salisbury, NC 28146

FILE COPY
NORTH CAROLINA NON-WARRANTY DEED

Tax Lot No. 015 00101 Parcel Identifier No. 
Verified by ___________________________ County on the ______ day of __________,_______.

by

Mail after recording to GRANTEE

This instrument was prepared by RYAN C. HAWKINS, Ferguson, Hayes, Hawkins & DeMay, PLLC

NO OPINION OF TITLE EXPRESSED OR IMPLIED

Brief Description for the index ___________

THIS DEED made this ______ day of __________, 2018, by and between

GRANTOR: CITY OF SALISBURY a North Carolina municipal corporation located in Rowan County, North Carolina

GRANTEE: ROBERT E. INGRAM, JR. and wife, OPAL L. INGRAM

Mailing Address: PO Box 479 Salisbury, NC 28145

Mailing Address: ____________________________

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g., corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Salisbury, Salisbury Township, Rowan County, North Carolina and more particularly described as follows:

(PIN 015 00101) (525 S. Caldwell Street)

BEGINNING at a stake 120 ft. S. W. from the South corner of the intersection of Woodson and Caldwell Streets; thence S. W. with Caldwell Street 24 ft. to a stake at the intersection of Caldwell Street and Henderson Avenue; thence with said avenue S. 2 deg. W. 97 ft. to a stake, Henderson’s corner; thence with Henderson’s line N. 82 3/8 E. 136 to Henderson and Woodson’s corner and Henderson’s line; thence N. W. with a line parallel to Woodson Street 160 ft. to the BEGINNING. Being Lot No. 17 in Henderson and Woodson’s plat of the Innis Lands, in the West Ward of the Town of Salisbury, N. C. Book 74, page 154.

There is excluded from the above described property the following parcel of land: BEGINNING at a stake 47 feet from the intersection of Caldwell Street and Henderson Avenue (Harrison Street); thence with said avenue South 2 deg. West 50 feet to a stake, Henderson’s corner; thence with Henderson’s line, North 82-3/8 deg. East 136 feet to Henderson and Woodson’s corner on Henderson’s line; thence Northwest with a line parallel to Woodson (now McCubbins) Street 50 feet to a stake; thence a new line South about 82 deg. West 125 feet more or less to the BEGINNING corner and being a part of Lot 17 in the Henderson and Woodson plat of the Innis lands.

Being the same property conveyed to the City of Salisbury by deed recorded in Deed Book 597 Page 414, Rowan County Registry.
On June 29, 1990, the City of Salisbury executed a deed to convey the above described property to Robert E. Ingram, Jr. and wife, Opal L. Ingram. The deed was not recorded until February 23, 2018 in Deed Book 1304, Page 660 of the Rowan County Registry. City of Salisbury executes this deed in order to convey any and all interest it may have in the above described property.

The deed recorded in Deed Book 1304 Page 660 of the Rowan County Registry, purported to convey the above described property subject to the following express restrictions and covenants:

"the above described parcel is conveyed upon the express restriction that it may not be used as a separate parcel for the construction of a dwelling, but must be combined with and become a part of the adjacent parcel presently owned by the Grantee and described in Deed Book 656 Page 917, office of the Register of Deeds for Rowan County, North Carolina. The above described parcel together with the parcel described in Deed Book 656 Page 917 shall be considered one building lot and must be combined for the purpose of obtaining any building permit. This special covenant and restriction shall run with the land until such time as the City of Salisbury shall grant an appropriate subdivision approval allowing the above described parcel to be used in a manner other than with the parcel described in Deed Book 656 Page 917, Rowan County Public Registry."

In addition to conveying any interest in the above described property to Grantee, the City Salisbury further executes this deed in order to remove these express restrictions and covenants set forth in the deed recorded in Deed Book 1304, Page 660, Rowan County Registry.

The property hereinafter described was acquired by Grantor by instrument recorded in Book 597, Page 414.

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book ___, Page ___.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinafter described.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

CITY OF SALISBURY

By: ____________________________ (SEAL)

Mayor

Attest:

______________________________ (SEAL)

City Clerk

STATE OF NORTH CAROLINA, COUNTY OF ______________

I, a Notary Public of the County and State aforesaid, certify that ______________________ personally came before me this day and acknowledged that (s)he is the City Clerk for the City of Salisbury, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by its Mayor, and attested by him/her as its City Clerk.

