Contract # 4550
To be assigned by Purchasing

TOWN OF CHAPEL HILL ROUTING FORM

Vendor/Contractor Name: AT&T North Carolina
Vendor # 2973

Document Name/Title: AT&T Master Network Development Agreement
Bid # (If applicable)

Department:	Manager
Contact Person:	Jason
Phone Number:	968-2844

Return To:	Jason
Department:	Manager

	Date Received	Date Forwarded	Initials
Department Head (Review & Approve)	6.9.14	6.9.14	JWND
Purchasing & Contracts Manager	6-10-14	6-12-14	ZA
Finance Officer (Per Budget Act)	6/12/14	6/13/14	[illegible]
Legal Review	6/13/14	6/13/14	RDK
Deputy/Town Manager ~~(If Required)~~ REQUIRED	6.17.14	6.17.14	JWND
Town Clerk (Attest, Date and Notarize)	6/17	6/17/14	[illegible]
Purchasing & Contracts Mgr (Distribution and Mailing)			

Deadline for Signing: ASAP

G/L Account Number(s): N/A

Contract Dollar Amount(s): N/A

Special Distribution Instructions

Send three copies to Jason.

Notes/Explanation

N/A
E-verify affidavit is not attached. — Being reviewed 6/13
Hold for E-verify Affidavit + COI.

Vendor Mailing Address/Telephone

MASTER NETWORK DEVELOPMENT AGREEMENT

This Master Network Development Agreement (the "Agreement") is hereby entered into by and between the Town of Chapel Hill, North Carolina, a municipal corporation duly formed under North Carolina law ("City") and BellSouth Telecommunications, LLC dba AT&T North Carolina, a Georgia limited liability company formed under Georgia law, on behalf of itself and its affiliates and related companies, including its service providing entities (collectively, "AT&T").

RECITALS

WHEREAS, to foster innovation, stimulate economic growth and expand the availability of state-of-the-art communications services for City residents and businesses, the City is soliciting private investment in the "next generation" fiber-based communications networks, capable of delivering services with service capability speeds up to 1 Gigabit per second in its jurisdiction and surrounding areas; and

WHEREAS, along with five other local municipalities and four universities ("NCNGN Participants"), the City is participating in the "North Carolina Next Generation Networks" ("NCNGN") initiative, a cooperative effort to solicit deployment of such ultra-high speed fiber-based communication networks in local markets and involving Carrboro, Chapel Hill, Cary, Durham, Raleigh and Winston-Salem; and

WHEREAS, AT&T is an international communications service company that has a significant presence in North Carolina, where it employs thousands on an annual payroll measured in the hundreds of millions of dollars, and in the City; and

WHEREAS, AT&T has announced its plans to build such "next generation" fiber-based networks in markets in the United States where it is attractive to do so; and

WHEREAS, AT&T desires to deploy and operate a fiber-based network in the City's jurisdiction to meet the standards of such an ultra-high speed network, and to thereby make a long-term commitment in the local market and use that network to provide industry-leading broadband Internet access, video programming, voice and other communications services to residential, business and governmental customers; and

WHEREAS, AT&T believes it is well-positioned to deploy such a fiber-based network to provide services to the citizens of the City, given it has already deployed fiber-to-the-premises in some municipalities of North Carolina and operates one of the largest Tier 1 Internet backbones globally; and

WHEREAS, this Agreement is accordingly intended to establish the framework under which AT&T will construct and deploy the "next generation" fiber-based network in the City, pursuant to all applicable local and other legal requirements, and also sets forth the parties' roles and responsibilities for communicating to the public about the availability and benefits of having such an ultra-high speed network in the community; and

WHEREAS, this Agreement applies to upgrades and extensions of AT&T's fiber-based network as well as other services described herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound, hereby enter this Agreement as set forth below:

