

RESOLUTION NO. 2543

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH MARYLAND BROADBAND COOPERATIVE, INC., FOR THE PURPOSE OF PLANNING AND CONSTRUCTING A FIBER OPTIC INFRASTRUCTURE IN THE CITY.

WHEREAS, the City of Salisbury desires to enter into an agreement with Maryland Broadband Cooperative, Inc. for planning and constructing a fiber optic infrastructure to be located in the City; and

WHEREAS, the Maryland Broadband Cooperative, Inc. is a non-profit cooperative that provides fiber optic infrastructure and services in the State of Maryland; and

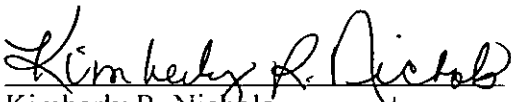
WHEREAS, a fiber optic infrastructure will be of great benefit to the citizens, businesses and government of the City of Salisbury; and

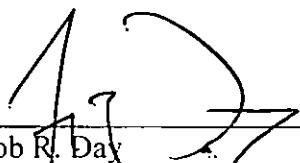
WHEREAS, the terms and conditions of the proposed agreement are set forth in the attached Memorandum of Understanding (MOU).

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council authorizes the Mayor to enter into the aforementioned MOU with Maryland Broadband Cooperative, Inc.

THE ABOVE RESOLUTION was introduced, read and passed at a meeting of the Council of the City of Salisbury, Maryland held on 14 day of September, 2015 and is to become effective immediately upon adoption.

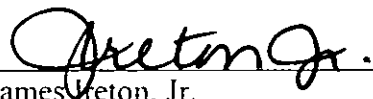
ATTEST:


Kimberly R. Nichols
CITY CLERK


Jacob R. Day
PRESIDENT, City Council

APPROVED BY ME THIS

16th day of Sept, 2015


James Wreton, Jr.
MAYOR, City of Salisbury

INTER

OFFICE

MEMO

OFFICE OF THE MAYOR

To: Tom Stevenson, City Administrator
From: Julia Glanz, Assistant City Administrator JG
Subject: Maryland Broadband- Fiber MOU
Date: September 10, 2015

Please find a resolution and MOU between the City of Salisbury and Maryland Broadband Cooperative, Inc. which would allow for the construction, implementation, and upkeep of fiber optic cables in the Downtown area. Fiber optic cables will bring extremely high speed internet to our Downtown. Other cities have seen this as a crucial component for growing an economy.

Unless you or the Mayor have any further comments, please forward this memo and the attachments to the Council for their discussion.

Attachment: Ordinance- MOU, Resolution for Mayor to Enter into an MOU with MDBC

MEMORANDUM OF UNDERSTANDING

between

City of Salisbury

and

Maryland Broadband Cooperative, Inc.

THIS MEMORANDUM OF UNDERSTANDING, (hereinafter referred to as the "Agreement") is made this ____ day of _____, 2015, by and between MARYLAND BROADBAND COOPERATIVE, INC., a Maryland consumer cooperative corporation with its principal offices located at 2129A Northwood Drive, Salisbury, Maryland (hereinafter referred to as "MDBC"), and the City of Salisbury, Maryland, a municipal corporation of the State of Maryland (hereinafter referred to as "City");

WHEREAS, the City is currently in the process of planning and constructing fiber optic infrastructure to be located in the City, as depicted in **EXHIBIT 1**, which is attached and made a part of this Agreement (hereinafter referred to as the "Fiber System"); and

WHEREAS, the MDBC is a non-profit cooperative that provides fiber optic infrastructure and services to underserved areas of the State of Maryland; and

Whereas, the City desires to sell, assign and deliver **certain rights connected to the Fiber System** to MDBC, and MDBC desires to purchase **those rights**, and thereafter to use, operate, inspect, maintain and repair the Fiber System, in accordance with the terms and conditions of this Agreement; and

Whereas, subject to Paragraph 28 below (relating to Relationship of the Parties), the purpose of this Agreement is to develop a collaboration between the parties on the matters set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement, the parties agree as follows:

1. CONSTRUCTION AND SALE OF FIBER SYSTEM BY CITY TO MDBC

A. During construction of the Main Street Masterplan project, a copy of which is attached and made a part of this Agreement as **EXHIBIT 2, with regard to the Fiber System**, the City's responsibilities shall be as follows: **(1) to procure and contract with a contractor to install the main conduit, hand holes and service conduit; (2) to oversee and inspect the installation of conduit, hand holes and service lines; and (3) to terminate service lines outside of buildings at a capped stub of conduit; and**

MDBC's responsibilities during construction of the Main Street Masterplan project with regard to the Fiber System shall be as follows: (1) to provide technical support for questions from the City arising from the design of the conduit, hand holes and service lines; (2) under a separate construction agreement to be entered into by and between MDBC and the City, to undertake responsibility for the procurement and installation (either directly or through a subcontractor engaged by MDBC) of the fiber optic lines, including service lines; (3) to oversee and inspect the installation of fiber optic lines and service lines; and (4) to coordinate installation of fiber optic line interconnections with individual property owners, which will then allow members of MDBC to provide high-speed internet services to individual property owners.

B. Subject to the City reserving a secured interest in the Fiber System and a right of reversion through legal action to ensure that MDBC performs all of its duties as outlined in this Agreement, and unless otherwise addressed in this Agreement, upon the completion of the construction, and the completion of testing, of the Fiber System, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City agrees to sell, grant, transfer, deliver and convey to MDBC, its successors and assigns to have and to hold the same forever, all of the City's rights, title and interest in and to, as well as good and marketable title to, the Fiber System.

C. The said sale of the Fiber System by the City to MDBC shall be consummated and closed on a date mutually agreed to by the parties (hereinafter referred to as the "Closing Date"), taking place promptly after the completion of the construction, and the completion of testing, of the Fiber System, through the execution and delivery of a Bill of Sale by the City substantially in the form as **EXHIBIT 3**, which is attached and made a part of this Agreement. As a part of the closing of the said sale of the Fiber System by the City to MDBC, the City shall execute and deliver an Easement Agreement substantially in the form as **EXHIBIT 4**, which is attached and made a part of this Agreement. **Said Easement Agreement and the sale of the Fiber System shall remain in force until such time as the City petitions for and receives a court order to terminate the easement and ownership of the Fiber System pursuant to Section 18 of this Agreement.**

D. On or promptly after the Closing Date, the City shall provide to MDBC all as-built drawings and records of the Fiber System.

E. To the extent that the Fiber System is constructed and completed in multiple phased steps, the parties by mutual agreement may determine to consummate and close the sale of the Fiber System with multiple closings, with the City executing and delivering a separate Bill of Sale at each such closing for each corresponding portion of the Fiber System then completed.