Witness my hand and official stamp or seal, this ___ day of ____________, 2018.

__________________________________________ Notary Public

Printed or Typed Name: ____________________

My commission expires: ____________________
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category:  [ ] Public  [ ] Council  [ ] Manager  [x] Staff

Requested Council Meeting Date:  4/3/18

Name of Group(s) or Individual(s) Making Request:  Brianna Price - HR

Name of Presenter(s):  Brianna Price

Requested Agenda Item:  Youth Opportunities

Description of Requested Agenda Item:  Share current youth opportunities that are available through the City and provide statistics on past internships

Attachments:  [ ] Yes  [x] No

Fiscal Note:  (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item:  (Please note if item includes an ordinance, resolution or petition)

Contact Information for Group or Individual:  bpric@salisburync.gov or 704-216-8021

[ ] Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

[ ] Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

______________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date****

For Use in Mayor’s Office Only

[ ] Approved  [ ] Declined

Reason:
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category:  ☒ Public  ☐ Council  ☐ Manager  ☒ Staff

Requested Council Meeting Date:  April 3, 2018

Name of Group(s) or Individual(s) Making Request:  Parks and Recreation

Name of Presenter(s):  Nick Aceves & Stephen Brown

Requested Agenda Item:  Update on Project

Description of Requested Agenda Item:  This will provide an update on the dog park project at the Civic Center. The dog park will remain on the grounds of the Civic Center but the location will move to the rear of the facility where we will repurpose the fenced in clay court area. This will leave another set of courts for use. This move will allow us to speed up the project.

Attachments:  ☒ Yes  ☐ No  Power Point

Fiscal Note:  (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item:  (Please note if item includes an ordinance, resolution or petition)

Contact Information for Group or Individual:  Nick Aceves  704-638-5299

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☒ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________  
Finance Manager Signature     Department Head Signature

______________________________  
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved  ☐ Declined
Reason:
CIVIC CENTER

DOG PARK

DogPAWs - salisbury, north carolina
Previous Plan
Previous Location
New Location
Site Plan
Questions??
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category:  □ Public  □ Council □ Manager □ Staff

Requested Council Meeting Date:  April 3, 2018

Name of Group(s) or Individual(s) Making Request:  Mayor Heggins

Name of Presenter(s):  Mayor Heggins and Councilwoman Alexander

Requested Agenda Item:  Update on Suggested Rules of Procedure

Description of Requested Agenda Item:

Attachments:  □ Yes  □ No

Fiscal Note:  (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item:  (Please note if item includes an ordinance, resolution or petition)

Update on Suggested Rules of Procedure

Contact Information for Group or Individual:  Mayor Heggins, 704-638-5231

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☑ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

_________________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved  ☐ Declined

Reason:
Please Select Submission Category: ☒ Public ☐ Council ☐ Manager ☒ Staff

Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: Kelly Baker

Name of Presenter(s):

Requested Agenda Item: Council to consider making appointments to boards and commissions. A worksheet is attached showing the current number of seats open either through vacancies or members who are rolling off of the board for each the boards and commissions.

Description of Requested Agenda Item:

Attachments: ☒ Yes ☐ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

There is no fiscal impact.

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)

Council to consider making appointments to boards and commissions.

Contact Information for Group or Individual: Kelly Baker, 704-638-5233

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☐ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

_________________________________
Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date****

For Use in Mayor’s Office Only
### Alternate Methods of Design Commission

<table>
<thead>
<tr>
<th>Current Member</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Wagoner</td>
<td>3/31/18</td>
<td>No</td>
<td>Members shall have demonstrated experience, education, or licensure in the design, construction, and/or development field.</td>
</tr>
</tbody>
</table>

**Applicants:**

- Tenkamenin Crowder

**Notes:**

- Members shall have demonstrated experience, education, or licensure in the design, construction, and/or development field.