1. Design and Construction of the Network.

1.1 Network Description. AT&T shall complete all necessary design work, and deploy and operate a fiber-based network that provides residential and business end-users with advertised broadband internet speeds of up to 1 Gigabit per second to customer locations chosen by AT&T within the corporate limits of the City (the "Network"), which may include any additional areas annexed by the City after the Effective Date ("Market Area"). The "Effective Date" is the date that this Agreement is last signed by either the City or AT&T. AT&T may host the fiber infrastructure electronics in its existing central offices and in cabinets in rights of ways ("ROWs"), which may house remote optical line terminals ("OLTs"), and provide or secure power to operate equipment for the Network to be located in public spaces, other than mutually agreed to exception equipment identified in Exhibit A ("Exception Equipment"), which list may be updated from time to time by written agreement of the parties. AT&T intends to utilize the Network primarily for commercial purposes to sell and provide various broadband Internet access, video programming, voice and other communication and entertainment services ("Services") to consumers and businesses within the service area where the AT&T Network is deployed as determined solely by AT&T ("Service Area"), consistent with all applicable federal and state laws and regulations.

1.2 Anticipated Investment. AT&T will bear the costs for deployment of the Network, including design, engineering, construction, equipment and insurance. AT&T will also bear reasonable and customary costs of maintenance of the Network.

1.3 Network Construction. AT&T will deploy and, as it deems necessary in its sole discretion to construct the Network, said construction to be in compliance with all applicable local and other regulatory and permitting requirements and processes. As determined by AT&T, traditional infrastructure used for wireless and wireline network deployment shall be used, including, but not limited to, conduit, fiber, poles, rack space, nodes, buildings, facilities, central office locations and available land. As necessary, AT&T intends to use various construction techniques, which may include, but are not limited to, the following: (i) traditional open trench or boring; (ii) slot cut micro-trenching or trenching and boring; (iii) fiber attached to buildings or aerial structures; and (iv) installation of fibers within existing utility infrastructure. Construction and other work related to the Network may be completed by independent contractors and representatives engaged by AT&T. If so, AT&T's agreements with the City will include customary provisions regarding AT&T being responsible for all negligent or intentionally wrongful acts or omissions of its independent contractors that occur in the City's rights-of-way ("ROWs") or on other City property or infrastructure when performing work on behalf of AT&T, or to the extent stricter standards exist within any applicable ordinance, in compliance with the City's ordinances, policies and procedures.

1.4 Network Deployment.

1.4.1 Schedule. The Network will be deployed and Services made available by AT&T in neighborhoods in which demand is expected to compensate AT&T fully for the cost to deploy and construct the Network. AT&T intends to define geographical areas ("Distribution Areas") within the Market Area based on its network design and construction plans. Following analysis of the cost to build and deploy the Network and expected market demand, AT&T will identify the specific Distribution Areas where the Network will be deployed and the schedule of such deployment to residents within such areas. AT&T intends to provide potential customers an opportunity to express their interest to provide an early indication of where demand is greatest. This first phase of construction is expected to take one to two years to complete from the Effective Date. AT&T will provide Services in such areas ("Service Area") to new or existing customers via the Network on an ongoing as-requested basis, for customers who satisfy and agree to customer terms and conditions for the Services. AT&T will also provide ad hoc updates from time to time upon request concerning, among other matters, demand thresholds required for residential neighborhoods, efforts to assess and increase demand, and deployment status.

1.4.2 Promotional Programs. To educate the public regarding deployment of the Network and its benefits, AT&T will sponsor promotional programs throughout the Market Area. Examples of such promotional activities may include block parties, outdoor concerts featuring local bands, other AT&T-sponsored events to address community needs, and academic contests and/or science fairs.