2. NO ASSUMPTION OF LIABILITIES OR OBLIGATIONS

The MDBC shall not assume any liabilities or obligations of the City and nothing shall be construed as imposing any liability or obligation upon MDBC other than those specifically provided for herein. If, however, the City obtains funding for the Fiber System from loans, grants or any other source that demands compliance by or the assumption of any obligation by MDBC, MDBC must agree, in writing, to comply. If MDBC's agreement is not received within 30 days of any such request by the City, this Agreement will terminate and any Bill of Sale or Easement Agreement previously executed in reliance upon the said anticipated loan, grant or other source of funds will be subject to nullification by the court pursuant to Section 18 of this agreement.

3. MAINTENANCE PROCEDURE

After the Closing Date, MDBC shall have all responsibilities for maintenance, repair and locating of the Fiber System. The MDBC agrees that it shall use all **commercially** reasonable efforts to perform routine, periodic maintenance work during the City's normal business hours. The City acknowledges that, after the Closing Date, MDBC shall have the right to access the Fiber System twenty-four (24) hours a day, seven (7) days a week, for installation and maintenance, provided such access does not negatively impact City operations. Prior to all visits, the MDBC shall, if so notified by the City, conform with the reasonable notice provisions promulgated by the City from time to time, and telephone the City's so designated authorized representative at a telephone number, all as set forth in the written notice to be provided by the City to MDBC, or any such other fully authorized person as the City may designate in writing from time to time.

4. REMEDY OF INTERFERENCE AND AGREEMENT TO PROVIDE COMMERCIALY REASONABLE OPERATION AND MAINTENANCE

The MDBC guarantees that in the event any of its operations interferes in any way with the operation of the City, it shall remedy the interference to the reasonable satisfaction of the City. The MDBC shall provide the City with an emergency telephone number(s) by which the City can contact a responsible employee, agent, or representative of the MDBC twenty-four (24) hours a day, seven (7) days a week. **MDBC shall provide for the commercially reasonable operation and maintenance of the Fiber System for the benefit of the City and all of MDBC's customers.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, MDBC MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, HEREUNDER, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. [DRAFTING NOTE: This standard general exclusion/disclaimer of UCC implied warranties is normally contained in all operating agreements of this sort, and it is contained in all such MDBC agreements. MDBC is agreeable to the newly proposed express warranty above, but all warranty provisions must be expressly set forth in the Agreement.]

5. REVENUE SHARING, PAYMENTS AND AUDITS

A. The MDBC shall pay to the City a portion of the revenue generated from MDBC's leasing of dark fiber in the Fiber System. The rate or rates charged by MDBC may be established and set by MDBC in its sole discretion. The portion of the revenue payable to the City by MDBC shall be equal to fifty percent (50%) of the lease amount paid by MDBC members on a monthly basis for leasing of dark fiber in the Fiber System. There is no revenue share derived from lit services delivered to customers in the Fiber System. If requested by the City, a copy of all such member agreements shall be provided to the City, provided however, that the user name and such other information as required, may be redacted should MDBC determine in its sole discretion that confidentiality requires so. *[DRAFTING NOTE: MDBC cannot agree to this provision giving the City approval rights of the rates charged. Any such third party approval of the rate making function would jeopardize MDBC's Federal tax exemption status under Section 501(c)(12) of the Internal Revenue Code. The loss of the cooperative's tax exemption would, of course, be catastrophic for MDBC. The City however can take comfort that, even without rate approval rights, it is adequately protected, since it is in MDBC's interests to generate maximum revenues from the Fiber System.]*

B. All fee payments are to be paid within 60 days of receipt of payments from MDBC members. The MDBC will provide quarterly reports identifying dark fiber optic cable usage and revenue generated to the City. The MDBC will also allow the City, at the City's expense, to audit the physical fiber optic infrastructure and financial records no more than twice per calendar year to verify payments due under this Agreement. Any fee payments due for any partial annual period shall be prorated. The MDBC shall make a reasonable attempt to recover all payments due from its members for leasing the dark fiber. In the event a member does not provide payment and service is discontinued, the MDBC shall not be responsible for past due amounts for that member, but the City may, at its option, seek to collect the past amounts owed with the full cooperation of the MDBC and shall be entitled to deduct its reasonable attorney's fees and costs incurred by it in collecting past due amounts before dividing the amount collected with MDBC on a fifty percent basis. Service shall be discontinued after 90 days in default, unless special circumstances are documented and provided in writing to the City.

6. CITY USE OF FIBER SYSTEM STRANDS

After the Closing Date, without cost to the City, MDBC will provide the City with the use of twelve (12) strands of the Fiber System for the use of the City in its sole discretion in its municipal operations. These twelve (12) strands of the Fiber System will not be leased, licensed, assigned or traded by the City with or to any third party. **Except at outlined elsewhere in this Agreement and specifically under Sections 1 and 18 of this Agreement**, all ownership right, title and interest in the aforesaid twelve (12) strands of the Fiber System shall at all times after the Closing Date remain exclusively with MDBC.

7. LIMITED USE OF RIGHT-OF-WAY

The MDBC shall have the right to **reasonable use of the** City rights-of-way for the purposes of installing, maintaining, repairing and operating the Fiber System and uses incidental thereto.

8. LIABILITY

A. The MDBC shall indemnify, **defend**, and hold the City and its employees or agents harmless against any claim or liability for loss from personal injury or property damage resulting from or arising out of the use of the Fiber System by the MDBC, its servants or agents, excepting, however, such claims or damages that may be caused by the acts or omissions of the City or its employees or agents.

B. The City shall indemnify, defend and hold MDBC and its employees or agents harmless against any claim or liability for loss from personal injury or property damage resulting from or arising out of the use of the Fiber System by the City, its servants or agents, excepting, however, such claims or damages that may be caused by the acts or omissions of MDBC or its employees or agents.

9. INSURANCE

The MDBC shall maintain comprehensive general liability insurance policy, which names the City as an additional insured, in the amount of at least three million dollars (\$3,000,000.00) combined single limit for personal injury and property damage liability per occurrence in the aggregate.

10. FORCE MAJEURE

“Force Majeure Event” means any act or event that prevents the affected party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected party and such party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, wind, drought, abnormal weather condition or actions of the elements, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the party seeking to be excused from performance; (iii) acts of war (declared or undeclared) or public disorders, civil disturbances, riots, insurrection, sabotage, military or guerilla action, economic sanction or embargo, epidemic, terrorist acts, or rebellion; (iv) civil strikes, work stoppage, slow-down, lock-out or labor disputes; (v) action by a governmental authority, including a moratorium on any activities related to the Agreement (provided that such order has been resisted in good faith); and (vi) the inability for one of the parties, despite its reasonable efforts, to obtain, in a timely manner, any governmental approval necessary to enable the affected party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such governmental approval is not attributable to the party in question and that such party has exercised its reasonable efforts to obtain such permit. A Force Majeure Event shall not be based on the economic hardship of either party.

Except as otherwise expressly provided to the contrary in this Agreement, if either party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force

Majeure event, gives the other party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of, or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due to the City under this Agreement shall not be excused by a Force Majeure event for such amounts as were received prior to, or after the Force Majeure event in connection with the leasing of the Fiber System.

11. COMPREHENSIVE EXCLUSIVITY OF ALL AGREEMENTS

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between the City and the MDBC, and that no verbal or oral agreements, promises, understandings, or warranties of any kind shall be binding upon either party in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to the Agreement shall be void and ineffective unless made in writing and signed by the authorized representatives of both parties. The Exhibits, referred to herein, are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall prevail. *[DRAFTING NOTE: All warranty provisions must be expressly set forth in the Agreement. Please see Drafting Note after Section 4 above.]*

12. GOVERNING LAW

This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maryland.

13. TRANSFER OF RIGHTS AND OBLIGATIONS

A. The MDBC may assign or transfer its rights and obligations arising under this Agreement to any entity legally authorized to operate a communications system, to any of its parents, subsidiaries or affiliates; to the successor by consolidation or merger; to a purchaser of all or substantially all of the MDBC's assets; to any entity which purchases either a majority or

controlling interest in the MDBC; and to any partnership in which the MDBC, or any of its parents, subsidiaries or affiliates is a general partner, upon the **written** consent of the City, which consent shall not be unreasonably withheld or delayed and shall be subject to the condition that the assignee shall ratify and affirm the terms of this Agreement in writing. **[DRAFTING NOTE: This standard clause, that the City may not unreasonably withhold or delay consent, should remain. Without it, the City would have the right to unreasonably withhold its approval of an assignment by MDBC, and to otherwise demand inappropriate considerations for its approval.]**

B. In its sole discretion, MDBC shall also have the right to grant third parties leases, licenses and rights to use the Fiber System for the provision of communications services. **[DRAFTING NOTE: In its operations of the Fiber System, MDBC should not be required to obtain the City's approval to sign dark fiber leases with its members.]**

14. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by overnight mail, hand delivered, and/or certified mail, return-receipt requested. If sent by certified mail, notices shall be deemed delivered three (3) days after mailing if addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

MDBC: MARYLAND BROADBAND COOPERATIVE, INC.
2129A Northwood Drive
Salisbury, MD 21801
Attention: Patrick Mitchell, President and CEO

CITY: CITY OF SALISBURY
125 North Division St.
Salisbury, MD 21801
Attention: Director of Information Technology

15. WAIVER OF TRIAL BY JURY

To the extent that a court of law would have jurisdiction over this Agreement, the parties hereby waive trial by jury.

16. NON-HIRING OF EMPLOYEES

No employee of the City or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of the Agreement shall, while so employed, become or be an employee of the party or parties hereby contracting with the City or any unit thereof.

17. NONDISCRIMINATION IN EMPLOYMENT

The MDBC agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

18. TERMINATION FOR DEFAULT

If the MDBC fails to materially fulfill its obligations under this Agreement properly and on time, or otherwise violates any material provision of the Agreement, the City may terminate the Agreement by written notice to the MDBC. Notwithstanding the foregoing, upon written notice to MDBC, MDBC shall have a **duty** to cure any such infractions and, providing MDBC diligently pursues corrective action and cures said infractions within thirty (30) days after its receipt of such written notice from the City, the Agreement shall remain in full force and effect. In the event of such a termination by the City, the notice shall specify the acts or omissions relied upon as cause for termination. Notwithstanding the foregoing, **and except as outlined elsewhere in this Agreement and specifically under Sections 1 and 18**, if any termination of this Agreement by the City takes place after the Closing Date, MDBC shall continue to own all title and interest in and to the Fiber System, and shall continue to quietly enjoy the Fiber System sold, transferred, conveyed, assigned and delivered by the City **until such time as the City**

petitions for and receives an order from the Circuit Court of Wicomico County to terminate the easement granted to MDBC and the sale of the Fiber System on the grounds of any material breach of this Agreement by MDBC, bankruptcy of MDBC or dissolution of MDBC, or its assignee. Failure, after the passage of the applicable time period for MDBC to cure any infractions as set forth in this section, to provide commercially reasonable service or maintenance of the Fiber System at a commercially reasonable rate, or to pay the City the monies due in a commercially reasonable and prompt manner shall constitute a material breach of this Agreement.

19. TERMINATION FOR CONVENIENCE

The performance of work under the Agreement may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the City shall determine that such termination is in the best interest of the City. The City will pay all reasonable costs associated with the Agreement that the MDBC has incurred up to the date of termination, and all reasonable costs associated with termination of the Agreement; provided, however, that the MDBC shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Notwithstanding the foregoing, **and except as outlined elsewhere in this Agreement and specifically under Sections 1 and 18**, if any termination of this Agreement by the City takes place after the Closing Date, MDBC shall continue to own all title and interest in and to the Fiber System, and shall continue to quietly enjoy the Fiber System sold, transferred, conveyed, assigned and delivered by the City until such time as the court orders a reversion of the Fiber System to the City and the extinguishment of the right-of-way easement.

20. DELAYS AND EXTENSIONS OF TIME

The MDBC agrees to perform the Agreement continuously and diligently in a **commercially reasonable manner**. No charges or claims for damages shall be made by the MDBC for any delays or hindrance, regardless of cause, in the performance of services under the Agreement. Time extensions shall be granted only for excusable delays that arise from unforeseeable causes beyond the reasonable control and without the fault or negligence of the MDBC, **as outlined in Section 10 of this Agreement**

21. POLITICAL CONTRIBUTION DISCLOSURE

The MDBC shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a City, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. RETENTION OF RECORDS

The MDBC shall retain and maintain all records and documents relating to the Agreement for three years after all payments to the City hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the City.

23. COMPLIANCE WITH LAWS

The MDBC hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Agreement;

C. It shall comply with all federal, State and local laws applicable to its activities and obligations under the Agreement; and

D. It shall obtain, at its expense, all applicable licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the Agreement. The City shall **reasonably** cooperate with the MDBC in its efforts to obtain such licenses, permits, and governmental approvals.

24. LIABILITY FOR LOSS OF DATA

In the event of loss of any data or records necessary for the performance of the Agreement where such loss is due to the negligence of the MDBC, the MDBC shall be responsible, irrespective of cost to the MDBC, for recreating such lost data or records.

25. REPRESENTATIONS

A. Each party to this Agreement represents and warrants to the other that it has full rights, power, and authority to execute this Agreement.

B. City represents and warrants to MDBC that no broker or finder has acted directly or indirectly for the City in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or agreements, arrangements, or understandings made with the City.

C. MDBC represents and warrants to City that no broker or finder has acted directly or indirectly for the MDBC in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or agreements, arrangements, or understandings made with MDBC.

26. WAIVER

The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be, and remain in full force and effect.

27. RULES OF CONSTRUCTION

The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

28. RELATIONSHIP OF THE PARTIES

The relationship between the City and MDDB shall not be that of partners or joint ventures, and nothing contained in this Agreement shall be deemed to constitute a partnership between them for any purposes. The City and MDDB in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

29. SEVERABILITY

If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

30. COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date first set forth above.

WITNESS:

CITY OF SALISBURY, MARYLAND

BY: _____ (SEAL)

Name: _____

Title: _____

WITNESS:

MARYLAND BROADBAND COOPERATIVE, INC.

BY: _____ (SEAL)

Patrick Mitchell, President/CEO

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

S. Mark Tilghman, City Attorney

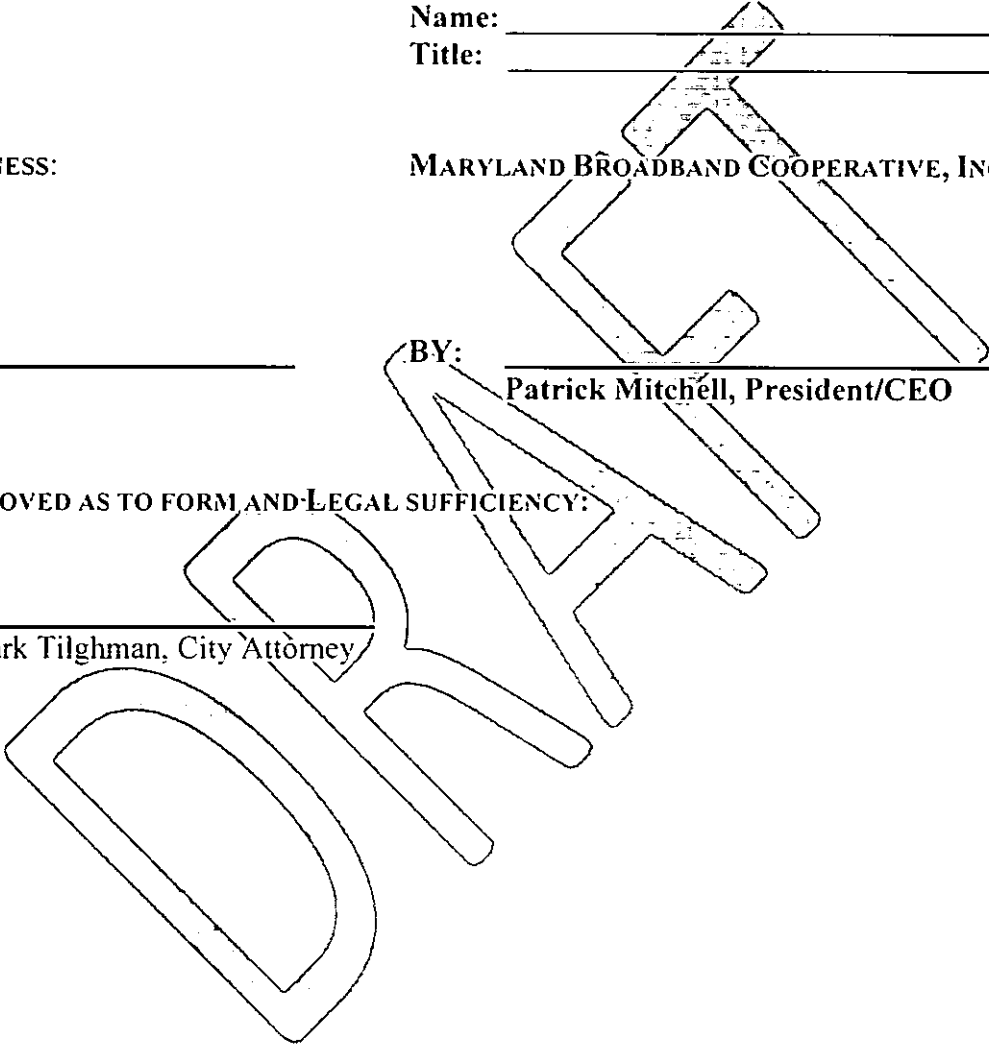


EXHIBIT 1

FIBER SYSTEM

[insert drawing]

EXHIBIT 2

MAIN STREET MASTERPLAN PROJECT

[insert copy]

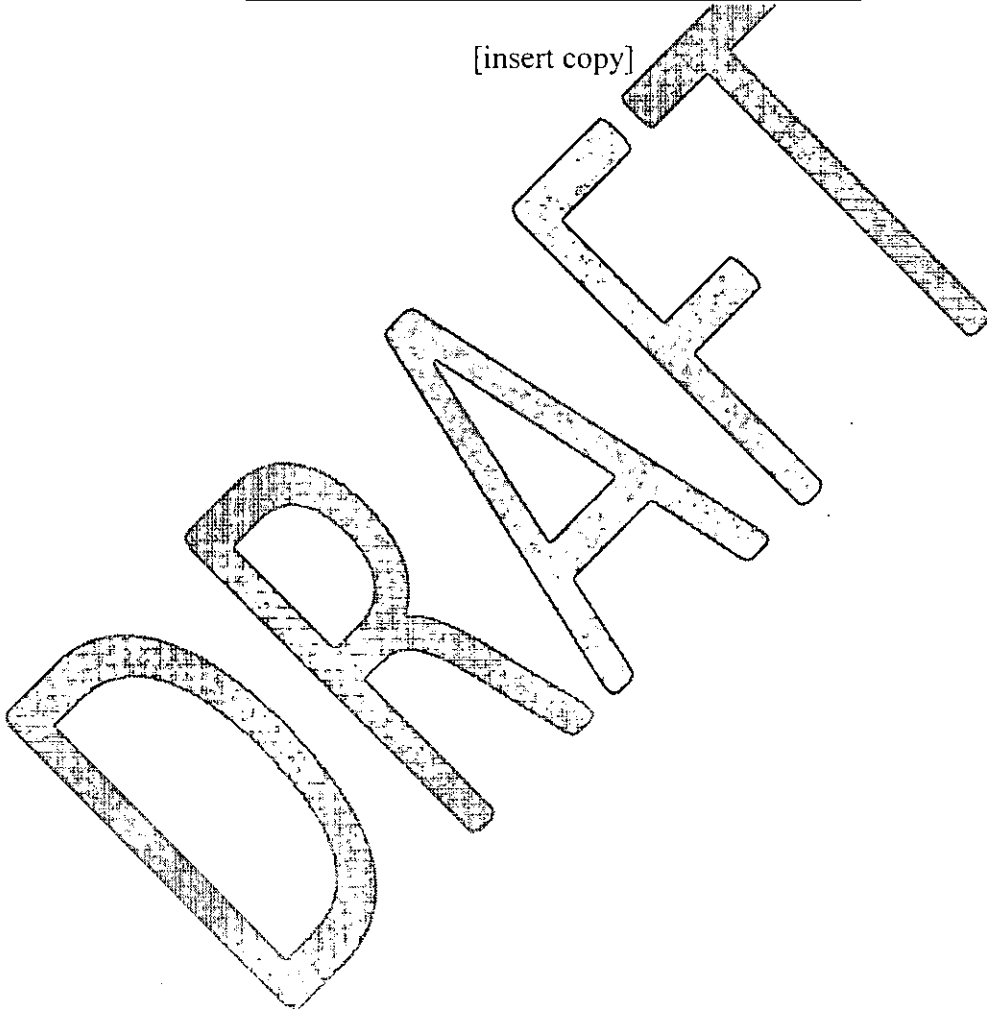


EXHIBIT 3

BILL OF SALE

The City of Salisbury, Maryland, a municipal corporation of the State of Maryland acting by and through its City Council (the "Seller") and MARYLAND BROADBAND COOPERATIVE, INC., a Maryland consumer cooperative corporation with its principal offices located at 2129A Northwood Drive, Salisbury, Maryland (the "Purchaser") have entered into a Memorandum of Understanding, dated as of _____, 2015 (the "Agreement"), whereby Seller has agreed to sell, assign and deliver to Purchaser, and Purchaser has agreed to purchase and acquire, certain assets. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Agreement.

NOW, THEREFORE, Seller, for good and valuable consideration, as set forth in the Agreement, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys, assigns, releases, transfers and delivers to Purchaser, its successors and assigns, absolutely to have and to hold the same forever, all of Seller's rights, title and interest in and to, as well as good and marketable title to, the Fiber System, as defined in the Agreement and described in Schedule A attached hereto, and Seller assigns to Purchaser all third party express or implied warranty rights relating to the construction of the Fiber System and materials incorporated into the Fiber System. This Bill of Sale is being executed and delivered as a condition to the Agreement and is expressly hereby made subject to and shall have the benefits of the respective representations, warranties, covenants, terms, conditions, limitation and other provisions of the Agreement.

Seller owns outright and has full legal right, title and authority to sell, transfer, convey, assign and deliver to Purchaser, and except as outlined in the Agreement and specifically under Sections 1 and 18, Purchaser hereby shall have, good, valid and marketable title to and ownership of the Fiber System, free and clear of any and all liens, encumbrances or other restrictions of every kind, nature, description or character whatsoever, including, without limitation, the claims or liens of any back taxes or taxing authority, and any and all claims or rights of others.

Purchaser shall quietly enjoy the Fiber System hereby sold, transferred, conveyed, assigned and delivered.

Seller further covenants and agrees that it will, from time to time, make, execute and deliver or cause to be made, executed and delivered all such other instruments, documents and other assurances as Purchaser may reasonably require to confirm or more effectively convey, transfer to and vest in Purchaser title to the assets described above.

This Bill of Sale shall be binding upon the Seller and its successors and assigns, and shall inure to the benefit of and be enforceable by Purchaser and its successors and assigns.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed in its name by its duly authorized officer as of _____, 201__.

CITY OF SALISBURY

By: _____ (SEAL)
Name: _____
Title: _____

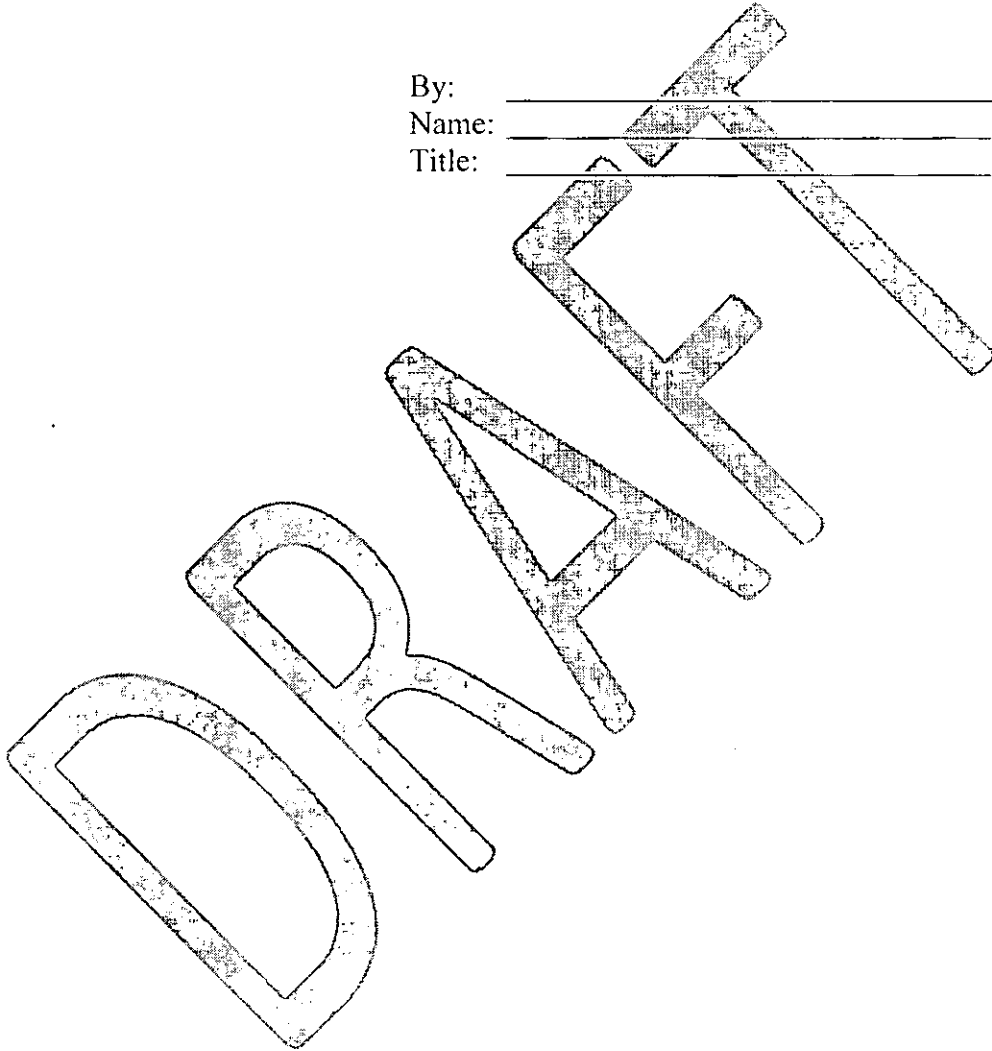


EXHIBIT 4

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Easement") is made on _____, 201__ by and between the CITY OF SALISBURY, a municipal corporation of the State of Maryland ("Grantor"), whose address is 125 North Division Street, Salisbury, Maryland 21801, and MARYLAND BROADBAND COOPERATIVE, INC., a Maryland non-stock consumer cooperative corporation ("Grantee"), whose address is 2129A Northwood Drive, Salisbury, Maryland 21801.

Grantor is the owner of certain real estate located at _____ in Salisbury, Maryland, as more particularly described on Exhibit A attached hereto (the "Property"). Grantee has requested that Grantor grant and conveys an easement as further described herein to Grantee for the construction and operation of certain telecommunications facilities by Grantee.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby sell, grant and convey to Grantee, its successors and assigns, an easement to construct, erect, install, lay, and thereafter use, operate, inspect, maintain, repair, replace and remove a telecommunications system, consisting of wires, cables, conduits, communications equipment, shelters, generators and other related above ground and subsurface fixtures, equipment, appurtenances and facilities (collectively, the "Facilities") on, under and above the Property, as it exists on the date of this Easement and as depicted on the plat attached hereto as Easement Exhibit B (the "Easement Area"). The term for the easement shall be subject to termination only by court order pursuant to the Memorandum of Understanding between City of Salisbury and Maryland Broadband Cooperative, Inc., dated the ___ day of _____, 2015.

1. Grantee shall use and operate the Facilities at its sole expense in accordance with applicable laws and safety codes, and shall promptly repair any damage to the Property resulting from such construction. The Facilities shall be maintained and repaired at the sole expense of Grantee and shall remain the property of Grantee. Grantee shall have the right to make changes, alterations or substitutions of the Facilities, as Grantee may from time-to-time reasonably deem advisable, provided that such changes, alterations or substitutions do not unreasonably interfere with Grantor's improvements or use of the Property.

2. The Easement granted hereunder includes the right of Grantee to access the Easement Area as needed for exercise its rights hereunder with respect to the Facilities. Except for emergency work, Grantee's access to the Property shall be limited to normal business hours. Grantee's rights of ingress and egress shall not unreasonably interfere with Grantor's improvements or use of the Property.

3. Grantee agrees to indemnify and hold harmless Grantor from, for and against any loss, damage, liability, deficiency or claim (including reasonable attorneys' fees) in connection with any injuries to any person or damage to any property directly resulting from Grantee's (or its contractors') construction, installation, use, operation, inspection, repair, maintenance, renewal, replacement, or removal of the Facilities.

4. Grantor represents, warrants, covenants and agrees that Grantor is the lawful owner of the Property, has good, right and lawful authority to execute and deliver this Easement and that Grantor and its successors and assigns shall warrant and defend the same and will indemnify and hold harmless Grantee forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to the rights of Grantee and its successors and assigns under this Easement.

5. Grantor and Grantee covenant and agree, for themselves and their respective successors and assigns, to execute such other documents, and take such further actions, as may be reasonably requested by the other in order to carry out the provisions of this Easement, including without limitation, in the event the applicable local recorder's office shall refuse or otherwise fail to record this instrument, the execution of another instrument granting the easement herein described in form acceptable for recording.

6. The cash consideration set forth above is paid by Grantee and accepted by Grantor as full and total payment for the rights set forth herein. All provisions of this Easement, including the benefits and burdens, shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, personal representatives, lessees, permittees and licensees, and such provisions shall be deemed to be enforceable equitable servitudes running with the land and shall bind any person having at any time any interest or estate in the Easement Area as though such provisions were recited and stipulated in full in each and every deed of conveyance, license or lease thereof or occupancy agreement pertaining thereto.

7. Except for Grantee's transfer, assignment, lease, permit and or license of the rights granted herein and except for any transfer, assignment, lease, permit and or license of such rights by operation of law or court order, upon dissolution of Grantee under the laws of the State of Maryland, all of Grantee's rights set forth herein shall cease and be of no force and effect.

8. This Easement shall be construed in accordance with, and governed by, the laws of the State of Maryland without regard to principles of conflicts of laws.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Easement Agreement as of the date first written above.

GRANTOR'S NAME AND SIGNATURE:

CITY OF SALISBURY

By: _____ (SEAL)

Name: _____

Title: _____

ACKNOWLEDGMENT BY GRANTOR

STATE OF MARYLAND

COUNTY OF _____

BEFORE ME, the undersigned authority, on this _____ day of _____, 201__, personally appeared the _____ of the City of Salisbury, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

Notary Public in and for said State

[SEAL]

My Commission Expires: _____

GRANTEE'S NAME AND SIGNATURE:

MARYLAND BROADBAND COOPERATIVE, INC.

By: _____ (SEAL)
William Patrick Mitchell
President and CEO

ACKNOWLEDGMENT BY GRANTEE

STATE OF MARYLAND

COUNTY OF _____

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__, personally appeared William Patrick Mitchell, the President and CEO of MARYLAND BROADBAND COOPERATIVE, INC. a Maryland non-stock consumer cooperative corporation, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed on behalf of the corporation and for the purposes and consideration therein expressed.

Notary Public in and for said State

[SEAL]

My Commission Expires: _____

Insert Property Exhibits "A" and "B"

MEMORANDUM OF UNDERSTANDING

between

City of Salisbury

and

Maryland Broadband Cooperative, Inc.

THIS MEMORANDUM OF UNDERSTANDING, (hereinafter referred to as the “Agreement”) is made this ____ day of _____, 2015 by and between **MARYLAND BROADBAND COOPERATIVE, INC.**, a Maryland consumer cooperative corporation with its principal offices located at 2129A Northwood Drive, Salisbury, Maryland (hereinafter referred to as “MDBC”), and the **City of Salisbury, Maryland**, a municipal corporation of the State of Maryland (hereinafter referred to as “City”);

WHEREAS, the City is currently in the process of planning and constructing fiber optic infrastructure to be located in the City, as depicted in **EXHIBIT 1**, which is attached and made a part of this Agreement (hereinafter referred to as the “Fiber System”); and

WHEREAS, the MDBC is a non-profit cooperative that provides fiber optic infrastructure and services to underserved areas of the State of Maryland; and

Whereas, the City desires to sell, assign and deliver certain rights connected to the Fiber System to MDBC, and MDBC desires to purchase those rights, and thereafter to use, operate, inspect, maintain and repair the Fiber System, in accordance with the terms and conditions of this Agreement; and

Whereas, subject to Paragraph 28 below (relating to Relationship of the Parties), the purpose of this Agreement is to develop a collaboration between the parties on the matters set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement, the parties agree as follows:

1. CONSTRUCTION AND SALE OF FIBER SYSTEM BY CITY TO MDBC

A. During construction of the Main Street Masterplan project, a copy of which is attached and made a part of this Agreement as EXHIBIT 2, with regard to the Fiber System, the City's responsibilities shall be as follows: (1) to procure and contract with a contractor to install the main conduit, hand holes and service conduit; (2) to oversee and inspect the installation of conduit, hand holes and service lines; and (3) to terminate service lines outside of buildings at a capped stub of conduit; and

MDBC's responsibilities during construction of the Main Street Masterplan project with regard to the Fiber System shall be as follows: (1) to provide technical support for questions from the City arising from the design of the conduit, hand holes and service lines; (2) under a separate construction agreement to be entered into by and between MDBC and the City, to undertake responsibility for the procurement and installation (either directly or through a subcontractor engaged by MDBC) of the fiber optic lines, including service lines; (3) to oversee and inspect the installation of fiber optic lines and service lines; and (4) to coordinate installation of fiber optic line interconnections with individual property owners, which will then allow members of MDBC to provide high-speed internet services to individual property owners.

B. Subject to the City reserving a secured interest in the Fiber System and a right of reversion through legal action to ensure that MDBC performs all of its duties as outlined in this Agreement, and unless otherwise addressed in this Agreement, upon the completion of the construction, and the completion of testing, of the Fiber System, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City agrees to sell, grant, transfer, deliver and convey to MDBC, its successors and assigns to have and to hold the same forever, all of the City's rights, title and interest in and to, as well as good and marketable title to, the Fiber System.

C. The said sale of the Fiber System by the City to MDBC shall be consummated and closed on a date mutually agreed to by the parties (hereinafter referred to as the "Closing Date"), taking place promptly after the completion of the construction, and the completion of testing, of

the Fiber System, through the execution and delivery of a Bill of Sale by the City substantially in the form as **EXHIBIT 3**, which is attached and made a part of this Agreement. As a part of the closing of the said sale of the Fiber System by the City to MDBC, the City shall execute and deliver an Easement Agreement substantially in the form as **EXHIBIT 4**, which is attached and made a part of this Agreement. Said Easement Agreement and the sale of the Fiber System shall remain in force until such time as the City petitions for and receives a court order to terminate the easement and ownership of the Fiber System pursuant to Section 18 of this Agreement.

D. On or promptly after the Closing Date, the City shall provide to MDBC all as-built drawings and records of the Fiber System.

E. To the extent that the Fiber System is constructed and completed in multiple phased steps, the parties by mutual agreement may determine to consummate and close the sale of the Fiber System with multiple closings, with the City executing and delivering a separate Bill of Sale at each such closing for each corresponding portion of the Fiber System then completed.

2. NO ASSUMPTION OF LIABILITIES OR OBLIGATIONS

The MDBC shall not assume any liabilities or obligations of the City and nothing shall be construed as imposing any liability or obligation upon MDBC other than those specifically provided for herein. If, however, the City obtains funding for the Fiber System from loans, grants or any other source that demands compliance by or the assumption of any obligation by MDBC, MDBC must agree, in writing, to comply. If MDBC's agreement is not received within 30 days of any such request by the City, this Agreement will terminate and any Bill of Sale or Easement Agreement previously executed in reliance upon the said anticipated loan, grant or other source of funds will be subject to nullification by the court pursuant to Section 18 of this agreement.

3. MAINTENANCE PROCEDURE

After the Closing Date, MDBC shall have all responsibilities for maintenance, repair and locating of the Fiber System. The MDBC agrees that it shall use all commercially reasonable efforts to perform routine, periodic maintenance work during the City's normal business hours. The City acknowledges that, after the Closing Date, MDBC shall have the right to access the Fiber System twenty-four (24) hours a day, seven (7) days a week, for installation and

maintenance, provided such access does not negatively impact City operations. Prior to all visits, the MDBC shall, if so notified by the City, conform with the reasonable notice provisions promulgated by the City from time to time, and telephone the City's so designated authorized representative at a telephone number, all as set forth in the written notice to be provided by the City to MDBC, or any such other fully authorized person as the City may designate in writing from time to time.

4. REMEDY OF INTERFERENCE AND AGREEMENT TO PROVIDE COMMERCIALY REASONABLE OPERATION AND MAINTENANCE

The MDBC guarantees that in the event any of its operations interferes in any way with the operation of the City, it shall remedy the interference to the reasonable satisfaction of the City. The MDBC shall provide the City with an emergency telephone number(s) by which the City can contact a responsible employee, agent, or representative of the MDBC twenty-four (24) hours a day, seven (7) days a week. MDBC shall provide for the commercially reasonable operation and maintenance of the Fiber System at commercially reasonable rates for the benefit of the City and all of MDBC's customers. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, MDBC MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, HEREUNDER, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

5. REVENUE SHARING, PAYMENTS AND AUDITS

A. The MDBC shall pay to the City a portion of the revenue generated from MDBC's leasing of dark fiber in the Fiber System. The rate or rates charged by MDBC may be established and set by MDBC in its sole discretion. The portion of the revenue payable to the City by MDBC shall be equal to fifty percent (50%) of the lease amount paid by MDBC members on a monthly basis for leasing of dark fiber in the Fiber System. There is no revenue share derived from lit services delivered to customers in the Fiber System. If requested by the City, a copy of all such member agreements shall be provided to the City, provided however, that the user name and such other information as required, may be redacted should MDBC determine in its sole discretion that confidentiality requires so.