### Community Appearance Commission

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Need 2 Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levonia Corry</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Jane Creech</td>
</tr>
<tr>
<td>Jane Creech</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Carlton Jackson, Jr.</td>
</tr>
<tr>
<td>Carlton Jackson, Jr.</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Levonia Corry</td>
</tr>
<tr>
<td>Vacant (Judy McDaniel)</td>
<td>3/31/18</td>
<td>n/a</td>
<td>Lewellen Padgett</td>
</tr>
<tr>
<td>Karl Sale</td>
<td>3/31/18</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

**Applicants:**

- Nancy Vick

**Notes:**

### Greenway Committee

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>All Vacancies Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Darryl Blackwelder</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Darryl Blackwelder</td>
</tr>
<tr>
<td>Edward Hirst</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Edward Hirst</td>
</tr>
<tr>
<td>Lisa Wear</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Lisa Wear</td>
</tr>
</tbody>
</table>

**Applicants:**

**Notes:**

### Historic Preservation Commission

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Need 2 Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jon Planovsky</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Jon Planovsky</td>
</tr>
<tr>
<td>Elizabeth Trick</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Elizabeth Trick</td>
</tr>
<tr>
<td>Mr. Jonathan Chamberlain</td>
<td>3/31/18</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/20</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>

**Applicants:**

- William Boyd
- Kaloni Brincefield
- Edward Clark
- Steven Cobb
- Emelia Duren
- Larry Richardson
- John Struzick

**Notes:**

- All members must have a demonstrated interest, competence, or knowledge in historic preservation. The Certified Local Government must document in writing its good faith effort to appoint professionals from the disciplines of architecture, history, architectural history, planning, archaeology, or other related disciplines, to the extent such professionals are available in the community and willing to serve. The CLG program recognizes that a mix of professional and lay members makes the strongest commission.
### Housing Advocacy Commission

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>All Vacancies Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greta Conner (Neighborhood)</td>
<td>3/31/18</td>
<td>No</td>
<td>Greta Conner</td>
</tr>
<tr>
<td>Jayne Helms (Landlord)</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Jayne Helms</td>
</tr>
<tr>
<td>Sean Meyers (At-large)</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Sean Meyers</td>
</tr>
</tbody>
</table>

**Applicants:**
- Katherine Boyd
- Michael Brown
- Myra Byarm
- Rocky Cabagnot
- Frances Day
- Emilia Duren
- Velveeta Reid-Hairston
- Heather Fidler
- Jayne Land
- Whitney Peckman
- John Struzick
- Bianca Warren

**Notes:** Seats have been designated for representatives from Neighborhoods, Landlords and At-large.

### Human Relations Council

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Need 2 Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annie Boone-Carroll</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Annie Boone-Carroll</td>
</tr>
<tr>
<td>Lorenzo Debose</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Lorenzo Debose</td>
</tr>
<tr>
<td>Linda Hunt (resigned)</td>
<td>3/31/18</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/19</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>

**Applicants:**
- Katherine Boyd
- William Boyd
- Kaloni Brincefiled
- Myra Byarm
- Tenkamemin Crowder
- Frances Day
- Emelia Duren
- Whitney Peckman
- John Struzick
- Kelly Vanager
- Biana Warren
- Latasha Wilks

**Notes:** Eight members of the HRC are appointed by City Council and eight members are appointed by the HRC.

### Hurley Park Advisory Board

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>All Vacancies Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kathryn Davis</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Kathryn Davis</td>
</tr>
<tr>
<td>Laura Thompson</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Laura Thompson</td>
</tr>
</tbody>
</table>

**Applicants:**
- Annie Boone-Carroll
- Latasha Wilks

**Notes:** The City will ensure that a member of the Hurley Family Foundation and a person who lives within 100 feet of the park are appointed to the board.
## Parks and Recreation Advisory Board

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Need 1 Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roy Bentley</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Roy Bentley</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Russell Smyre</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/18</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

**Applicants:**
- George Benson
- William Boyd
- Heather Fidler
- Jon Post
- Kelly Vanager
- Nancy Vick
- Latasha Wilks

**Notes:**

## Planning Board

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>Need 2 Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Josh Canup (ETJ)</td>
<td>3/31/18</td>
<td>No</td>
<td>Cress Goodnight</td>
</tr>
<tr>
<td>Cress Goodnight</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Jon Post</td>
</tr>
<tr>
<td>Jon Post</td>
<td>3/31/18</td>
<td>Yes</td>
<td>John Struzick</td>
</tr>
<tr>
<td>Randy Reamer (ETJ)</td>
<td>3/31/18</td>
<td>No</td>
<td>Patricia Ricks</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/19</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/20</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>