2. Gigabit Broadband Service to Community Centers or other Public Facilities.

2.1.1 Community Broadband Services. As described more fully below, AT&T will provide a limited number of sites with community broadband Internet access service for identified public sites, as designated under the provisions of this Agreement, ("Community Sites" or "Public Sites") in Distribution Areas where AT&T deploys the Network ("Community Broadband Service"). Community Broadband Service is Internet access service at up to 1 Gigabit per second speed provided primarily for use by the public. The Community Broadband Service will be substantially the same as those gigabit broadband services to be provided to AT&T's residential customers. The Community Broadband Service is not intended for and should not be used for any emergency or mission critical services or functions. Community Broadband Service does not include any other services, including but not limited to telephone or television and shall not be used to support any commercial service offerings or operations provided to third parties for a fee or other valuable consideration (e.g., web-hosting or other online business, Wi-Fi service, etc.). Community Sites shall be agreed to by the parties and shall be public or non-profit facilities that provide access and services directly to citizens (e.g. civic buildings, recreation centers, or non-profits offering digital literacy or community technology access). The parties further agree that Community Sites may include public and non-profit incubators, but do not include schools and libraries unless such schools and libraries can be connected consistent with E-rate rules and regulations. AT&T agrees to provide Community Broadband Service at up to one hundred (100) geographically distributed (not more than one site per neighborhood) Community Sites across all six municipalities participating in the NCNGN

initiative. Accordingly, City and AT&T can agree on a Community Site only if the location/facility is one that the NCNGN cities collectively identified as one of the 100 Community Sites across all NCNGN cities. The parties agree to identify candidates for the 100 Community Sites within 120 days of the Effective Date of the last agreement signed with an NCNGN municipality or October 1, 2014, whichever comes first. During the Service Term (as defined in paragraph 2.1.2 below), and within the Service Area, AT&T will make Community Broadband Service available subject to AT&T's standard terms and conditions, which shall be substantially similar to AT&T's standard residential Internet access service terms and conditions and with respect to City-owned sites to the extent such terms and conditions may be reasonably expected of a North Carolina municipality and do not conflict with applicable legal requirements of the City, as well as subject to the conditions and requirements set forth in Section 2.1.2 below.

2.1.2 Terms of Community Broadband Services. Provided the City or a third party shall pay the initial network connection cost, which AT&T agrees shall typically be approximately $300-$500 per Public Site that is in the Service Area but could be substantially higher for a given site, AT&T shall provide Community Broadband Service at no additional monthly recurring charge to the City for the Service Term. AT&T, not the City, shall determine whether such service is being used in compliance with this Agreement. Once Community Broadband Service is installed at a Public Site, it shall be provided, per Public Site, for a term of seven (7) years from when the Community Broadband Service is first provided to the Public Site, including any extensions agreed upon (the "Service Term"), unless this Agreement is terminated earlier due to a default pursuant to paragraph 8.2.1 of this Agreement or the City fails to comply with the terms and conditions of this Agreement or AT&T's standard terms and conditions for such service to the extent such standard terms and conditions may be reasonably expected of a North Carolina municipality and do not conflict with applicable legal requirements of the City. In the event AT&T determines at any time that continued delivery of Community Broadband Service to any Public Site located in the Service Area is no longer feasible for any reason, as determined by AT&T, AT&T shall notify the City and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution, such as AT&T delivering Community Broadband Service to another mutually agreed alternative Public Site in the Service Area, so long as that Public Site is geographically distributed from other identified Public Sites. AT&T agrees to begin to provide Community Broadband Services as soon as reasonably practicable following the time when AT&T completes deployment of the Network in the Distribution Area where a selected and mutually agreed to Public Site is located.

2.1.3 Public Wi-Fi Hotspots. Concurrent with or following completion of the Network, AT&T may choose to design, construct, install, and operate a Wi-Fi network within limited sections of the Market Area, which may be used for public Wi-Fi access and for commercial purposes. The City agrees to meet with AT&T and reasonably consider deploying AT&T's Wi-Fi network solution at agreed upon Public Sites and upon terms and conditions mutually agreed upon by the parties. The City acknowledges that those terms may require that the City pay construction and make-ready costs for any Wi-Fi hotspots that will be used to provide complimentary Wi-Fi to all members of the public (subject to users agreeing to customary terms and conditions). AT&T agrees that any construction and make-ready costs expected to be paid by the City will be limited to the provision of sufficient commercial power to the site and any pole, strand, traffic light, building or City-owned or controlled fixture

attachment costs. The City further acknowledges that AT&T may negotiate a cost-sharing arrangement with the City for ongoing operations and maintenance costs in exchange for AT&T's agreement to provide this service without charge to members of the public even if AT&T monetizes the service via value exchange access models or through other means. The City acknowledges that AT&T will be the exclusive provider of public Wi-Fi in the agreed upon public sites. Any provision of Wi-Fi service by the City (or its contractors) to patrons of City facilities, such as entertainment venues or convention facilities, are not considered "public Wi-Fi" for purposes of this subsection. AT&T may also provide public Wi-Fi at such locations, with the City's consent, but shall have no obligation to do so. For the purpose of providing the best available user experience, if AT&T offers public Wi-Fi as contemplated in this paragraph at locations described within this subsection (other than for locations with wireless internet already provided by the City or its contractors), the City will include a radio frequency management policy in easements and licenses for City property to third parties providing Wi-Fi in those locations under any license, lease, or other agreement between the City and such third parties.

The City agrees and acknowledges that, at the sole discretion of AT&T, the public Wi-Fi service provided under this Agreement may be branded by AT&T and end users will be subject to AT&T's standard Terms of Service and Privacy Policy applicable to such service.

The City agrees and acknowledges that AT&T may decide not to deploy the Wi-Fi network. AT&T agrees and acknowledges that the City may decide not to pay construction and make-ready costs or negotiate a cost-sharing arrangement with AT&T if the City chooses instead (a) to deploy its own free public Wi-Fi network solution (b) to enter an agreement with another vendor willing to deploy a Wi-Fi network solution at public sites upon terms and conditions that the City considers favorable, or (c) to decide not to participate in the Wi-Fi network.

3. Broadband Service to Multi-Dwelling Residential Units. AT&T will use commercially reasonable efforts to ensure that free broadband internet service at 3 Megabits per second is provided to the residents in up to 10 qualified affordable housing apartment complexes (hereinafter called Multiple Dwelling Units – "MDUs") serving low-income households as set forth in this Section of the Agreement (a) across all six communities participating in the NCNGN initiative (the university NCNGN Participants shall not be eligible for any MDUs under this Agreement) and (b) distributed geographically in proportion to the NCNGN Participants' population among the eligible MDUs. For an MDU to qualify for this free service: (i) the property owner, to the extent permitted by law, will have to sign an exclusive marketing contract with AT&T with no fees owed to the property owner by AT&T and no fees, including installation fees, charged to any tenant for the free service, (ii) the MDUs must have 45-300 Living Units, unless some exception is agreed to by AT&T, (iii) the MDU is considered "affordable housing" because it is owned or operated and managed by a local public housing authority (or an affiliate) or because a significant number of the Living Units within the MDU are subject to low-income occupancy thresholds, rent restrictions, or affordability covenants associated with certain Federal, State, or local programs designed to increase the supply of affordable housing units, (iv) the inside wiring at the MDU is of sufficient quality to support delivery of broadband and TV service and compatible with AT&T technology, and (v) the MDU is located in the U-verse TV footprint, which AT&T shall solely determine. For the avoidance of

doubt, if there are not 10 qualifying MDUs across the six communities participating in the NCNGN initiative, then AT&T shall not be required to provide the service at other MDUs. This free service will be available at each participating MDU for five (5) years, plus any agreed upon extensions, running from the date the parties agree that an MDU will be covered by this provision and service is available at the MDU, unless this Agreement is terminated earlier due to a default pursuant to paragraph 8.2.1 of this Agreement, or the City fails to comply with the terms and conditions of this Agreement or the MDU fails to comply with commercially reasonable terms and conditions for service at the MDU. AT&T may cease providing the free service if the MDU ceases to be considered "affordable housing" at any time during the 5 year period or any agreed upon extension. AT&T agrees to work with the City, or its designee, to ensure that all qualifying MDU owners are aware of this offering and have an equal opportunity to apply to the program, on a timeline agreed to by AT&T and the City, or its designee, by indicating the MDU owner's willingness to waive fees that might otherwise be charged to AT&T and to enter, to the extent permitted by law, into an exclusive marketing agreement with AT&T. If the number of applications from owners of qualifying MDUs exceeds the allocation of the City, AT&T will determine in its discretion which MDUs to connect within the City. Any users of the service at the MDUs must agree to AT&T's standard terms and conditions for such service.

4. Small and Medium Business Program. AT&T agrees to pre-provision, in advance of any customer orders, fiber and electronics ("Fiber") to up to 100 business buildings throughout the NCNGN municipalities, in a manner consistent with all applicable local and other laws, codes or policies. The City, or a designee of the City, will nominate locations for this pre-provisioning in consultation with AT&T, although it shall be AT&T's sole decision whether to deploy Fiber to the location, including consideration of whether AT&T is able to seek customer orders at those buildings. If AT&T decides not to pre-provision a building nominated by the City, AT&T shall provide the City, or its designee (if applicable), the reasons for such decision (for example, insufficient customer demand, cost too high, etc.). For any identified business buildings where Fiber is to be deployed AT&T and the City or its designee will work together to contact property owners about this program and will require point of entry for operational access. If the City does not nominate locations for this pre-provisioning within 120 days of the signing of this agreement, then AT&T may determine the sites to pre-provision in its discretion.

5. Community Engagement. The City will work with AT&T and other NCNGN municipalities and universities in developing digital literacy and training programs for low-income residents living in the City.

6. City Support and Commitments.

6.1 Project Liaison and Contacts. The City shall designate staff that will facilitate communications between AT&T and City staff and officials, and will coordinate between municipal departments as well as other NCNGN Participants regarding the project.

6.2 Future Service. The City will consider AT&T for future communications services including high speed data, voice, Internet access and cellular, subject to applicable procurement laws and regulations.

6.3 Permit Processing and Inspections.

6.3.1 Permit Processing. Parties will use their best efforts to conduct, within 30 days after the Effective Date of this Agreement and prior to construction of the Network, a pre-construction conference to review and to plan for the construction to be undertaken by AT&T. The City will provide diligent and expeditious review and determinations of all applications for permits submitted by AT&T and will attempt, based on the nature and size of the work being permitted and any applicable legal requirements (including need for governing board approval), to approve or respond within one week from the date of the submission of the request, in connection with constructing and deploying the Network, including requests for any approvals necessary for construction, maintenance or other work within City's ROWs and easements or related to access to City's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties. The City will accept electronic submission of documents to expedite approvals.

6.3.2 Inspections. In order to facilitate and ensure continuity and efficiency of inspections, the City will designate inspectors and supervisors with the collective authority to inspect all construction for the Network, maintenance and related work in connection with each applicable permit to be issued by the City to AT&T. The City will ensure that all such inspections are completed in an expeditious manner in accordance with applicable ordinances and the City's processes and practices made available to all third parties.

6.3.3 Street Cuts. Pursuant to the City's applicable code and policies, and if street cuts are permitted, AT&T shall be expected to repair only the street cuts that it, its agents, or subcontractors make in constructing, deploying or maintaining the Network.

6.4 Access to Rights-of-Way for Construction and Maintenance of Facilities. AT&T intends to access City ROWs and City-owned utility easements to the extent such ROWs and easements are available under the law and applicable easements, access will not overburden the easement, there is available capacity to allow for access, and they are determined by the parties as reasonably necessary or desirable for the Network. The City in its sole discretion will determine whether its utility easements permit or otherwise authorize the City to allow AT&T to have access to city utility easements. The City will use its best efforts to make the City ROWs and utility easements available to AT&T upon request, and upon entry or amendment to an appropriate encroachment or similar agreement, in order to allow AT&T and its contractors access to and to perform construction and other work related to the Network, and for maintaining such facilities in the City ROWs and easements. Such access will be provided in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties. If requested, the City shall also cooperate with AT&T's efforts to gain access to rights-of-way owned and controlled by the N.C. Department of Transportation or other third parties.

6.5 Access to City Facilities and Infrastructure. To the extent AT&T requires space on premises owned by the City for purposes of constructing, deploying and maintaining equipment or other components of the Network, the City will, subject to applicable legal

requirements, license AT&T to utilize such space for those purposes at rates or fees and other terms no less favorable than those granted to any other similar commercial service provider, provided that: (i) the City believes it has the space available and (ii) AT&T's equipment or other facilities will not interfere with the City's operations. Provided the City determines that space is available and no interference with the City's operations will result, the City will also, subject to the satisfaction of any applicable legal requirements, grant AT&T access to City-owned infrastructure that could be used for deployment of wireless or wireline components of the Network including, but not limited to, traffic signal poles, mast arms, and light poles. On or after the Effective Date, the parties shall enter into various agreements as applicable to provide for such licenses or attachment rights to AT&T, including license and structure agreements which will be negotiated by the parties.

6.6 Community Education Program/Public Outreach. Consistent with its public information office's policies and procedures, the City will develop and implement an informational program for community residents and businesses with respect to the benefits of Network and Services enabled by the Network. This program may include direct mailings, meetings, and/or other initiatives focused on informing the public about the benefits of gigabit networks.

6.7 Map Data and Valid Address Data. AT&T will require certain map data and address data in order to begin and complete construction and deployment of the Network. The City agrees to promptly provide AT&T with publicly available map and address information in the City's possession, and such other similar publicly available information reasonably requested by AT&T from time to time ("Map and Address Data"), provided, however, the Map and Address Data shall not in any event include resident names or other personally identifiable information, and the City makes no representation regarding the accuracy of such data.

6.8 The City's Communication Needs. During and after the Service Term, the City may negotiate individual commitments to purchase Services from AT&T for the City's business and operational needs.

6.9 Non-Discriminatory Practices. As to its non-discriminatory practices concerning the Network during the Term of the Agreement and as permitted under applicable law, it is the City's policy to treat broadband Internet service providers in the Market Area, including AT&T, in a competitively neutral and non-discriminatory way as to benefits, concessions, accommodations, and other rights that the City extends to providers of comparable broadband Internet services, depending on their availability and the similarity of services involved. If the City extends a better benefit, concession, accommodation or other right to another broadband Internet service provider in the Market Area providing services equivalent to the Network during the Term of this Agreement, the City will prospectively extend such right to AT&T subject to governing board approval if such governing board approval is required by any applicable law, regulation or policy. This provision does not abrogate existing contracts between the parties, and such agreements shall remain in full force and effect. This provision shall not reduce AT&T's obligations under Paragraphs 2-4 above.

6.10 Project Announcement. The parties will cooperate on one or more joint publicity and public relations initiatives related to the announcement of construction of the Network (the "Public Announcement"). Without limiting the terms and conditions outlined in Section 9 of this Agreement, neither party shall, prior to any such public announcements, issue any press releases or make any official public announcements related to the Network or the terms and conditions or existence of this Agreement without the other party's prior written consent. For purposes of this provision, references related to the Network in agendas or similar documents do not constitute public announcements nor shall any releases of information in response to requests for public information under any applicable public records inspection requirements.

7. Effective Date, Term and Termination.

7.1 Initial Term and Renewal. The term of this Agreement shall begin on the date the Effective Date, and shall expire at the end of AT&T's obligations under Sections 2 and 3 of this Agreement as applied to the City or nine (9) years from the Effective Date, whichever occurs first, unless earlier terminated in accordance with the terms of this Agreement or renewed by mutual written agreement of the parties. For the avoidance of doubt, the expiration periods for the obligations on AT&T under Sections 2 and 3 are separate and expiration (or non-expiration) of one does not impact the other.

7.2 Termination.

7.2.1 Default. Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provided that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof; or (vi) AT&T fails to provide any Network services to City residential end-users within two years of the Agreement's execution.

7.2.2 Survival. The provisions in Paragraph 9 of this Agreement shall survive and remain in effect after this Agreement is terminated as do AT&T's obligations under Sections 2 and 3 to the extent sites are connected but the terms of service have not concluded. Also, any encroachment, license, attachment or other agreements that the parties enter into pursuant to this Agreement will remain in effect and shall expire by their own terms.

8. Confidentiality.

8.1.1 Confidential Documents. "Confidential Documents" as used in this Agreement shall mean any and all records or other documents, whether stored or exchanged by the parties in hard copy or electronically, that contain information that are designated by either party as Confidential Documents and qualify as "trade secrets" as defined in N.C.G.S. 66-152(3).

