

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, ASHEBORO CITY HALL
THURSDAY, MAY 9, 2024
7:00 P.M.**

David H. Smith) – Mayor Presiding

Clark R. Bell)

Edward J. Burks)

Kelly L. Heath)

William N. McCaskill) – Council Members Present

Walker B. Moffitt)

Charles A. Swiers)

W. Joseph Trogdon, Jr.)

John N. Ogburn, III, City Manager
Robert L. Brown, Jr., Chief of Police
Alyssa R. Chapuis, Public Information Officer
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
Michael L. Leonard, PE, City Engineer
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Jonathan M. Sermon, Recreation Services Director
Jeffrey C. Sugg, City Attorney
Tammy M. Williams, Engineering Assistant

1. Call to Order

A quorum thus being present, Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

2. Moment of Silent Prayer and Pledge of Allegiance

After a moment of silence was observed in order to allow for private prayer and meditation, Mayor Smith asked everyone to stand and recite the pledge of allegiance.

3. Public Comment Period

Mayor Smith opened the floor for comments from the public, and none were offered.

Mayor Smith closed the public comment period.

4. Discussion of the Loss of Pandemic Related Federal Funding and the Impact on Asheboro’s Childcare Centers

Randolph County Partnership for Children Finance Director Julie Fowler discussed the impending child care crisis within the community as a whole. The childcare stabilization grant will end June 2024. The loss of pandemic related federal funding has forced some child care centers to close within Randolph County.

Ms. Fowler extended an invitation to the council members to attend a discussion on May 22, 2024 at Pinewood Country Club in order to address the ongoing childcare shortage crisis. No formal action was taken by the council during this portion of the meeting.

5. Review of the StrEATery Event

Downtown Asheboro Inc Executive Director Addie Corder reported on the most recent StrEATery Event that was held on April 20, 2024. Approximately 1,500 people

attended the event, with approximately 14,000 visitors at the NC Zoo. With the success of the high attendance at the event, Ms. Corder hopes that the event will be held again in the future.

6. Introduction of the City of Asheboro's Public Information Officer

Community Development Director Trevor Nuttall introduced the city's new public information officer. Alyssa Chapuis is the new public information officer, and she will be working with the city's community development division.

7. Police Department Annual Report

Police Chief Robbie Brown presented an overview of the Asheboro Police Department's activities during 2023. During his presentation, Chief Brown noted there were a total of 31,510 calls for service.

No council action was requested under this agenda item, and none was taken. A copy of the police department's annual report is on file in the city clerk's office.

8. Request for Authorization to Execute a Memorandum of Understanding with the Atlanta-Carolinas High Intensity Drug Trafficking Area Multi-Jurisdictional Public Safety Program

The Atlanta-Carolinas High Intensity Drug Trafficking Area (AC-HIDTA) is a multi-jurisdictional public safety program that was established to reduce drug trafficking and production in the United States. The AC-HIDTA is managed under the Executive Board. The AC-HIDTA Executive Board is comprised of in excess of 120 law enforcement Executives, from Georgia, South Carolina, and North Carolina; representing federal agencies, and state/local and tribal agencies. Their direction and policies are administered on a daily basis by the AC-HIDTA Director.

The AC-HIDTA LPR Database was formed in support of this mission, under leadership of the AC-HIDTA, its Executive Board, and regional stakeholders, to develop, establish, and maintain an integrated system of information technology that maximizes the sharing of data and communication between Member Agencies in support of law enforcement and public safety, while maintaining the confidentiality of privileged or otherwise protected information shared through the system, and protecting privacy and civil liberties in accordance with applicable law.

Member agencies agree to work together in a variety of ways to facilitate sharing data in an effort to promote and improve the data sharing capabilities of the respective member agencies and the AC-HIDTA LPR Database.

In order to fully participate in the above-described public safety program, Chief Brown requested authorization from the council to execute a memorandum of understanding with AC-HIDTA. Council Member Bell moved, and Council Member Heath seconded the motion to authorize Chief Brown to execute said memorandum. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

9. Consent Agenda

Council Member Burks moved, and Council Member Swiers seconded the motion, to approve/adopt the following consent agenda items. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

(a) Approval of the City Council Meeting Minutes for April 4, 2024

The meeting minutes for the city council's regular meeting on April 4, 2024, were approved and have been filed in the city clerk's office. An electronic copy of the approved document has been posted on the city's website.

(b) Approval of the City Council Meeting Minutes for April 12, 2024

The meeting minutes for the city council's special meeting on April 12, 2024, were approved and have been filed in the city clerk's office. An electronic copy of the approved document has been posted on the city's website.

(c) Acknowledgement of the Receipt from the Asheboro ABC Board of its Meeting Minutes for March 4, 2024

The meeting minutes for the above-listed Asheboro ABC Board meeting were received and distributed to the elected officials. The document has been filed in the city clerk's office.

(d) Acknowledgement of the Receipt of the Monthly Report Detailing Major Subdivisions Administratively Approved

The report listing the major subdivision (Windcrest Acres, Section 4) that was administratively approved was received and distributed to the elected officials. A copy of the report is on file in the city clerk's office and the community development division.

(e) Acknowledgement of the Receipt of the Annual Report Concerning the City of Asheboro Planning Board Activities, Expenditures, and Budget Estimates

A memorandum from Michael O'Kelley, who is the Planning Board Chairman, was received and distributed to the elected officials. The memorandum summarizes the Planning Board's activities since July 1, 2023, including an analysis of the expenditures to date for the current fiscal year and the anticipated funds needed for operation during the ensuing year.

A copy of the memorandum is on file in the city clerk's office and the community development division.

(f) Approval of an Audit Contract with Thompson, Price, Scott, Adams & Co., P.A. for the fiscal year ending June 30, 2024

A copy of the approved audit contract is on file in the finance department and the city clerk's office.

(g) Approval of an Ordinance to Amend the General Fund to Allocate Funding for Insurance Costs

13 ORD 5-24

**ORDINANCE TO AMEND
THE GENERAL FUND
FY 2023-2024**

WHEREAS, The City of Asheboro is self funded for health insurance.

WHEREAS, the City Council of the City of Asheboro allocated funding for the 2023- 2024 fiscal year in the annual adopted budgets passed on June 23rd, 2023.

WHEREAS, the current fiscal year claims are greater than the estimation in the FY 2023-2024 appropriation.

WHEREAS, additional funding is needed to provide for current known claims and estimated claims through June 30, 2024.

WHEREAS, the budget as adopted requires amendment to reflect the appropriation of fund balance to pay for these unanticipated medical costs.

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law.

WHEREAS, the City Council of the City of Asheboro wants to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

That the following expense line item be increased / decreased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/</u> <u>Decrease</u>
10-410-507.0004	Fringe- Insurance	14,200
10-410-514.0000	Travel	(4,200)
10-410-547.0000	Elections	(10,000)
10-420-507.0004	Fringe- Insurance	2,662
10-420-511.0000	Telephone	(600)
10-440-507.0004	Fringe- Insurance	3,550
10-440-522.0000	Professional Services	(3,550)
10-450-507.0004	Fringe- Insurance	2,662
10-480-507.0004	Fringe- Insurance	6,745
10-480-535.0006	Exchange backup server	(6,745)
10-490-507.0004	Fringe- Insurance	12,425
10-490-522.0000	Professional Services	(17,149)
10-510-502.0000	Salaries	(232,525)
10-510-507.0004	Fringe- Insurance	232,525
10-530-502.0000	Salaries	360,569
10-530-507.0004	Fringe- Insurance	133,125
10-530-574.0000	Capital outlay	(493,694)
10-540-502.0000	Salaries	8,000
10-540-507.0004	Fringe- Insurance	7,100
10-545-507.0004	Fringe - Insurance	7,100
10-545-509.0000	Workers Compensation	(2,000)

Section 2: That the following Expense line item be increased/decreased (cont):

<u>Account #</u>	<u>Expense</u> <u>Description</u>	<u>Increase</u>
10-545-514.0000	Travel	(2,400)
10-545-560.0000	Small Eq	(2,700)
10-550-507.0004	Fringe	18,460
10-550-515.0000	Maint & Repair	(18,460)
10-555-507.0004	Fringe Insurance	30,175
10-555-542.0000	Contracted Maint- veh	(31,500)
10-565-507.0004	Fringe- Insurance	49,700
10-565-545.0000	Contracted Maint.& Repair	(49,700)
10-575-507.0004	Fringe- Insurance	5,325
10-580-507.0004	Fringe- Insurance	30,175
10-580-531.0001	Gas Oil Tires	(30,000)
10-580-534.0000	Garbage Cans	(175)
10-590-502.0000	Salaries	5,000
10-590-507.0004	Fringe- Insurance	3,550
10-590-506.0000	Unallocated Pay Plan chg.	(32,975)
10-615-507.0004	Fringe Insurance	5,325
10-615-515.0000	Maint & Repair- bldg	(325)
10-615-516.0000	Maint & Repair- Dq	(5,000)
10-620-507.0004	Fringe- Insurance	24,850

10-620-522.0000	Prof. Services	(24,850)
10-623-507.0004	Fringe Insurance	7,987
10-623-515.0000	Maint & Repair Bldg	(5,000)
10-623-516.0000	Maint & Repair Eq	(2,987)
10-625-507.0004	Fringe- Insurance	5,325
10-640-507.0004	Fringe- Insurance	52,362
10-640-515.0700	Maint & Repair- McCrary	(52,362)
	Total change	0

Adopted this 9th day of May 2024.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, City Clerk

(h) Approval of an Ordinance to Amend the Water and Sewer Fund to Allocate Funding for Insurance Costs

14 ORD 5-24

**ORDINANCE TO AMEND
THE WATER & SEWER FUND
FY 2023-2024**

WHEREAS, The City of Asheboro is self-funded for health insurance.