**Applicants:**
- Michael Brown
- Myra Byarm
- Edword Clark
- Heather Fidler
- Velveeta Reid-Hairston
- Jayne Land
- Whitney Peckman
- Russell Smyre
- Kelly Vanager

**Notes:**

## Transportation Advisory Board

<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>All Vacancies Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wendy Brindle</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Wendy Brindle</td>
</tr>
<tr>
<td>Cynthia Kaminski</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Cynthia Kaminski</td>
</tr>
<tr>
<td>Gary Price, Jr. (County Service)</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Gary Price, Jr.</td>
</tr>
<tr>
<td>Laura Schmidt (V.A.)</td>
<td>3/31/18</td>
<td>Yes</td>
<td>Laura Schmidt</td>
</tr>
</tbody>
</table>

**Applicants:**
- George Benson
- Michael Brown
- Rocky Cabagnot
- Velveeta Reid-Hairston

**Notes:** Membership shall be representative of the population of the service area and include representatives from human service agencies, transportation providers, business sector, government sector, and the public within the service area.
<table>
<thead>
<tr>
<th>Current Members</th>
<th>Term Expires</th>
<th>Eligible for Reappointment</th>
<th>All Vacancies Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rick Lewis</td>
<td>3/31/18</td>
<td>No</td>
<td>Katherine Boyd</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/17</td>
<td>n/a</td>
<td>Carolyn Brown</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/18</td>
<td>n/a</td>
<td>Edword Clark</td>
</tr>
<tr>
<td>Vacant</td>
<td>3/31/19</td>
<td>n/a</td>
<td>Melisa Williams</td>
</tr>
</tbody>
</table>

**Applicants:**

**Notes:**
Requested Council Meeting Date: April 3, 2018

Name of Group(s) or Individual(s) Making Request: Parks and Recreation

Name of Presenter(s):

Requested Agenda Item: Announcement

Description of Requested Agenda Item: The 30th Anniversary of Hurley Park at the annual Spring Celebration will be held on Sunday, April 8 from 2-4 pm at 304 Annandale Ave. Please come out for music in the park and enjoy the beautiful gardens it has to offer. The event is free to the public.

Attachments: Yes No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item: (Please note if item includes an ordinance, resolution or petition)

Contact Information for Group or Individual: Danelle Cutting, Hurley Park Manager 704-638-4459

**Consent Agenda** (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

**Regular Agenda** (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

Finance Manager Signature

Department Head Signature

Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

Approved

Declined

Reason:
Salisbury City Council
Agenda Item Request Form

Please Select Submission Category:  ☐ Public  ☐ Council  ☐ Manager  ☒ Staff

Requested Council Meeting Date:  April 3, 2018

Name of Group(s) or Individual(s) Making Request:  Salisbury Parks and Recreation Department

Name of Presenter(s):  Announcement

Requested Agenda Item:  Touch a Truck

Description of Requested Agenda Item:  The Salisbury Parks and Recreation Department will hold its 12th Annual Touch a Truck event on Saturday, April 14, 2018 from 10:00 am-1:00 pm in Downtown Salisbury behind City Hall at 217 S. Main St. Participants of all ages will get a hands on, up close and personal, educational experience with a wide variety of vehicles. You will find dump trucks, tractors, helicopter, ambulances and much more. Cameras highly recommended. This event is free and open to the public.

Attachments:  ☐ Yes  ☒ No

Fiscal Note:  (If fiscal note requires approval by finance department because item exceeds $100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item:  (Please note if item includes an ordinance, resolution or petition)

Contact Information for Group or Individual:
Vivian Koontz
704-638-5294

☐ Consent Agenda (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☒ Regular Agenda (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

_________________________________   _____________________________
Finance Manager Signature     Department Head Signature

Budget Manager Signature

****All agenda items must be submitted at least 7 days before the requested Council meeting date***

For Use in Mayor’s Office Only

☐ Approved  ☐ Declined
Reason: