



**TOWN OF DAVIDSON
BOARD OF COMMISSIONERS**

**Town Hall Board Room - 216 S. Main Street
March 18, 2019**

I. CALL TO ORDER - 6:00PM

II. CLOSED SESSION

- (a) **Consult with Attorney NCGS §143-318.11. (a) (3) - Attorney-client privilege**

III. DISCUSSION

- (a) **Fifth Amendment to the Interlocal Agreement for the Joint Operation of Communications System**
- (b) **Resolution 2019-10 Approving Solicitation of Offers to Purchase Continuum**

IV. ADJOURN



Agenda Title: Consult with Attorney NCGS §143-318.11. (a) (3) - Attorney-client privilege

Summary:

ATTACHMENTS:

Description

Upload Date

Type

No Attachments Available



Agenda Title: Fifth Amendment to the Interlocal Agreement for the Joint Operation of Communications System

Summary:

ATTACHMENTS:

Description		Upload Date	Type
<input type="checkbox"/>	Fifth Amendment to the Interlocal Agreement for the Joint Operation of Communications System	3/18/2019	Exhibit

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

**FIFTH AMENDMENT TO THE INTERLOCAL AGREEMENT FOR
THE JOINT OPERATION OF COMMUNICATIONS SYSTEM**

This Fifth Amendment to the Interlocal Agreement for the Joint Operation of a Communications System (the "Fifth Amendment") is entered into by and between the Town of Mooresville and the Town of Davidson, the Operating Parties as defined in the Interlocal Agreement for the Joint Operation of a Communications System (the "Interlocal Agreement").

WITNESSETH

WHEREAS, in June 2012, the Operating Parties entered into the Fourth Amendment to the Interlocal Agreement (the "Fourth Amendment") in order to agree to a more equitable formula to be used to calculate the financial risks and rewards of the System (including the sharing of the payment of operating costs) so as to encourage increasing subscribers within the territories served by the Operating Parties;

WHEREAS, the Operating Parties are reviewing strategic alternatives with respect to the System (the "Strategic Review"), which Strategic Review could result in significant cash proceeds being realized by the Joint Agency;

WHEREAS, both of the Operating Parties and the Joint Agency will benefit from the Strategic Review;

WHEREAS, the Strategic Review will result in the incurrence of certain expenses, including expenses associated with the engagement of consultants and advisers and retention and possible severance of System employees (the "Strategic Review Expenses"), the funding of which was not contemplated by the Interlocal Agreement (as amended by the Fourth Amendment) or by the System's current operating budget;

WHEREAS, while all of the Strategic Review Expenses shall be deemed a liability of the Joint Agency, certain of the Strategic Review Expenses will be funded by Mooresville and Davidson.

Now, therefore, the Parties desire to further amend the Interlocal Agreement For the Joint Operation Of A Communications System as follows:

1. Section 11.5 of the Interlocal Agreement (as amended by the Fourth Amendment) is amended and restated in its entirety to read as follows:

“Section 11.5

- (a) It is agreed between the Parties that each Operating Party's share of the required payments to offset the deficit of revenues versus expenses and debt service should be recalculated using the Financial Interests as set out in the Amended Article 16 in the Fourth Amendment from the date of the Interlocal Agreement establishing the System (August 14, 2007).
- (b) Commencing July 1, 2012, the maximum annual contribution required from Davidson shall be One Million Dollars (\$1,000,000.00) (the “Davidson Maximum Annual Contribution”). Mooresville will contribute the amount to offset the deficit of revenues versus expenses and debt service that exceeds \$1,000,000.00. The System shall keep a record of the payments made by the Operating Parties and the total of all such payments. The total of such payments shall be reported at least annually to the Operating Parties.
- (c) As long as a deficit of revenues versus expenses and debt service exists, Davidson shall contribute to the System the sum of One Million Dollars (\$1,000,000.00) annually. To the extent that the \$1,000,000.00 annual contribution by Davidson exceeds the annual contribution required to be paid by Davidson based upon its Financial Interest as set out in the amended Article 16 herein, such excess shall be paid to Mooresville until such time that Mooresville has recovered its contributions in excess of its Financial Interest under Articles 11 and 16 herein. Except as otherwise provided herein, in any one year, Davidson's contribution shall not exceed the “Davidson Maximum Annual Contribution”.
- (d) Notwithstanding the foregoing and any other provisions of the Interlocal Agreement, the expenses, including expenses associated with the engagement of consultants and advisors and retention and possible severance of System employees (the “Strategic Review Expenses”), of a review of strategic alternatives with respect to the System being conducted by the Joint Agency (the “Strategic Review”) shall be provided for as follows:
 - (i) The Joint Agency and Davidson acknowledge and agree that Mooresville may engage advisors and consultants in connection with the Strategic Review, following the approval by Davidson of such advisors and consultants (the “Strategic Review Advisors”), and that the engagement of the Strategic Review Advisors by Mooresville is in the best interests of the Joint Agency and Davidson.

- (ii) The Joint Agency agrees that it shall be liable for the payment of the Strategic Review Expenses, including those incurred by Mooresville and Davidson in accordance with subsection (d)(iii) below, and that such liability shall be included in the calculation of the Joint Agency's liquidation value upon any sale of the System irrespective of whether such liability has been funded in advance by Mooresville and Davidson.
 - (iii) Mooresville and Davidson agree that they shall be responsible for funding Strategic Review Expenses, including those related to Strategic Review Advisors, in accordance with their respective Financial Interest and that the amount of the Davidson Maximum Annual Contribution shall be disregarded in connection with Davidson's responsibility for the funding of such expenses.
 - (iv) Following the receipt of an invoice for a Strategic Review Expense, Mooresville shall provide the amount of the expense to Davidson and the Joint Agency (with supporting documentation). If Mooresville has paid such expense, then Davidson shall reimburse Mooresville, within 30 days of receipt of the supporting documentation, for its pro rata share of such expense based on its Financial Interest.
 - (v) Upon the Joint Agency's receipt of any proceeds resulting from the Strategic Review, and before any other distributions are made other than distributions required by Section 13.3(a) herein, the Joint Agency shall make payments from such proceeds to Mooresville and Davidson in the amount of all Strategic Review Expenses previously incurred by them or for which they remain responsible for payment in accordance with their respective Financial Interest pursuant to this Fifth Amendment.
2. The remaining provisions of the Cable Television System Interlocal Agreement for the Joint Operation of a Cable Television System, as previously amended, shall remain in full force and effect. Capitalized terms used and not defined in this Fifth Amendment shall have the meanings assigned to such terms in the Interlocal Agreement (as amended prior to the date hereof).
3. This Fifth Amendment shall be effective as of March 18, 2019.

IN WITNESS WHEREOF the Operating Parties have caused this Fifth Amendment to be executed in their corporate names by duly authorized officers, as of the date set out next to each signature.

TOWN OF MOORESVILLE

By _____

Name: _____ Date

Title:

ATTEST:

Name:

Title: Town Clerk

TOWN OF DAVIDSON

By 

Name: Rusty Knox

Title: Mayor

3-18-19
Date

ATTEST:

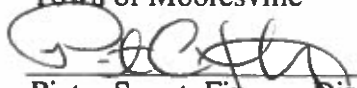

Name: Elizabeth K. Shores

Title: Town Clerk

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

Deborah Hockett, Finance Director
Town of Mooresville

Date



Pieter Swart, Finance Director
Town of Davidson

3/18/19
Date



Agenda Title: Resolution 2019-10 Approving Solicitation of Offers to Purchase Continuum

Summary:

ATTACHMENTS:

Description	Upload Date	Type
□ Resolution 2019-10 Approving Solicitation of Offers to Purchase Continuum	3/18/2019	Resolution Letter



Resolution 2019-10
APPROVING SOLICITATION OF OFFERS TO
PURCHASE CONTINUUM

Be it ordained by the Board of Commissioners of the Town of Davidson:

WHEREAS, the Town of Mooresville (“Mooresville”), the Town of Davidson (“Davidson”), the Town of Cornelius (“Cornelius”) and Mecklenburg County, North Carolina entered into a Cable Television System Interlocal Agreement for the Joint Operation of a Cable Television System effective August 14, 2007, the title of which was subsequently amended to An Interlocal Agreement for the Joint Operation of a Communications System (the “Interlocal Agreement”), providing for the purchase and operation of the communications system now known as Continuum (“the System”);

WHEREAS, the parties entered into the Interlocal Agreement pursuant to authority granted by Article 20 of Chapter 160A and section 153A-445 of the General Statutes of North Carolina;

WHEREAS, as authorized by the foregoing statutes, in the Interlocal Agreement the parties created a joint agency known as MI Connection Communication System (the “Joint Agency”) to own and operate the System;

WHEREAS the Town of Cornelius and Mecklenburg County immediately transferred and ceded to Mooresville and Davidson, as the Operating Parties, all rights and duties to share in the management of the System;

WHEREAS, pursuant to the Interlocal Agreement, as amended, the System is deemed owned in its entirety by the Joint Agency, save for real estate which is owned by Mooresville and held in trust for and leased to the Joint Agency;

WHEREAS, the Interlocal Agreement confers on Mooresville and Davidson, as the Operating Parties, the right to authorize the sale of the entire System without the concurrence of the other parties to the Interlocal Agreement, while requiring certain payments be paid from sale proceeds to Cornelius and Mecklenburg County upon certain conditions;

WHEREAS, Mooresville and Davidson agreed by amendment to the Interlocal Agreement that their respective financial interests in respect of the System are divided seventy percent (70%) to Mooresville and thirty percent (30%) to Davidson;

WHEREAS, Mooresville is the sole obligor on the installment financing obtained in connection with the purchase of the System, and Davidson makes a proportionate annual contribution to debt service;

WHEREAS, debt service on the installment financing exceeds the net revenues of the System;

WHEREAS, in light of the financial obligations for Davidson from the System, including from the installment financing, the Town Board believes that it is in the best interest of Davidson, the citizens of Davidson, and the customers of the System to review its strategic alternatives with respect to the System, including to seek a buyer of the System which would offer favorable financial terms and which could continue to operate the System and provide services to the public;

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-321, Davidson is authorized to sell any city-owned public enterprise on such terms as the Town Board deems best, subject to public approval by referendum;

WHEREAS, if the Town Board determines to pursue a sale of the System, in order carry out such sale in compliance with the law and to achieve the most favorable terms, the Town Board deems it advisable to retain, and to consent to its co-Operating Party Mooresville's retention, of experienced communications capital market and legal representation;

WHEREAS, in order to pursue a sale of the System the Town Board must communicate, or authorize the communications consultant to communicate, its desire to sell together with critical facts regarding the System to potential buyers, and then receive proposals from such interested parties, evaluate offers, and, if deemed to be in the best interest of Davidson and its citizens, authorize the sale, subject to approval of the public in a referendum;

NOW, THEREFORE, BE IT RESOLVED by the Town Board as follows:

1. The Town Board hereby authorizes and directs the Town Manager: to finalize a Confidential Information Memorandum regarding the System ("CIM") in a form that the Town Manager, with the advice of the capital market consultant and counsel, shall deem appropriate and not inconsistent with these resolutions; to consent to the capital markets consultant's mailing the CIM to each entity or individual that the consultant has identified as a potential purchaser and to such other persons as the Town Manager deems appropriate; to provide a mechanism for persons not so identified to be made aware of the possible sale of the System and the identity of the communications capital markets consultant; to receive, review, obtain further information with respect to, and evaluate responses to the CIM; to negotiate with one or more respondents; to take any and all other actions and enter into such nondisclosure agreements and other contracts in furtherance of the process as the Town Manager deems appropriate and not inconsistent with these resolutions; provided, however, that the CIM and such other actions and agreements shall not create or result in any binding contractual commitment or undertaking on the part of the Town to sell the System except as required to be undertaken in furtherance of the process, or otherwise constitute an offer, solicitation, or action by which the Town or any division thereof may become bound in contract or by law to sell or convey any assets of the Town or any interest therein, all such undertaking and contracts to be subject to final review and approval by this Board.

2. The Town Manager be and hereby is authorized to engage the services of the following law firms to provide services jointly to Davidson and Mooresville in connection with the strategic review process and prospectively in connection with any sale or other transaction, including a public referendum process, that may ensue, and to execute engagement letters with the said firms in the forms presented to the Board: Troutman Sanders, LLP, Robinson Bradshaw & Hinson, P.A., and Parker Poe, Adams & Bernstein, LLP.

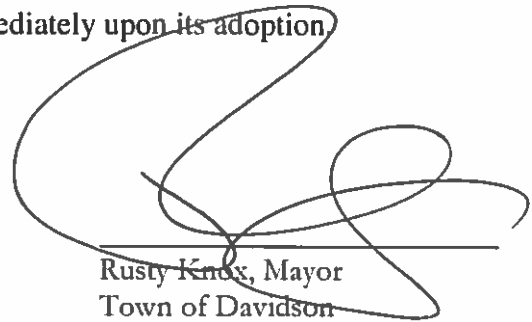
3. Mooresville's engagement of RBC Capital Markets, LLC ("RBCCM"), as the communications capital market advisor and consultant on the terms of their confidential engagement letter with Mooresville is hereby approved, consistent with and pursuant to the Fifth Amendment to the Interlocal Agreement. The Town Manager is hereby authorized to enter into on behalf of Davidson an engagement agreement with RBCCM on the same terms as those in the confidential engagement letter with Mooresville.

4. The Town Manager be and hereby is authorized to carry out such functions and actions as are necessary and appropriate under the Interlocal Agreement with the Town of Mooresville to effectuate the sale of the System, and to bring back to the Town Board such proposed amendments to the Interlocal Agreement as are deemed appropriate.

5. This Resolution shall become effective immediately upon its adoption.

Approved this 18th day of March, 2019.

Attest:



Rusty Knox, Mayor
Town of Davidson



Elizabeth K. Shores, Town Clerk

Approved as to form: 
Cindy Reid, Town Attorney