WHEREAS, the City Council of the City of Asheboro allocated funding for the 2023- 2024 fiscal year in the annual adopted budgets passed on June 23rd, 2023.

WHEREAS, the current fiscal year claims are greater than the estimation in the FY 2023- 2024 appropriation.

WHEREAS, additional funding is needed to provide for current known claims and estimated claims through June 30, 2024.

WHEREAS, the budget as adopted requires amendment to reflect the appropriation of fund balance to pay for these unanticipated medical costs.

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law.

WHEREAS, the City Council of the City of Asheboro wants to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

That the following expense line item be increased / decreased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/ Decrease</u>
30-720-506.0000	Unallocated Pay chg.	(24,408)
30-720-507.0004	Fringe- Insurance	7,262
30-810-507.0004	Fringe- Insurance	17,146
30-820-507.0004	Fringe- Insurance	22,471
30-820-518.0000	Maintenance- Pump Sta.	(22,471)

30-830-507.0004	Fringe- Insurance	31,346
30-830-545.0000	Contracted Services	(31,346)
30-840-507.0004	Fringe- Insurance	31,346
30-840-546.0000	Contracted Construction	(31,346)
30-850-507.0004	Fringe- Insurance	27,796
30-850-534.0000	Other Supplies & Materials	(27,796)
30-860-507.0004	Fringe- Insurance	7,100
30-860-509.0000	Workers comp Ins	(7,100)
30-870-507.0004	Fringe - Insurance	28,400
30-870-545.0000	Contracted Services	(43,000)
30-880-507.0004	Fringe - Insurance	14,600
10-545-509.0000	Workers Compensation	(2,000)
	Total change	0

Adopted this 9th day of May 2024

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, City Clerk

10. Community Development Division Legislative Hearings

- (a) **Legislative Hearing (Case No. RZ-24-05): An application to rezone property currently addressed as 801 and 817 Sunset Avenue (Randolph County Parcel Identification Number 7751426889) from M (CZ) zoning to OA6 (CZ) zoning for a residential development with multiple family dwellings for the elderly.**

The applicant has withdrawn this application.

- (b) **Legislative Hearing (Case No. RZ-24-07): An application to rezone property located at 919 Draper Street (Randolph County Parcel Identification Number 7762573909) from B2, I1, and R10 zoning to R15 zoning.**

Mayor Smith opened the legislative hearing on the zoning map amendment application filed as Case No. RZ-24-07. Community Development Director Trevor Nuttall was the first speaker. In addition to entering into the records the notation that notice of this land use case had been advertised, posted, and mailed as required by North Carolina law, he gave an overview of the zoning map amendment application submitted by Pablo Beltran Martinez.

The land for which the above-described zoning has been requested is located at Central Fall Road and Draper Street (919 Draper Street). The property is approximately 3.5 acres in size and is specifically identified by Randolph County Parcel Identification Number 7762573909 (this property will hereinafter be referred to as the “Zoning Lot”).

In addition to the written staff report, Mr. Nuttall utilized a slide show presentation in conjunction with his comments. The following points of information were noted.

1. The property is inside the city limits.
2. Central Falls Road and Draper Street are both state-maintained minor thoroughfares.
3. The property has multiple zoning designations including B2 General Commercial, I1 Light Industrial, and a small amount of R10 Medium-

Density Residential. The B2 district is the most permissive commercial district in terms of allowable commercial uses; I1 zoning, in addition to allowing several industrial uses, also allows limited commercial development. The small area of R10 zoning could allow single and two-family development if certain criteria were met.

4. The requested R15 zoning district generally permits only single-family dwellings; one principal dwelling per property is allowed. Developable lots must possess at least 15,000 square feet of land area and 100 feet of lot width. Descriptions from the zoning ordinance for these districts are as follows:

Current zoning designations (B2, I1, and R10 district)

B2 General Commercial District (existing zoning): The B2 General Commercial District is intended to serve the convenience goods, shoppers’ goods retail and service needs of the motoring public, both local and transient. This district should always be located with access directly to minor thoroughfares or higher classification streets, but never local residential streets.

I1 Light Industrial District (existing zoning): The intent of the I1 Industrial Development District is to produce areas of manufacturing, process and assembly uses, commercial uses, distribution and servicing enterprises, controlled by performance standards to limit the effect of such uses on uses within the district and on adjacent districts.

R10 Medium-Density Residential District (existing zoning): The R10 Residential District is intended to provide regulations which will produce a moderate intensity of residential uses, usually single family or two family in character and served by central water supply and sewage disposal systems, plus the necessary governmental and other support facilities to service such urban intensity living.

Proposed zoning designations (R15 district)

R15 Low-Density Single-Family Residential District (proposed zoning): The R15 Residential District is intended to provide regulations which will produce a low intensity of single-family residential use with the necessary governmental and other support facilities to service such suburban intensity living.

Table 4-1									
Table of Area, Height, Bulk and Placement Regulations									
District	Minimum Lot Size in Sq. Ft.	Lot Width (Frontage) In Feet*	Front Required Yard in Feet*	Side Required Yard In Feet*	Rear Required Yard in Feet*	Maximum Height in Feet*	Maximum Floor Area Ratio*	Open Space Ratio*	Recreation Ratio*
R15	15,000	100	30	15	25	35	22%		
			1 Single Family Only						
R10	10,000 SF	75	30	10	25	35	22%		
	15,000 Duplex		1 Single Family or 1 Duplex Only						
	10,000 NonRes						22%		
B2	10,000	75	25	0 or 5	0 or 5	35	100%		
I1	10,000	75	10	10	10	45	N/A		
*Except as specifically modified by this Ordinance								Revised 07/2021	

5. There was formerly a non-residential use on the property according to tax assessment information. The use, a “Storage-Shop,” was noted as previously burned.
6. The area consists primarily of single-family residential uses, with scattered two-family dwellings and manufactured housing. Non-

- residential uses include an adjoining parking lot serving a place of assembly (church) and a solar farm.
7. The request is for a general district zoning. No specific use or site plan can be considered with this application. There are property constraints, such as regulated floodplain, areas of steeper slopes, and an existing city-maintained utility easement that will affect the property’s development potential.

Mr. Nuttall noted that, when evaluating a rezoning application, careful consideration must be given to each goal and policy as outlined in the Land Development Plan.

Proposed Land Use Map Designation:	Suburban Residential
Small Area Plan:	Northeast
Growth Strategy Map Designation:	Primary Growth

LDP Goals/Policies that Support the Request:

<u>Checklist Item 1:</u>	Rezoning is compliant with the Proposed Land Use Map.
<u>Checklist Item 3:</u>	The property on which the rezoning district is proposed fits the description of the Zoning Ordinance. (<i>Article 200, Section 210, Schedule of Statements of Intent</i>)
<u>Checklist Item 4:</u>	The proposed rezoning is compatible with surrounding land uses.
<u>Checklist Item 5:</u>	Complies with Growth Strategy Map
<u>Checklist Item 7:</u>	The proposed rezoning is compatible with the applicable Small Area Plan.
<u>Checklist Item 12:</u>	Property is located outside of the watershed area.

Goals/Policies that Do Not Support the Request:

<u>Checklist Item 13-14:</u>	Property is located withing Special Hazard Flood Area, and area with steep slopes.
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The City of Asheboro Planning Board considered the zoning application and recommended placement of the Zoning Lot into the requested R15 zoning district. In making this recommendation, the planning board concurred with the planning staff’s analysis of the consistency of the proposed zoning with the adopted comprehensive plans as well as the reasonableness of the proposal. The planning staff’s analysis is summarized in the following indented paragraphs.

The requested R15 residential zoning district promotes single-family residential development and is consistent, . . . with the Land Development Plan map’s Suburban Residential designation for the property. The Northeast Small Area plan, which advocates protection of existing residential neighborhoods from incompatible non-residential development, also lends support to the application. Development under the current commercial and industrial zoning could result in land use

conflicts; amending the property's zoning and applying an R15 designation is advisable.

Considering the aforementioned analysis, staff believes that the proposed zoning map amendment is reasonable and in the public interest and recommends approval of the request.

The applicant, Pablo Beltran Martinez was available to answer any questions. No one spoke in opposition to the application. Mayor Smith transitioned to the deliberative phase of the process.

After engaging in deliberations about the zoning map amendment application, Council Member Bell moved, and Council Member Swiers seconded the motion, to adopt the plan consistency statement printed below and to approve the requested zoning map amendment with the following multi-part motion.

1. The requested R15 residential zoning district promotes single-family residential development and is consistent with the Suburban Residential designation for the property. The Northeast Small Area plan, which advocates protection of existing residential neighborhoods from incompatible non-residential development, also lends support to the application. Development under the current commercial and industrial zoning would result in land use conflicts; amending the property's zoning and applying an R15 designation is advisable.

Considering the planning board recommendation and the aforementioned analysis, the city council believes that the proposed zoning map amendment is consistent with the comprehensive plan, reasonable and in the public interest.

2. The zoning map amendment application seeking to place the Zoning Lot into the requested above-described R15 zoning district is hereby approved.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

(c) Legislative Hearing (Case No. RZ-24-08): An application to rezone property located at 947 East Salisbury Street (Randolph County Parcel Identification Number 7761324663) from R7.5 to B2 zoning.

Mayor Smith opened the legislative hearing on the zoning map amendment application filed as Case No. RZ-24-08. Mr. Nuttall was the first speaker. In addition to entering into the records the notation that notice of this land use case had been advertised, posted, and mailed as required by North Carolina Law, he gave an overview of the zoning map amendment application submitted by Robert Small.

The land for which the above-described zoning has been requested is located at 947 East Salisbury Street. The property is approximately 0.78 of an acre in size, and is specifically identified by Randolph County Parcel Identification Number 7761324663 (this property will be hereinafter referred to as the "Zoning Lot").

In addition to the written staff report, Mr. Nuttall utilized a slide show presentation in conjunction with his comments. The following points of information were noted.

1. The property is inside the city limits.
2. East Salisbury Street (SR 2237) is a state-maintained minor thoroughfare at this location.
3. The existing R7.5 zoning district is described as: *To provide regulations which will produce a moderate intensity of residential uses, usually single family and no more than two family in character and served by*

central water supply and sewage disposal systems, plus the necessary governmental and other support facilities to service such urban intensity living. The proposed B2 district is described as: Intended to serve the convenience goods, shoppers' goods retail and service needs of the motoring public, both local and transient. This district should always be located with access directly to minor thoroughfares or higher classification streets, but never local residential streets.

- 4. The request is for a B2 General Commercial district. No specific use or site plan can be reviewed with the request.
- 5. There is currently a commercial use existing on the property (repair services and retail shoppers' goods). It is considered a legal nonconforming land use. Tax records indicate that the two structures on the property were constructed in 1972 and 1980. City zoning regulations limit the extent of changes that can be made to legal nonconforming uses.
- 6. As is common with many long-standing legal nonconforming land uses, the property is not development in a manner that complies with all respects of current city codes. The application filed seeks to make the land use legal and conforming; any present nonconforming situations would be permitted to remain unless a new use is proposed for the property.

Mr. Nuttall noted that, when evaluating a rezoning application, careful consideration must be given to each goal and policy as outlined in the Land Development Plan.

Proposed Land Use Map Designation:	Commercial
Small Area Plan:	Central
Growth Strategy Map Designation:	Primary Growth

LDP Goals/Policies that Support the Request:

<u>Checklist Item 1:</u>	Rezoning is compliant with the Proposed Land Use Map.
<u>Checklist Item 3:</u>	The property on which the rezoning district is proposed fits the description of the zoning ordinance. <i>(Article 200, Section 210, Schedule of Statements of Intent)</i>
<u>Checklist Item 5:</u>	Complies with Growth Strategy Map
<u>Checklist Item 7:</u>	The proposed rezoning is compatible with the applicable Small Area Plan
<u>Checklist Items 12-14:</u>	Property is located outside of the watershed area, Special Hazard Flood Area, and area with steep slopes.

Goals/Policies that Do Not Support Request:

<u>2.1.5:</u>	The city will ensure development regulations provide appropriate transitional land uses, such as office & institutional, between high-intensity industrial/commercial & low-intensity residential uses.
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The City of Asheboro Planning Board considered the zoning application and recommended placement of the Zoning Lot into the requested B2 zoning district. In making this recommendation, the planning board concurred with the planning staff's analysis of the consistency of the proposed zoning with the adopted comprehensive plans as well as the reasonableness of the proposal. The planning staff's analysis is summarized in the following indented paragraphs.

The Land Development Plan designates the subject property and several adjoining properties for commercial use. Approval of the rezoning would recognize the property's lengthy commercial history and be consistent with surrounding zoning; much of the East Salisbury Street corridor in the immediate vicinity already is zoned B2 General Commercial.

The Central Small Area plan identifies "accommodating existing, and some future commercial development" as an objective in appropriately designated locations along minor thoroughfares or higher classification streets. Staff believes changing the property's zoning to B2 could help facilitate investment into the property by eliminating its non-conforming status.

Considering the aforementioned analysis, staff believes that the proposed zoning map amendment is reasonable and in the public interest and recommends approval of the request.

Mayor Smith opened the floor for comments from the public, and none were offered. Mayor Smith then transitioned to the deliberative phase of the process.

After engaging in deliberations about the zoning map amendment application, Council Member Bell moved, and Council Member Heath seconded the motion to adopt the plan consistency statement printed below and to approve the requested zoning map amendment with the following multi-part motion.

1. The Land Development Plan designates the Zoning Lot and several adjoining properties for commercial use. The rezoning will recognize the property's lengthy commercial history and be consistent with surrounding zoning; much of the East Salisbury Street corridor in the immediate vicinity already is zoned B2 General Commercial.

The Central Small Area plan identifies "accommodating existing, and some future commercial development" as an objective in appropriately designated locations along minor thoroughfares or higher classification streets. The city council believes changing the property's zoning to B2 will help facilitate investment into the property by eliminating its non-conforming status.

Considering the planning board recommendation and the aforementioned analysis, the city council believes that the proposed zoning map amendment is reasonable, is consistent with the comprehensive plan, and in the public interest.

2. The zoning map amendment application seeking to place the Zoning Lot into the requested above-described B2 zoning district is hereby approved.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

11. McCrary Ballpark Lease Agreement with ZooKeepers Baseball LLC

The city council’s intent to approve a 10-year lease agreement with ZooKeepers Baseball LLC was originally advertised on January 30, 2024. Subsequent to the advertisement, in The Courier-Tribune, the city council formally considered taking action on the proposed lease agreement during the regular meeting on March 7, 2024. After discussion of the lease in March 2024, the potential lease agreement has been the subject of evaluation and debate at the ensuing regular council meetings. At each meeting, the matter, upon motion and second, was continued by the city council to the next regular council meeting.

During the regular meeting in May 2024, the council members engaged in an extensive discussion about rental rates as well as the use of McCrary Park by different entities and how the city recreation services department handles operational issues at McCrary Park. This discussion also included deliberations about the desire for the city to obtain a right of first refusal in the event a change in the ownership of the summer collegiate baseball team created a threat to the continued use of McCrary Park as the home for the baseball team.

After this substantive discussion, a consensus emerged that city staff should prepare a complete draft lease agreement that the council could review and redline. In order to allow time for the preparation of the latest draft of the leasing instrument, Council Member Bell moved, and Burks seconded the motion, to continue the lease approval process to the next regular meeting on June 6, 2024. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

12. A Contract Award Decision for the Purchase of Seven Chemicals

Water Resources Director Michael Rhoney, PE reported on the chemical procurement process undertaken for operations at the water and wastewater treatment plants. The apparent lowest responsive, responsible bidders who submitted offers to meet the requirements of the water and wastewater treatment plants for seven chemicals from May 10, 2024 to April 15, 2025, are listed below.

<u>Chemical</u>	<u>Company</u>	<u>Price</u>
Liquid Alum	C & S Chemicals	\$418.95/Ton
Liquid Caustic	Trinity Mfg. DBA Oltrin Solutions, LLC	\$664.00/Ton
Fluosilicic Acid	Univar, USA, Inc.	\$550.00/Ton
Sodium Hypochlorite	Univar, USA, Inc.	\$1.71/Gal
Calcium Nitrate	Pencco, Inc.	\$2.35/Gal
Sodium Permanganate	Chemrite, Inc.	\$12.98/Gal
Calcium Hydroxide/Magnesium Hydroxide Slurry Blend	Polytec, Inc.	\$1.75/Gal

Council Member Bell moved, and Council Member Burks seconded the motion, to accept the bids/offers listed above and to award to the above-listed chemical suppliers at the listed prices the contracts to supply the designated chemicals required by the city’s water and wastewater treatment plants from May 10, 2024 to April 15, 2025. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

13. Community Development Division Items:

(a) Request for Authorization to Solicit Professional Services for a Downtown Parking Study

Parking in downtown has been is a topic for research because the downtown area continues to be revitalized. Mr. Nuttall requested authorization from the city council to procure professional services for a parking study. The study would seek ways to improve parking in downtown Asheboro.

Council Member Bell moved, and Council Member Heath seconded the motion to authorize city staff to prepare solicitations for a downtown parking study. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

(b) Discussion of Highlights from the City Council Strategic Priorities Retreat Held on April 12, 2024

Mr. Nuttall provided a written summary of the city council's strategic priorities retreat that was held on April 12, 2024. Rebecca Jackson who is an adjunct faculty member at the UNC School of Government for Public Leadership and Governance, prepared a summary of the activities from the retreat. During his presentation, Mr. Nuttall highlighted the following objectives:

- To provide an opportunity for the council to collaborate as a team
- To strive for consensus on long-term (10-year) vision themes for the City of Asheboro
- To consider key issues, trends, and changes
- To develop 3-year strategic focus areas
- To identify and prioritize key strategic actions (critical tasks) to accomplish over the next 12-18 months
- To develop next steps in the strategic planning process

The retreat was very productive in that the council engaged in discussion that forged a roadmap with 6 key strategic focus areas that positions Asheboro for success. Moving forward, the retreat produced the following recommendations:

- Review the report prepared by Ms. Jackson
- Utilize the council's 6 strategic focus areas to guide policy, resourcing and management decisions in the short term (12-18 months)
- Consider developing a formal organizational strategic plan
- Leadership retreat/development
- Broader staff training in high performing organization strategies

In essence, the retreat generated visions for the success and growth of Asheboro as a whole. A copy of the report presented by Mr. Nuttall is on file in the city clerk's office.

(c) Update on the Abatement of the Underground Storage Tank on the City's Historic Mill Property Located at 159 North Street

Mr. Nuttall reported that the underground storage tank on the city's historic mill property located at 159 North Street has been removed. Soil samples were collected. A Limited Site Assessment will be prepared and submitted.

No formal action was taken by the council during this portion of the meeting.

14. Asheboro Regional Airport Items

(a) The Annual Report from the Airport Authority

City Engineer Michael Leonard, PE, reviewed the annual report from the Asheboro Airport Authority. Throughout the course of 2023-2024, the airport authority completed the following:

- Regular quarterly meetings were held on July 18, 2023, October 16, 2023, January 16, 2024, and April 16, 2024
- Reviewed and discussed quarterly safety committee reports
- Reviewed and discussed the status of FBO operations, aircraft maintenance, and hangar rentals
- Reviewed and discussed the status of the aviation museum and activities
- Reviewed and discussed possible marketing strategies for the airport
- Reviewed and discussed the design of a 80' x 80' corporate hangar

During the course of May 2023-April 2024, a work authorization was submitted to the council for review and was approved for construction of 10-unit T-Hangars. According to the report, 100 percent of the hangar spaces are currently leased, and an estimated economic output projected for 2024 is more than \$30million.

A copy of the report is on file in the city's engineering department and the city clerk's office. No formal action was taken by the council during this portion of the meeting.

(b) Request for Authorization to Seek a Letter of Recommendation from the NC Division of Aviation for an Application for the FAA ATP Funds of up to \$2,000,000.00 Towards the Construction of a New Terminal Building

Mr. Leonard asked for council's authorization to seek a letter of recommendation from the NC Division of Aviation for an application for the FAA ATP funds of up to \$2,000,000.00 towards the construction of a new terminal building. Council Member Trogdon moved, and Council Member Moffitt seconded the motion to authorize city staff to seek a letter of recommendation from the NC Division of Aviation for an application for the FAA ATP funds of up to \$2,000,000.00 towards the construction of a new terminal building. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogdon voted aye. There were no dissenting votes.

15. Legal Services Items

(a) Annexation of City Owned Property Acquired for a Future Emergency Operations Center/Third Fire Station

(i) Public Hearing

Mayor Smith opened a public hearing on the question of the annexation of city-owned land on the east side of Zoo Parkway, near the intersection with Crestview Church Road.

As part of the public hearing, City Attorney Jeff Sugg presented and recommended adoption, by reference, of an ordinance to extend the Asheboro City limits by annexing city-owned property located on the east side of Zoo Parkway and contiguous to the existing primary city limits. No citizen spoke in opposition to the proposed annexation.

(ii) Annexation Ordinance

The city council entered into the deliberative phase of the hearing. Council Member Heath moved, and Council Member Burks seconded the motion to adopt/approve the following annexation ordinance by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogdon voted aye. There were no dissenting votes.

ORDINANCE NO. _____ 15 ORD 5-24

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

AN ORDINANCE EXTENDING THE ASHEBORO CITY LIMITS BY ANNEXING CITY-OWNED PROPERTY LOCATED ON THE EAST SIDE OF ZOO PARKWAY AND CONTIGUOUS TO THE EXISTING PRIMARY CITY LIMITS

WHEREAS, on December 13, 2023, the City of Asheboro purchased 3.25 acres of vacant land, more or less, lying on the east side of Zoo Parkway; and

WHEREAS, this land, which is identified by Randolph County Parcel Identification Number 7669395087, (the “EOC/Fire Station Parcel”) is contiguous to the existing primary city limits for the City of Asheboro; and

WHEREAS, the EOC/Fire Station Parcel was purchased because this site was deemed to be a suitable location for the city’s proposed emergency operations center/third fire station; and

WHEREAS, the Asheboro City Council has concluded that, in preparation for the eventual development of a municipal emergency operations center/third fire station at this site, the EOC/Fire Station Parcel should be annexed into the City of Asheboro; and

WHEREAS, on April 4, 2024, pursuant to Section 160A-31(g) of the North Carolina General Statutes, the Asheboro City Council adopted a Resolution (Resolution Number 9 RES 4-24) stating the city council’s intent to annex the EOC/Fire Station Parcel; and

WHEREAS, the entirety of the territory proposed for annexation is more specifically described by metes and bounds in Section 1 of this Ordinance; and

WHEREAS, pursuant to Asheboro City Council Resolution Number 9 RES 4-24, a legal notice was published on April 18, 2024, in *The Courier-Tribune*, a newspaper with general circulation in the City of Asheboro, announcing that a public hearing to consider the adoption of an ordinance annexing the described territory into the City of Asheboro would be held during the city council’s next regular meeting, which was scheduled to begin at 7:00 p.m. on May 9, 2024, in the council chamber on the second floor of Asheboro City Hall, 146 North Church Street, Asheboro, North Carolina 27203; and

WHEREAS, the public hearing was held, as advertised, on May 9, 2024; and

WHEREAS, the city council has found that the proposed annexation meets the requirements of Section 160A-31 of the North Carolina General Statutes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. By virtue of the authority granted in Section 160A-31 of the North Carolina General Statutes, the following described contiguous territory is hereby annexed, attached to, and made part of the City of Asheboro:

Grant Township, Randolph County, North Carolina:

BEGINNING in the eastern margin of the 60-foot public right-of-way for Zoo Parkway and on the existing City of Asheboro primary city limits line at a 1-inch existing iron pipe down two inches and located by means of the North Carolina Coordinate System at the coordinates of North 699,157.86 feet and East 1,763,303.42 feet (NAD 83 (2011)), this BEGINNING point is at the northwest corner of the City of Asheboro parcel or tract of land described in the Office of the Register of Deeds for Randolph County, North Carolina (the “Randolph County Registry”) in Book of Record 2888, Page 637 and in Plat Book 183, Page 22 and for which annexation is sought (the described parcel or tract of city-owned land will be hereinafter referred to as the “EOC/Fire Station Parcel”); thence, from the described BEGINNING point, departing from the eastern margin of the public right-of-way for Zoo Parkway and running with the existing City of Asheboro primary city limits line along the northern boundary of EOC/Fire Station Parcel the next four bearings and distances: North 81 degrees 34 minutes 05 seconds East 109.67 feet along the Jonathan Bullington and Ashley L. Bullington property described in Deed Book 2698, Page 1462, Randolph County Registry (Lot 19 as shown in Plat Book 31, Page 5, Randolph

County Registry) to a 5/8-inch existing iron rod up two inches; thence North 81 degrees 33 minutes 02 seconds East 99.98 feet along the Kimberly Dekle Hanna Fields property described in Deed Book 1927, Page 780, Randolph County Registry (Lot 18 as shown in Plat Book 31, Page 5, Randolph County Registry) to a 1/2-inch existing iron pipe down two inches; thence North 71 degrees 37 minutes 33 seconds East 101.33 feet along the Joan Beane Cockman and Johnnie Edwind Cockman property described in Deed Book 2511, Page 1316, Randolph County Registry (Lot 17 as shown in Plat Book 31, Page 5, Randolph County Registry) to a 1/2-inch existing iron pipe down two inches; thence North 71 degrees 37 minutes 42 seconds East 195.00 feet along the Johnny J. Harvell and Nancy H. Harvell property described in Deed Book 1827, Page 572, Randolph County Registry (Lot 16 and part of Lot 15 as shown in Plat Book 31, Page 5, Randolph County Registry) to a set 1-inch iron pipe up two inches; thence departing from the northern boundary of the EOC/Fire Station Parcel and the existing City of Asheboro primary city limits line and proceeding along the proposed City of Asheboro primary city limits line by running with the eastern boundary of the EOC/Fire Station Parcel the next two bearings and distances: South 19 degrees 25 minutes 40 seconds East 165.88 feet to a set 2-inch iron pipe up two inches; thence South 29 degrees 48 minutes 20 seconds East 60.00 feet to a set 2-inch iron pipe up two inches; thence continuing to follow the proposed City of Asheboro primary city limits line by departing from the eastern boundary of the EOC/Fire Station Parcel and running with the southern boundary of the EOC/Fire Station Parcel the next two bearings and distances: South 60 degrees 11 minutes 40 seconds West 460.02 feet to a set 2-inch iron pipe up two inches; thence in a southwesterly direction along the arc of a curve with a radius of 30.00 feet and an arc length of 49.42 feet a chord bearing and distance of South 13 degrees 00 minutes 21 seconds West 44.02 feet to a set 1-inch iron pipe up two inches in the eastern margin of the public right-of-way for Zoo Parkway; thence continuing to follow the proposed City of Asheboro primary city limits line by departing from the southern boundary of the EOC/Fire Station Parcel and running with the western boundary of the EOC/Fire Station Parcel along the eastern margin of the public right-of-way for Zoo Parkway northwestward along the arc of a curve with a radius of 1,203.94 feet and an arc length of 73.75 feet a chord bearing and distance of North 32 degrees 25 minutes 41 seconds West 73.74 feet to a computed point; thence following the proposed City of Asheboro primary city limits line across the public right-of-way for Zoo Parkway South 59 degrees 19 minutes 36 seconds West 139.67 feet to a computed point on the existing City of Asheboro primary city limits line; thence following the existing City of Asheboro primary city limits line the next three bearings and distances along the western margin of the public right-of-way for Zoo Parkway, inclusive of a sight distance area at the intersection of Zoo Parkway and Crestview Church Road (North Carolina Secondary Road 2820): North 06 degrees 02 minutes 02 seconds East 136.44 feet to a computed point; thence northwestward along the arc of a curve with a radius of 712.07 feet and an arc length of 120.53 feet a chord bearing and distance of North 22 degrees 36 minutes 53 seconds West 120.39 feet to a computed point; thence continuing northwestward along the arc of a curve with a radius of 1,750.67 feet and an arc length of 111.01 feet a chord bearing and distance of North 16 degrees 05 minutes 18 seconds West 110.99 feet to a computed point; thence continuing to follow the existing City of Asheboro primary city limits line by crossing the public right-of-way for Zoo Parkway North 78 degrees 49 minutes 53 seconds East 58.97 feet to the point and place of BEGINNING, and containing a total of 3.817 acres (166,221 square feet), more or less, to be annexed.

The preceding description is in accordance with a plat of survey titled "ANNEXATION SURVEY CITY OF ASHEBORO PROPERTY ANNEXATION." The plat was drawn under the supervision of Thomas Scaramastra, a Professional Land Surveyor with Registration Number L-4421, from an actual survey made under his supervision. The job number listed on the plat is 23-002, with a date of April 2, 2024.

The plat of survey referenced in the immediately preceding paragraph is recorded in Plat Book 185, Page 91, Randolph County Registry.

Section 2. Upon and after May 9, 2024, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Asheboro and shall be entitled to the same privileges and benefits as other parts of the City of Asheboro. The above-described territory shall be subject to municipal taxes according to Section 160A-58.10 of the North Carolina General Statutes.

Section 3. The Mayor of the City of Asheboro shall cause to be recorded in the Office of the Randolph County Register of Deeds and in the Office of the North Carolina Secretary of State an accurate map of the annexed territory that is described in Section 1 of this Ordinance together with a duly certified copy of this Ordinance. Such a map shall also be delivered to the Randolph County Board of Elections as required by Section 163-288.1 of the North Carolina General Statutes.

Section 4. All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 5. This Ordinance shall be in full force and effect upon and after May 9, 2024.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on May 9, 2024.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

Approved as to form:

/s/Jeffrey C. Sugg
Jeffrey C. Sugg, City Attorney

(b) Proposed Lease Agreement with New Cingular Wireless PCS, LLC for the Placement of Electronic Communications Equipment

Mr. Sugg presented and recommended adoption, by reference, of a resolution approving a lease agreement between the City of Asheboro and New Cingular Wireless PCS, LLC. Council Member Bell moved, and Council Member Trogon seconded the motion, to adopt/approve the following resolution by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Swiers, and Trogon voted aye. There were no dissenting votes.

RESOLUTION NO. 10 RES 5-24

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF ASHEBORO AND NEW CINGULAR WIRELESS PCS, LLC

WHEREAS, the City of Asheboro owns two parcels of land on South Church Street in Asheboro that are identified by Randolph County Parcel Identification Numbers 7751619869 and 7751710819 and are more particularly described in the Office of the Randolph County, North Carolina Register of Deeds (the “Randolph County Registry”) in the following books of record: Deed Book 208, Page 376, Randolph County Registry and Deed Book 210, Page 133, Randolph County Registry; and

WHEREAS, an elevated water tank that is owned and operated by the City is located upon the premises described in the immediately preceding paragraph (the “Water Tank Premises”); and

WHEREAS, New Cingular Wireless PCS, LLC, a Delaware limited liability company authorized to do business in North Carolina, (the “Lessee”) has expressed its desire to continue to lease a portion of the Water Tank Premises for the purpose of maintaining and operating a wireless communication facility on the premises; and

WHEREAS, Section 160A-272 of the North Carolina General Statutes provides that property owned by the city may be leased to a tenant if the desired property will not be needed by the city for the term of the lease; and

WHEREAS, on March 28, 2024, a legal notice was published in *The Courier-Tribune* stating the Asheboro City Council’s intent to consider, during its regular meeting on May 9, 2024, a resolution authorizing the lease of the requested space to the Lessee; and

WHEREAS, the city council has determined that the portion of the Water Tank Premises that Lessee wishes to lease will not be needed by the city during the term of the lease; and

WHEREAS, the proposed lease agreement with the Lessee is attached to this Resolution as EXHIBIT 1 and is hereby incorporated into this Resolution by reference as if copied fully herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro as follows:

Section 1. The proposed lease agreement attached to this Resolution as EXHIBIT 1 is hereby approved.

Section 2. The Mayor is hereby authorized to execute on behalf of the city any and all documents and instruments necessary to carry into full force and effect the lease agreement attached hereto as EXHIBIT 1.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on May 9, 2024.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

EXHIBIT 1

STATE OF NORTH CAROLINA

LEASE AGREEMENT FOR PLACEMENT
OF ELECTRONIC COMMUNICATIONS
EQUIPMENT

COUNTY OF RANDOLPH

THIS AGREEMENT (the “Agreement”), dated as of the latter of the signature dates found on the signature page for this leasing instrument (such date shall be the “Effective Date”), is by and between the **CITY OF ASHEBORO**, a North Carolina municipal corporation with a mailing address of Post Office Box 1106, Asheboro, North Carolina 27204-1106, (the “Lessor”) and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company authorized to do business in North Carolina and having a mailing address at 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, Georgia 30319, (the “Lessee”). Lessor and Lessee are collectively referred to herein as the “Parties.”

WITNESSETH

In consideration of the monthly rental fees set forth below and the other mutual promises contained herein, the Parties agree as stated in the following sections of this Agreement.

Section 1. Lease of Property

Lessor hereby leases to Lessee, and Lessee accepts, the lease area described herein. The lease area is located within two parcels of land identified by Randolph County Parcel Identification Numbers 7751619869 and 7751710819. These parcels or tracts of land are described, respectively, in the following books of record maintained by the Office of the Register of Deeds for Randolph County, North Carolina (the “**Randolph County Registry**”): Deed Book 208, Page 376, Randolph County Registry and Deed Book 210, Page 133, Randolph County Registry. The two parcels of land described in the immediately preceding sentence, and the improvements located upon the described parcels of land, (the “**Water Tank Premises**”) are commonly referred to, collectively, as the City of Asheboro elevated water tank located at 252 South Church Street, Asheboro, North Carolina 27203.

The lease area subject to this Agreement (the “**Demised Premises**”) consists only of the space on the Lessor’s elevated water tank and the ground space adjacent thereto necessary to enable the Lessee to install, remove, replace, modify, maintain, refurbish, upgrade, and operate, at the sole expense of the Lessee, a wireless communications facility (“**WCF**”) described as follows:

- (a) Up to nine (9) antennas mounted on the corral of the elevated water tank at an approximate 130-foot level and associated equipment all for the purpose of a communications facility and uses incidental thereto; and
- (b) The Demised Premises also include the existing 20-foot by 20-foot area of land, which is a portion of the Water Tank Premises, utilized for locating the Lessee’s associated communications equipment. Within this area, the Lessee is allowed to maintain a 9-foot by 15-foot concrete pad for the placement of an equipment shelter.

Permission is hereby granted for the Lessee to attach necessary transmission lines, cables, fixtures, and other associated equipment to the elevated water tank to make the listed antennas operational. The Lessee is responsible for providing all mounting hardware necessary for the WCF. The exact location of these antennas and the associated equipment on the elevated water tank shall always be subject to strict conformance with determinations made by the most recent structural analysis of the elevated water tank. Any analysis triggered by the decision of the Lessee to move the antennas and associated equipment after the Effective Date of this Agreement shall be at the sole cost and expense of the Lessee.

Subject to the restriction/limitation stated in the immediately following sentence, this Agreement shall also be deemed to include the grant of a nonexclusive easement for ingress and egress onto the Water Tank Premises by the Lessee and its employees, agents, contractors, and any other representatives twenty-four hours a day, seven days a week. The described nonexclusive easement for ingress and egress is subject to the requirement that Lessee and its employees, agents, contractors, and any other representatives shall notify the on-duty personnel at the City of Asheboro Water Treatment Plant at (336) 626-1215 prior to entering upon the Water Tank Premises. When entering upon the Water Tank Premises, the Lessee and its employees, agents, contractors, and any other representatives shall be escorted or accompanied by an authorized representative of the Lessor.

Without liability of any kind to the Lessor, and prior to undertaking on the Demised Premises any modification of the existing WCF in any form or to any degree, the Lessee must receive prior express written approval from the Lessor’s City Manager or Water Resources Director. To be eligible to receive the required approval from the Lessor of proposed modifications, the Lessee must successfully complete the following steps:

- (i) Submit reports/drawings of proposed modifications, including the work plan for implementing the proposed modifications, for review by the Lessor’s water resources division and/or the Lessor’s consultant(s) to determine the compatibility of the proposal with the operation and maintenance of the Water Tank Premises as part of the Lessor’s municipal water supply infrastructure;
- (ii) A structural analysis with a certified engineering report or drawings to confirm Lessee’s proposed modifications do not compromise the structural integrity of the elevated water tank;
- (iii) A certified engineering report that clearly identifies the distance from the Lessee’s antennas in which the maximum radio frequency exposure limits will be exceeded for workers engaged in painting, repairing, or servicing the elevated water tank;
- (iv) If the modification plans include the generation of additional noise, plans for noise abatement, with supporting data, must be provided to ensure any future modifications that generate noise, specifically including without limitation the installation and operation of a power generator, do not create levels of noise that exceed the limits prescribed by the applicable laws and regulations,

specifically including by way of illustration and not limitation the City of Asheboro Zoning Ordinance; and

- (v) The proposed modifications must include plans for designing, painting, and/or staining all proposed cables, antennas, wiring, fixtures, and all other types of equipment so that such future modifications are reasonably compatible, both functionally and aesthetically, with the improvements located on the Water Tank Premises.

The Parties mutually agree that the cost of the above-referenced reports/drawings shall be at the sole cost and expense of the Lessee. Furthermore, all future modifications to the Demised Premises proposed and implemented by the Lessee shall be made at the sole cost and expense of the Lessee.

The Lessor shall not withhold approval for any modification work proposed by the Lessee unless the Lessor has a good faith basis for believing that the proposed modification(s) to the existing WCF will interfere with or be detrimental to the use and enjoyment of residential dwellings contiguous with the Water Tank Premises and/or will interfere with or be detrimental to the use of the Water Tank Premises by the Lessor and/or third-party lessees.

Lessor and/or its consultant(s) shall conduct an inspection upon completion of modification(s) sought by the Lessee to verify work compliance with the approvals granted by the Lessor. If the inspection identifies nonconforming work, Lessee shall correct such nonconforming work after which Lessor and/or its consultant(s) will conduct another inspection to verify that the deficiencies have been corrected. The cost of any such work corrections shall be at the sole cost and expense of the Lessee.

Any damage to the Water Tank Premises caused by the Lessee's installation, construction, maintenance, operation, repair, replacement, and upgrade activities on the Demised Premises shall be immediately repaired by the Lessee. The cost or expense associated with the repairs contemplated by the immediately preceding sentence shall be borne by the Lessee, not the Lessor.

Lessee shall comply with all applicable governmental laws, statutes, ordinances, rules, and regulations relating to the use of the Demised Premises in particular and the Water Tank Premises in general. Lessee shall maintain its WCF in a good and safe operating condition.

At the expiration or earlier termination of this Agreement in accordance with the terms and conditions found herein, Lessee will return the Water Tank Premises to their original condition as of the Effective Date of this Agreement, less normal wear and tear and any casualty not caused by the Lessee, within 90 calendar days of the date of expiration or earlier termination.

The Parties mutually agree that all rights granted under this Agreement are expressly subject and subordinate to the Lessor's rights and obligations to operate, maintain, and repair the Water Tank Premises as party of the Lessor's municipal water supply system.

Section 2. Term of Lease

- (a) *Bridge Lease Term.* The Bridge Lease Term is the initial term of this Agreement and shall begin on the Effective Date that is defined above. The Bridge Lease Term shall continue until the end of the calendar day on October 31, 2025. This term covers the balance of the license term previously addressed by the Co-Location Option and License Agreement for BellSouth Site 174-263 dated September 15, 2000, and superseded by this Agreement. The Bridge Lease Term shall expire at midnight EDT on October 31, 2025, and will be immediately followed by the Base Lease Term described below.
- (b) *Base Lease Term.* Subject to the terms and conditions found herein, and at the expiration of the Bridge Lease Term, the Base Lease Term shall immediately

commence. The commencement date for the Base Lease Term shall be November 1, 2025, and the Base Lease Term shall be a term of sixty (60) calendar months. The Base Lease Term shall expire on the last day of the calendar month in which the fifth (5th) annual anniversary of the commencement date of the Base Lease Term occurs.

- (c) *Extension Lease Term.* Subject to the terms and conditions found herein, and at the expiration of the Base Lease Term, this Agreement will automatically renew for one (1) additional 60-calendar month term upon the same terms and conditions unless the Lessee notifies the Lessor in writing of the intent not to renew this Agreement at least sixty (60) calendar days prior to the expiration of the Base Lease Term. This additional 60-month lease term shall be referred to as the Extension Lease Term.

Upon the occurrence of either (i) the termination of this Agreement by either party in accordance with the terms and conditions stated herein, or (ii) the expiration of the Base Lease Term or the Extension Lease Term, whichever expiration occurs later, the Lessee shall, in a manner consistent with any applicable provisions found elsewhere in this Agreement, surrender the Demised Premises to the Lessor in as good of a condition as when received, ordinary wear and tear and any casualty not caused by the Lessee excepted, within ninety (90) calendar days of the termination or expiration of the Agreement. If Lessee fails to surrender the Demised Premises upon the expiration or earlier termination of the Agreement, there shall be no renewal of this Agreement or exercise of an option by operation of law.

Section 3. Rental Rate

The rental payments that shall be paid by Lessee to Lessor pursuant to this Agreement are as follows:

- (a) Beginning on the Effective Date of this Agreement and throughout the entirety of the Bridge Lease Term, the Lessee will pay to the Lessor a monthly rental payment in the amount of Two Thousand Six Hundred Twenty-Three and Fifty-One Hundredths Dollars (\$2,623.51);
- (b) Beginning on the first day of the Base Lease Term and throughout the entirety of the Base Lease Term, the Lessee will pay to the Lessor a monthly rental payment in the amount of Three Thousand and No Hundredths Dollars (\$3,000.00); and
- (c) Beginning on the first day of the Extension Lease Term and throughout the entirety of the Extension Lease Term, the Lessee will pay to the Lessor a monthly rental payment in the amount of Three Thousand Four Hundred Fifty and No Hundredths Dollars (\$3,450.00).

The rental payments specified in the three (3) immediately preceding paragraphs shall be delivered in good funds, on or before the fifth (5th) day of each calendar month in advance, to the Lessor at the following address: City of Asheboro, Attn: Finance Department, PO Box 1106, Asheboro, NC 27204-1106. The rent will be prorated for any partial month.

Section 4. Approvals

To the degree permitted by law, Lessor shall cooperate with Lessee in its efforts to obtain and maintain in effect all certificates, permits, licenses, and other approvals required by governmental authorities for Lessee's use of the Demised Premises in accordance with Section 1 of this Agreement. If any previously issued certificate, permit, license, or approval is cancelled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, then Lessee shall have the right to terminate this Agreement upon notice to the Lessor and without penalty.

Section 5. Utilities

Lessee shall make arrangements for the provision of all utilities necessary for the operation of its equipment and facilities. Any and all costs and expenses associated with such provision of utilities shall be at Lessee's sole cost and expense. Such utilities shall be

metered separately from those of the Lessor and shall not unreasonably interfere with Lessor's use of the Water Tank Premises.

Section 6. Termination

- (a) If Lessee fails to pay any rental or other amounts payable under this Agreement when due, or if Lessee fails to perform any of the other covenants, terms, or conditions of this Agreement, prior to exercising any rights or remedies against Lessee on account thereof, Lessor shall first provide Lessee with written notice of the failure and provide Lessee with a 30-calendar day period to cure such failure. Lessee agrees and covenants that, upon such notification of a violation or breach of the terms and conditions of this Agreement, it shall immediately and diligently undertake to correct any such condition. Lessee must, without delay or excuse, absolutely correct the defect or violation on or before the date specified by Lessor. When the Lessee's failure to perform pertains to the failure to make a scheduled payment to the Lessor, the Lessee shall, in addition to any other remedy available to Lessor, pay a late fee equal to five percent (5%) of any installment of rent that is not received within ten (10) calendar days of its due date. In the event the failure to perform or comply with any term and condition of this Agreement is not cured by Lessee within the above-referenced 30-calendar day period to cure or within any other time-period specified by Lessor in its written notice of the breach or failure to perform, whichever is later, the Lessor may, at its option, terminate this Agreement immediately. Upon such termination, this Agreement shall become null and void, and Lessor and Lessee shall have no further obligations to each other, other than Lessee's obligation to remove its property as hereinafter provided.
- (b) Lessor may order the Demised Premises closed immediately when any condition exists on the Water Tank Premises that an agency of the city, county, state, or federal government, which is charged with public health and safety responsibilities, deems to constitute a threat to health or safety. In such event, Lessor shall provide notice to Lessee of such closure, which shall be only for the period of time that is strictly necessary to successfully address the public health or safety issue(s) that triggered the closure of the Water Tank Premises. If such an emergency closure order is issued, Lessee shall have the right to terminate this Agreement.
- (c) Any continuing violation or breach by Lessor of any of the terms and conditions of this Agreement shall be grounds for termination of this Agreement by Lessee upon the failure of the Lessor to cure within thirty (30) calendar days a default identified in a written notice transmitted by the Lessee to the Lessor.
- (d) Upon written notice to the Lessor, the Lessee may terminate this Agreement if Lessee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction or operation of the Lessee's communications facility as now and hereafter intended by Lessee, or if the Lessee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable.
- (e) Upon sixty (60) calendar days prior written notice, the Lessee may terminate this Agreement without cause so long as Lessee pays Lessor a termination fee in an amount equal to the total of three (3) months of rent payments at the monthly rental rate stated herein.

Section 7. Insurance

- (a) Lessee shall carry throughout the duration of this Agreement, at the sole cost and expense of the Lessee, the following insurance:
 - (1) Commercial general liability insurance with a limit of liability of Two Million and No Hundredths Dollars (\$2,000,000.00) combined single limit for bodily injury or death/property damage per occurrence and in the aggregate; and
 - (2) Workers' compensation insurance as required by law.

- (b) Lessee shall annually cause to be furnished to the Lessor a certificate of insurance verifying that the above-stated amount of insurance coverage is in effect. The commercial general liability shall include Lessor as additional insured by endorsement under the general liability policy or policies, as respects this Agreement. The required policy or policies shall not be cancelled, without replacement, except upon thirty (30) calendar days advance written notice to Lessor. This Agreement shall automatically terminate without notice upon the occurrence of an event of termination or lapse of the insurance coverage required by this Agreement. Termination pursuant to this section shall take precedence and supersede any other section establishing the lease term of this Agreement or requiring notice and/or an opportunity to cure a breach. The insurance limits in this section shall in no way act or be deemed to define or limit the right of the Lessor to recover damages, expenses, or losses for injuries or property damage sustained by Lessor as a consequence of Lessee's violation or breach of any provision of this Agreement.

Section 8. Interference

Subject to the modification provisions found in Section 1 of this Agreement, the Lessee shall not make any modifications of any type or to any degree on the Demised Premises that disturb the communications configurations, equipment, and frequencies in existence on the Water Tank Premises as of the Effective Date of this Agreement. Lessee's activities, operations, and equipment shall not interfere with the Lessor's operation, maintenance, and repair of the Water Tank Premises, including, without limitation, the elevated water tank itself and its lighting system. Lessee agrees to install equipment only of types and generating frequencies that will not cause interference to transmissions or signals from Lessor and third parties present on the Water Tank Premises as of the Effective Date of this Agreement. Furthermore, Lessee's equipment shall comply with all noninterference rules of the Federal Communications Commission.

In the event Lessee fails to achieve compliance with the above-stated non-interference provisions, Lessee shall take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours of Lessee's receipt of written notice from the Lessor of the existence of such interference, Lessee shall temporarily disconnect the electric power and shut down the equipment (except for intermittent operation for the purpose of testing after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference). If such interference is not corrected within thirty (30) days after receipt by Lessee of the written notice of the existence of the interference, Lessee agrees to either remove its noncompliant equipment from the Demised Premises, or this Agreement shall terminate as if by expiration and all of the Lessee's WCF shall be removed as provided herein.

Throughout the term(s) of this Agreement, Lessor shall place in subsequent lease agreements pertaining to the Water Tank Premises similar restrictions upon interference with Lessee's frequencies. If Lessor fails to cure the cause of any such interference within forty-five (45) days of Lessor's receipt from Lessee of written notice of such interference, Lessee may terminate this Agreement without penalty and remove its equipment.

Lessee shall be responsible for the testing needed to confirm that any and all future modifications to the Demised Premises proposed by the Lessee are compatible with the communications facilities in existence on Lessor's Water Tank Premises as of the Effective Date of this Agreement and that no interference will exist between the various communications equipment and frequencies located on the Water Tank Premises. Lessee hereby expressly acknowledges and accepts that Lessor has multiple third-party lessees using communications equipment and frequencies located on the elevated water tank and the adjoining premises. Furthermore, Lessee hereby expressly acknowledges and accepts that Lessor reserves the right to enter new antenna and communications facilities leases in the future. Lessor will use reasonable efforts to require any new lessee to abide by provisions similar to this section but will not be liable for monetary damages or equitable relief for interference caused by existing or future communications equipment or frequencies used on Lessor's premises.

Section 9. Indemnification

- (a) Lessee agrees to indemnify, defend, and hold harmless Lessor and its elected and appointed officials, employees, contractors, agents, and representatives from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) caused by Lessee, its officers, employees, contractors, agents, and representatives. However, Lessee shall not indemnify or save harmless the Lessor from such claims or damages as may be attributed to the acts or omissions of the Lessor and its officers, employees, contractors, agents, and representatives.
- (b) To the extent permitted by law, Lessor agrees to indemnify, defend, and hold harmless Lessee and its officials, employees, contractors, agents, and representatives from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) caused by Lessor and its officers, employees, contractors, agents, and representatives. However, Lessor shall not indemnify or save harmless the Lessee from such claims or damages as may be attributed to the acts or omissions of the Lessee and its officers, employees, contractors, agents, and representatives.
- (c) Each party shall give the other party hereto prompt and timely notice of any claim or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party; provided, however, such notice shall not be a precondition to indemnification hereunder. The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section of this Agreement.

Section 10. Warranties

Lessor and Lessee each acknowledge and represent that it is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into this Agreement and bind itself hereto through the official set forth as signatory for the party below. Lessor's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on the Lessor.

Section 11. Removal of Improvements

Title to all improvements constructed or installed by Lessee on the Demised Premises shall remain in Lessee and all improvements constructed or installed by Lessee shall at all times be and remain the property of Lessee, regardless of whether such improvements are attached or affixed to the Lessor's elevated water tank and adjoining premises. Upon the expiration or earlier termination of this Agreement, the Lessee shall, within a reasonable period not to exceed ninety (90) calendar days, remove all improvements, fixtures, and personal property constructed or installed on the Lessor's premises by or on behalf of Lessee and shall restore the Lessor's premises to its original condition, reasonable wear and tear and casualty not caused by the Lessee excepted. If such removal causes Lessee to remain on the premises after the expiration or earlier termination of this Agreement, Lessee shall pay rent at the then existing monthly rate until such time as the removal is completed. Such payment shall not be construed as an agreement to continue the leasing relationship and shall in no way limit any other remedy available to the Lessor for recovery of the property or damages related thereto.

Section 12. Quiet Enjoyment

Lessor covenants that Lessee, on paying the rental and performing the covenants, terms, and conditions required of Lessee and contained herein, shall peaceably and quietly have, hold, and enjoy the leasehold estate granted to Lessee by virtue of this Agreement, subject to Lessor's continuous, primary, and overriding right to use the Water Tank Premises as a vital component in the public water supply system owned and operated by the Lessor.

Section 13. Assignment/Sublease

Lessee does have the right to assign this Agreement or sublease the area leased to the Lessee, inclusive of the rights granted to the Lessee herein, in whole or in part, without the Lessor's consent.

Section 14. Condemnation

In the event the Lessor receives notification of any condemnation proceedings affecting the Demised Premises, Lessor will provide notice of the condemnation proceedings to Lessee within forty-eight (48) hours. If a condemning authority takes all of the Water Tank Premises, or a portion sufficient in Lessee's reasonable determination to render the Demised Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in the condemnation proceedings, which for Lessee will include, where applicable, the value of the communications facilities, moving expenses, prepaid rent, and business dislocation expenses; provided, however, any award to Lessee will not diminish Lessor's recovery. Lessee will be entitled to reimbursement for any prepaid rent on a pro rata basis.

Section 15. Casualty

Lessor will provide notice to Lessee of any known casualty affecting the Demised Premises within forty-eight (48) hours of the Lessor's discovery of the casualty. If any part of the Water Tank Premises is damaged by fire or other casualty so as to render, in Lessor's or Lessee's determination, the Demised Premises unsuitable for continued use, then either party may terminate this Agreement by providing written notice to the other party, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be reimbursed for any prepaid rent on a pro rata basis, but Lessor shall not be obligated to provide any other form of monetary relief, compensation, and/or damages to Lessee because of such casualty that rendered the Demised Premises unsuitable for use.

Section 16. Waiver of Lessor's Liens

Lessor waives any and all lien rights it may have, statutory or otherwise, concerning Lessee's communications facilities or any portion thereof. Lessee's communication facilities shall be deemed to be personal property for purposes of this Agreement regardless of whether any portion is deemed real or personal property under applicable law. Lessor consents to Lessee's right to remove all or any portion of Lessee's communications facilities from time to time in Lessee's sole discretion.

Section 17. Waiver of Liability

With the exception of any loss or damage caused by the negligence or willful misconduct of one of the Parties, neither Lessor nor Lessee shall be responsible or liable to the other party to this Agreement for any loss or damage arising from any claim to the extent such loss or damage is attributable to any acts or omissions of other users of the Water Tank Premises, acts of vandalism, structural failures, power failures, or other destruction or damage to the Water Tank Premises.

Section 18. Subordination

If the Water Tank Premises becomes encumbered by a deed to secure a debt, mortgage, or other security interest, Lessor will make a good faith effort to provide promptly to Lessee a mutually agreeable Subordination, Non-Disturbance, and Attornment Agreement.

Section 19. Maintenance

- (a) Lessee will be responsible for repairing and maintaining Lessee's communication facilities and any other improvements installed by Lessee on the Demised Premises in a proper operating and reasonably safe condition; provided, however, if any such repair or maintenance is required due directly to negligent or malicious acts of the Lessor or its elected and appointed officials, employees, contractors, and

representatives, the Lessor shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. With the exception of (i) Lessee's communications fixtures and related equipment, cables, accessories, and improvements and (ii) any additional costs, maintenance or otherwise, that are directly or indirectly attributable to the acts or omissions of the Lessee, the Lessor shall bear the costs of maintaining the Water Tank Premises.

- (b) Lessor represents and warrants that its operation of the Water Tank Premises, exclusive of Lessee's facilities, meets and will be maintained in accordance with all applicable laws, rules, and regulations, including, without limitation, rules and regulations of the Federal Communications Commission, Federal Aviation Administration, and all applicable local codes and regulations.
- (c) The Water Tank Premises are a critical component in the Lessor's public water supply infrastructure. The protection, preservation, and operational readiness of this public water supply infrastructure is of critical and overriding importance to the Lessor and its citizens.
 - (1) No provision in this Agreement shall be interpreted or construed in a manner that significantly or materially impairs the ability of the Lessor, in its capacity as a municipal corporation operating a public water supply and distribution system enterprise, to take emergency actions to protect the public water supply and to distribute treated water in a safe and efficient manner.
 - (2) In order to provide the Lessor with an effective means of responding to an emergency that requires rapid corrective action to alleviate or remedy a condition threatening the safe operation of the public water supply and distribution system, a point of contact must be provided to the Lessor for use in emergencies. Lessee shall provide the Lessor with a telephone number, or some other mutually agreed upon means of contact such as an email address, to serve as an emergency point of contact that can be reliably and effectively utilized twenty-four (24) hours a day, seven (7) days a week. This emergency point of contact shall provide around the clock access to a representative of the Lessee that can and will take prompt action to properly eliminate any impediment created by the Lessee's equipment to the Lessor's ability to effectively access public water supply and distribution system infrastructure that must be accessed to test water quality and, when necessary, restore water service.
 - (3) By way of illustration and not limitation, and in addition to the possibility of relocating the Lessee's equipment by using a Cell On Wheels ("COW") at the Lessee's expense, the type of emergency response required under this Agreement for the removal of obstacles created by the Lessee's equipment to the Lessor's emergency testing, repair, and/or restoration work includes Lessee turning off the Lessee's transmitter(s) when and only for so long as is strictly necessary, as judged by the appropriate industry, trade, or professional standards, for employees, contractors, or agents of the Lessor to approach for emergency repair, water quality, or safety purposes the zone specified in the certified engineering report referenced in Section 1 of this Agreement as a restricted area due to the excessive levels of radio frequency exposure. Notwithstanding any other clause, provision, or text in this Agreement, when the Lessor is attempting to address an emergency triggered by a specific threat to the operation of the public water supply infrastructure or more generally to the public health and safety, the only amount of notice required under this Agreement to implement an emergency response is as much notice as is practicable under the circumstances.
 - (4) Upon receipt of notice by way of the above-referenced emergency point of contact, the Lessee's authorized personnel shall respond no later than forty-eight (48) hours after the time of the initial emergency notification in order to work in good faith with the Lessor to turn off or relocate the Lessee's equipment as necessary to enable the Lessor to resolve the emergency situation

impacting the public water supply and distribution system. As soon as the emergency is resolved, the Lessor's personnel and contractors shall work with the Lessee in a good faith effort to restore the Lessee's equipment to its original operational status.

- (5) In the event of routine maintenance (*e.g.*, painting) that is not associated with an emergency, the Lessor will provide written notice one hundred eighty (180) days in advance of the date upon which the Lessee will be required to relocate its equipment for the purpose of allowing the Lessor to perform maintenance on the elevated water tank. Once this written 180-day notice is sent to the address listed in the notice section (Section 22) of this Agreement, the Lessee is required, on or before the date specified in the notice, to relocate its equipment to a COW until the Lessor has completed the maintenance work on the elevated water tank. This relocation of equipment to a COW shall be conducted at the sole and exclusive expense of the Lessee at a frequency not to exceed once per five-year period. Maintenance work on the Lessor's elevated water tank shall be scheduled in the sole and exclusive discretion of the Lessor.
- (6) When either an emergency or routine maintenance subject to the 180-day written notice requirement necessitates the relocation of Lessee's equipment to a COW, the Lessor and Lessee shall make good faith efforts to coordinate the relocation of equipment so as to minimize, to the degree possible, the negative impacts on both Parties. These good-faith coordination efforts shall include, where possible, coordination of the use of the COW with third-party carriers present on the Water Tank Premises. Any expenses associated with or connected in any way to a required relocation of the Lessee's equipment, or a required turning off of the power to the Lessee's transmitter(s), shall be the sole responsibility of the Lessee; provided, however, any expenses associated with or connected in any way to a required relocation of the Lessee's equipment, or a required turning off of the power to the Lessee's transmitter(s), due to non-emergency maintenance shall be the sole responsibility of the Lessee at a frequency not to exceed once per 5-year period. No set-off in the monthly rental amount or any other form of reimbursement from the Lessor for costs associated with either the relocation of Lessee's equipment to a COW or turning off power to Lessee's equipment is permitted.
- (7) In the event that the relocation of the Lessee's equipment to a COW is necessary, the exact temporary location of any such COW must be approved in advance by the Lessor. Furthermore, the temporary location and operation of a COW must be compliant with all applicable laws, ordinances, rules, and regulations including, without limitation, all zoning ordinances of the City of Asheboro and all rules and regulations of the Federal Communications Commission.
- (8) Subject to the requirement that the Water Tank Premises must be restored to a condition at least equal to the condition of the premises as of the date hereof and that all utility lines, etc. associated with the COW must be removed within forty-eight (48) hours of the return of the Lessee's equipment to the Demised Premises, the above-stated authorization for the location and operation of a COW, as limited by the provisions found within this section and elsewhere in this Agreement, expressly includes authorization for Lessee to access the COW with personnel, equipment, and utility lines over the Water Tank Premises so long as and on the express condition that such access shall be limited to include only that amount of access strictly necessary for the operation of a COW in accordance with the provisions of this section.
- (d) Aside from relocations of Lessee's equipment that are required by the Lessor in accordance with the above-stated provisions of this Agreement, in the event Lessee's equipment is damaged in a manner that results in the loss of service for a minimum of seven (7) consecutive days, and only so long as Lessee undertakes good faith efforts to restore service to the equipment located on the Demised Premises, Lessor hereby authorizes Lessee to temporarily locate and operate a COW on the Water Tank Premises.

- (1) The exact temporary location of any such COW must be approved in advance and in writing by the Lessor.
 - (2) The temporary location and operation of a COW must be compliant with all applicable laws, ordinances, rules, and regulations including, without limitation, all zoning ordinances of the City of Asheboro and all rules and regulations of the Federal Communications Commission.
 - (3) Subject to the requirement that the Water Tank Premises must be restored to a condition at least equal to the condition of said premises as of the date hereof and that all utility lines, etc. associated with the COW must be removed within forty-eight (48) hours of the restoration of service to the Lessee's equipment located on the Demised Premises, the above-stated authorization for the location and operation of a COW, as limited by the provisions found within this subsection and elsewhere in this Agreement, expressly includes authorization for Lessee to access the COW with personnel, equipment, and utility lines over the Water Tank Premises so long as and on the express condition that such access shall be limited to include only that amount of access strictly necessary for the operation of a COW in accordance with the provisions of this subsection.
- (e) The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section or provision of this Agreement.

Section 20. Hazardous Substances

Lessor represents that it has no knowledge of any substance, chemical, or waste on the Water Tank Premises that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee will not introduce or use any such substance on the premises in violation of any applicable law.

Section 21. Governing Law

This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of North Carolina. Venue for any state trial court litigation shall be in Randolph County, North Carolina, and the venue for any federal trial court litigation shall be in the Middle District of North Carolina.

Section 22. Notices

Except as specifically provided elsewhere in this Agreement, all notices, requests, demands, and communications must be given in writing and shall be deemed validly given on the date when deposited in the United States mail as certified or registered mail, return receipt requested with postage prepaid, and addressed as follows:

If to Lessor, to:

City of Asheboro
Attn: City Manager
Post Office Box 1106
Asheboro, NC 27204-1106

If to Lessee, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
RE: Site Name: 174-263 (NC); Fixed Asset No. 10018305
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

With a required copy to:

New Cingular Wireless PCS, LLC
Attn: General Counsel – Network
RE: Site Name: 174-263 (NC); Fixed Asset No. 10018305
208 S. Akard Street
Dallas, TX 75202

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

Section 23. Bind and Benefit

The terms and conditions contained in this Agreement shall constitute covenants running with the land and shall bind and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns.

Section 24. Waivers and Disclaimers; Memorandum of Lease

At the request of Lessee or Lessee's lenders, Lessor shall execute such documents as are reasonably requested by Lessee from time to time for the purpose of releasing, waiving, or disclaiming any interest of Lessor in and to the equipment of Lessee. In addition to the foregoing, at Lessee's request and expense (including reimbursement of reasonable out-of-pocket expenses incurred by Lessor hereunder), Lessor agrees to execute a memorandum of lease in a form suitable for recording and acceptable to Lessor and Lessee. Lessee agrees to provide Lessor with a certified copy of any such memorandum following any recordation of the same.

Section 25. Miscellaneous Provisions

- (a) *Written Modification.* This Agreement cannot be modified except by a written modification executed by Lessor and Lessee in the same manner as this Agreement is executed.
- (b) *Gender/Plurals.* Whenever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.
- (c) *Superseding Agreement.* As of the Effective Date specified herein, this Agreement supersedes any leasing or licensing agreements pertaining to the Demised Premises that have previously been executed by the Parties or their predecessors in interest, specifically including the Co-Location Option and License Agreement dated as of September 15, 2000. This instrument embodies the entire agreement between the Parties in connection with the Water Tank Premises, and there are no oral or parol agreements, representations, or inducements existing between the Parties relating to this transaction which are not expressly set forth herein and covered hereby.
- (d) *Parties Not Joint Venturers.* Nothing contained herein shall be construed to place the Parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.
- (e) *Waiver of Breach Not Deemed Waiver of Subsequent Breach.* No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein or a consent to any subsequent breach of the same or any other provisions. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

- (f) *Enumerated Rights Shall Not Be Deemed To Be Exclusive Remedies.* The various rights, powers, and remedies herein contained and reserved to either Lessor or Lessee shall not be considered as exclusive of any other right, power, or remedy, but the same shall be construed as cumulative and shall be in addition to every other right, power, or remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of a party to exercise any right, power, or remedy arising from any omission, neglect, or default of the other party shall impair any such right, power, or remedy nor shall any such delay or omission be construed as a waiver of any such default or be construed as acquiescence therein.
- (g) *Captions Are Merely Informative.* The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or sections of this Agreement or in any way affect this Agreement.
- (h) *Time Is of the Essence.* Time shall be of the essence of this Agreement and each and every term and condition thereof.
- (i) *Multiple Counterparts.* This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such fully executed counterpart.
- (j) *Product of Mutual Negotiation.* Both Lessor and Lessee acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that counsel has drafted it for both Lessor and Lessee. As such, the doctrine of construction against the drafter shall have no application to this Agreement.
- (k) *Agreement Is Not Executory.* Each of the Parties agrees that this Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is critical to the Agreement and was bargained for and part of the consideration for the Agreement.
- (l) *Severability.* If any term or condition of this Agreement is found to be unenforceable by a court of competent jurisdiction, the remaining terms and conditions shall remain binding upon the Parties as though the unenforceable provision was not contained herein. However, if the invalid, illegal, or unenforceable provision materially affects this Agreement, then the Agreement may be terminated by either party by means of a 10-business day prior written notice to the other party hereto.
- (m) *Interpretation.* Unless otherwise specified, the use of the term “including” will be interpreted to mean “including but not limited to.”
- (n) *No Option.* The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of, or option for the Water Tank Premises based on the terms set forth herein. This Agreement will become effective as an Agreement only upon the legal execution, acknowledgment, and delivery hereof by Lessor and Lessee. Scanned and electronic copies of the executed Agreement shall legally bind the Parties to the same extent as original documents.
- (o) *Third Party Approvals Not Necessary.* Lessor warrants and represents that the consent or approval of a third party, including without limitation a lender, is not required with respect to Lessor’s execution of this Agreement.

IN WITNESS WHEREOF, the Parties have caused their properly authorized representatives to execute this Agreement on the dates set forth below.

LESSOR:

**THE CITY OF ASHEBORO,
a North Carolina municipal corporation**

By: _____
David H. Smith, Mayor

Date: _____

ATTEST:

Holly H. Doerr, CMC, NCCMC, City Clerk

LESSEE:

**NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company**

By: AT&T Mobility Corporation
Its: Manager

By: _____
Signature of Authorized Official

Name of Authorized Official

Title of Authorized Official

Date: _____

16. Upcoming Events and Items Not on the Agenda

Mayor Smith and Mr. Ogburn led a brief discussion of upcoming events within the city government and the community in general.

No formal action was taken by the city council during this portion of the meeting.

There being no further business, the meeting was adjourned at 9:47 p.m.

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

/s/David H. Smith
David H. Smith, Mayor