Such documents may include, but are not limited to, business plans, business forecasts, research, financial information, customer lists, sales and merchandising efforts, marketing plans, design or engineering details and specifications

Documents shall in no event qualify as Confidential Documents if: (i) their relevant contents are publicly available prior to this Agreement or become publicly available without a breach by the receiving party; (ii) they are subject to inspection under the public records laws of the State of North Carolina and not within an exception to disclosure, (iii) rightfully received by the receiving party from third parties without accompanying confidentiality obligations; (iv) already in the receiving party's possession and lawfully received from sources other than the disclosing party; (iv) independently developed by the receiving party; or (vi) approved by the disclosing party for release.

8.1.2 Duties Regarding Confidential Documents. Through the term of this Agreement, and in order to achieve the objectives of this Agreement, one party may have to provide the other with access to documents it considers to be Confidential Documents. In such case, documents shall be treated as confidential pursuant to this subparagraph if: (i) they in fact qualify as Confidential Documents under subparagraph 9.1.1 above, (ii) the disclosing party communicates in writing to the other party that it considers the information to be Confidential before, or at the time of the disclosure, and (iii) the documents are prominently labeled as confidential by the disclosing party at submission to the other party. In such event, the party which receives any Confidential Documents from the other party agrees to treat the same as confidential and shall not divulge, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose whatsoever, such documents, without the prior written consent of the disclosing party, except as required by law and except as provided in the paragraph below. The receiving party may, however, disclose Confidential Documents to its employees, agents and contractors on a need-to-know basis.

8.1.3 If the City receives a public records request to produce documents which AT&T has labeled "confidential," "trade secret" or another equivalent designation, the City shall make an initial determination as to whether the Confidential Documents, in whole or in part, are subject to public inspection and promptly notify AT&T of such initial determination. Within ten (10) calendar days of the receipt of such notice, AT&T must notify the City whether it agrees with the City's initial determination and, if not, notify the City in writing which Confidential Documents, or parts thereof, are not subject to public inspection. The City will then make a final determination as to whether the Confidential Documents, or parts thereof, are subject to public inspection under applicable laws and will promptly notify AT&T of its final determination. The City will allow AT&T, if it disagrees with the final determination, three (3) calendar days after notice to obtain injunctive relief to prevent disclosure of the subject information before the City releases the information. If such justification is not provided with the notice to withhold materials, AT&T acknowledges that the notice shall be void and deemed of no effect and that the City may release the information without any resulting liability to AT&T. Further, if AT&T does not seek appropriate injunctive or other judicial action or relief to prevent the disclosure of the materials within this three (3) calendar day period, the City may release the information pursuant to the public records request without any resulting liability to AT&T. Nothing in this Agreement shall prevent a party from disclosing Confidential Documents received from the other

party if such disclosure is required by a court of competent jurisdiction or otherwise required by law. Finally, if the City decides not to release information that it deems to be entitled to an exception from any applicable public records laws (including if due to AT&T's seeking injunctive relief), then AT&T shall indemnify and hold the City harmless from all attorneys' fees and other costs associated with such decision.

Upon termination of this Agreement for any reason, each party agrees, to the extent permitted by law, to promptly deliver to the other party all Confidential Documents of the other party then in such party's possession.

9. Representations and Warranties; Limitation of Liability.

9.1 Representations. Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; (iii) and that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party. The parties each agree to comply with all applicable laws and regulations and City policies as they may be amended from time-to-time. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time.

9.2 Limitation of Liabilities.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY UNDER THE TERMS OF THIS AGREEMENT, OR ANY AGREEMENT ENTERED PURSUANT TO THIS MASTER AGREEMENT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

10. General Terms.

10.1 Independent Contractors. The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership, or joint venture between the parties.

10.2 No License or Franchise. The parties acknowledge and agree that this Agreement is not a grant of any license, easement, or franchise by the City to AT&T, and that AT&T is not required to obtain a franchise from the City to offer the Services because of the terms and conditions of this Agreement.

10.3 Reservation of Police Powers. This Agreement does not alter the terms or conditions of any approval, permit or decision granted or made by the City, nor does it affect the general police powers of the City and does not relieve AT&T of any obligations under the City laws, policies, or regulations and does not constitute an approval, permit or decision by the City. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the City in a manner not permitted by law.

10.4 No Exclusivity. Except as expressly stated otherwise in this Agreement, nothing in the Agreement shall be construed as precluding the City from entering into similar agreements with any other Services provider or precluding any such party from providing Services in the Market Area.

10.5 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.6 Governing Law and Jurisdiction. This Agreement and any action related to this Agreement will be governed by the laws of the State of North Carolina, excluding that body of law controlling conflict of laws and any application of the United Nations Convention on the International Sale of Goods. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of North Carolina, Orange County, or if it has or can acquire jurisdiction, in the United States District Court for the Middle District of North Carolina. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum. The parties agree that it is their mutual intent that this Agreement conform to applicable local, state, and federal law regulating the covenants and obligations contained in this Agreement.

10.7 Dispute Resolution. Except as otherwise specifically provided in this Agreement, all disputes, disagreements, or controversies arising in connection with this Agreement will first be resolved through good faith negotiations in order to reach mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or in equity.

10.8 Assignment. Except as set forth, neither party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the prior written

consent of the other party, which shall not be unreasonably withheld or delayed. Provided, however, that AT&T may, upon sixty (60) days advance written notice to City, and without the City's prior consent, assign this Agreement or any or all of its rights and obligations under this Agreement to (i) any Affiliate (as defined below) of AT&T; (ii) any successor in interest to AT&T in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of AT&T's assets related to the Network. "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with AT&T; and (ii) "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

10.9 Severability. If any provision of this Agreement is found to be unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

10.10 Waiver. A waiver of any provision of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No failure or delay by either party in exercising any option, right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

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

10.12 Remedies Cumulative, Specific Performance. Except as provided otherwise in this Agreement, all rights and remedies granted to each party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such party at law or in equity. The parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to each.

10.13 Further Agreements. As noted herein, on or after the Effective Date, the parties contemplate negotiation of license, encroachment, and/or attachment and similar agreements to effectuate the purpose of this Agreement.

10.14 Notices. All notices must be in writing and delivered to the addresses and persons specified below. Notice will be deemed delivered (a) when verified by written receipt if

sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.

City	**AT&T**
Roger L. Stancil, Town Manager 405 Martin Luther King Jr. Blvd Chapel Hill, NC 27514	Venessa C. Harrison President–North Carolina 150 Fayetteville St., Ste. 800 Raleigh, North Carolina 27601
With copies, which shall not constitute notice, to:	With a copy to:
Ralph D. Karpinos Town Attorney rkarpinos@townofchapelhill.org John Bjurman, Director of Technology Solutions jbjurman@townofchapelhill.org	Attn: John Tyler General Attorney (North Carolina) Email: jt9523@att.com

10.15 Entire Agreement; Amendment; Signatures. The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by both parties. This Agreement is for the exclusive benefit of their parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.

10.16 E-Verify. AT&T, and all subcontractors, will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," and will provide documentation or sign affidavits or any other documents requested by the City demonstrating such compliance.

[The remainder of this page is intentionally blank]

The parties agree to the terms of this Agreement and have caused this Agreement to be signed by their duly authorized representatives.

BellSouth Telecommunications, LLC dba AT&T North Carolina

Venessa C. Harrison

(Authorized Signature)

Venessa C. Harrison

(Name)

President–North Carolina

(Title)

Address:
150 Fayetteville St., Ste. 800
Raleigh, North Carolina 27601

Date: June 6, 2014

Town of Chapel Hill, North Carolina

(Authorized Signature)

Roger L. Stancil

(Name)

Town Manager

(Title)

Address:
Town of Chapel Hill
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

Date: 6/17/2014

Approved as to form:

Ralph Karpinos

Ralph Karpinos, Town Attorney
Town of Chapel Hill, North Carolina

EXHIBIT A

EXCEPTION EQUIPMENT

Emux
Public Wi-Fi Equipment