B. All fee payments are to be paid within 60 days of receipt of payments from MDBC members. The MDBC will provide quarterly reports identifying dark fiber optic cable usage and revenue generated to the City. The MDBC will also allow the City, at the City's expense, to audit the physical fiber optic infrastructure and financial records no more than twice per calendar year to verify payments due under this Agreement. Any fee payments due for any partial annual period shall be prorated. The MDBC shall make a reasonable attempt to recover all payments due from its members for leasing the dark fiber. In the event a member does not provide payment and service is discontinued, the MDBC shall not be responsible for past due amounts for that member, but the City may, at its option, seek to collect the past amounts owed with the full cooperation of the MDBC and shall be entitled to deduct its reasonable attorney's fees and costs incurred by it in collecting past due amounts before dividing the amount collected with MDBC on a fifty percent basis. Service shall be discontinued after 90 days in default, unless special circumstances are documented and provided in writing to the City.

6. CITY USE OF FIBER SYSTEM STRANDS

After the Closing Date, without cost to the City, MDBC will provide the City with the use of twelve (12) strands of the Fiber System for the use of the City in its sole discretion in its municipal operations. These twelve (12) strands of the Fiber System will not be leased, licensed, assigned or traded by the City with or to any third party. Except as outlined elsewhere in this Agreement and specifically under Sections 1 and 18 of this Agreement, all ownership right, title and interest in the aforesaid twelve (12) strands of the Fiber System shall at all times after the Closing Date remain exclusively with MDBC.

7. LIMITED USE OF RIGHT-OF-WAY

The MDBC shall have the right to reasonable use of the City rights-of-way for the purposes of installing, maintaining, repairing and operating the Fiber System and uses incidental thereto.

8. LIABILITY

A. The MDBC shall indemnify, defend, and hold the City and its employees or agents harmless against any claim or liability for loss from personal injury or property damage resulting

from or arising out of the use of the Fiber System by the MDBC, its servants or agents, excepting, however, such claims or damages that may be caused by the acts or omissions of the City or its employees or agents.

B. The City shall indemnify, defend and hold MDBC and its employees or agents harmless against any claim or liability for loss from personal injury or property damage resulting from or arising out of the use of the Fiber System by the City, its servants or agents, excepting, however, such claims or damages that may be caused by the acts or omissions of MDBC or its employees or agents.

9. INSURANCE

The MDBC shall maintain comprehensive general liability insurance policy, which names the City as an additional insured, in the amount of at least three million dollars (\$3,000,000.00) combined single limit for personal injury and property damage liability per occurrence in the aggregate.

10. FORCE MAJEURE

“Force Majeure Event” means any act or event that prevents the affected party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected party and such party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, wind, drought, abnormal weather condition or actions of the elements, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the party seeking to be excused from performance; (iii) acts of war (declared or undeclared) or public disorders, civil disturbances, riots, insurrection, sabotage, military or guerilla action, economic sanction or embargo, epidemic, terrorist acts, or rebellion; (iv) civil strikes, work stoppage, slow-down, lock-out or labor disputes; (v) action by a governmental authority, including a moratorium on any activities related to the Agreement (provided that such order has been resisted in good faith); and (vi) the inability for one of the parties, despite its reasonable efforts, to obtain, in a timely

manner, any governmental approval necessary to enable the affected party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such governmental approval is not attributable to the party in question and that such party has exercised its reasonable efforts to obtain such permit. A Force Majeure Event shall not be based on the economic hardship of either party.

Except as otherwise expressly provided to the contrary in this Agreement, if either party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of, or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due to the City under this Agreement shall not be excused by a Force Majeure event for such amounts as were received prior to, or after the Force Majeure event in connection with the leasing of the Fiber System.

11. COMPREHENSIVE EXCLUSIVITY OF ALL AGREEMENTS

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between the City and the MDBC, and that no verbal or oral agreements, promises, understandings, or warranties of any kind shall be binding upon either party in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to the Agreement shall be void and ineffective unless made in writing and signed by the authorized representatives of both parties. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Agreement, the terms of this Agreement shall prevail.

12. GOVERNING LAW

This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maryland.

13. TRANSFER OF RIGHTS AND OBLIGATIONS

A. The MDBC may assign or transfer its rights and obligations arising under this Agreement to any entity legally authorized to operate a communications system, to any of its parents, subsidiaries or affiliates; to the successor by consolidation or merger; to a purchaser of all or substantially all of the MDBC's assets; to any entity which purchases either a majority or controlling interest in the MDBC; and to any partnership in which the MDBC, or any of its parents, subsidiaries or affiliates is a general partner, upon the written consent of the City, which consent shall not be unreasonably withheld or delayed and shall be subject to the condition that the assignee shall ratify and affirm the terms of this Agreement in writing.

B. In its sole discretion, MDBC shall also have the right to grant third parties leases, licenses and rights to use the Fiber System for the provision of communications services.

14. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by overnight mail, hand delivered, and/or certified mail, return receipt requested. If sent by certified mail, notices shall be deemed delivered three (3) days after mailing if addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

MDBC: MARYLAND BROADBAND COOPERATIVE, INC.
2129A Northwood Drive
Salisbury, MD 21801
Attention: Patrick Mitchell, President and CEO

CITY: CITY OF SALISBURY
125 North Division St.
Salisbury, MD 21801
Attention: Director of Information Technology

15. WAIVER OF TRIAL BY JURY

To the extent that a court of law would have jurisdiction over this Agreement, the parties hereby waive trial by jury.

16. NON-HIRING OF EMPLOYEES

No employee of the City or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of the Agreement shall, while so employed, become or be an employee of the party or parties hereby contracting with the City or any unit thereof.

17. NONDISCRIMINATION IN EMPLOYMENT

The MDBC agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

18. TERMINATION FOR DEFAULT

If the MDBC fails to materially fulfill its obligations under this Agreement properly and on time, or otherwise violates any material provision of the Agreement, the City may terminate the Agreement by written notice to the MDBC. Notwithstanding the foregoing, upon written notice to MDBC, MDBC shall have a duty to cure any such infractions and, providing MDBC diligently pursues corrective action and cures said infractions within thirty (30) days after its receipt of such written notice from the City, the Agreement shall remain in full force and effect. In the event of such a termination by the City, the notice shall specify the acts or omissions relied upon as cause for termination. Notwithstanding the foregoing, and except as outlined elsewhere

in this Agreement and specifically under Sections 1 and 18, if any termination of this Agreement by the City takes place after the Closing Date, MDBC shall continue to own all title and interest in and to the Fiber System, and shall continue to quietly enjoy the Fiber System sold, transferred, conveyed, assigned and delivered by the City until such time as the City petitions for and receives an order from the Circuit Court for Wicomico County, Maryland to terminate the easement granted to MDBC and the sale of the Fiber System on the grounds of any material breach of this Agreement by MDBC, bankruptcy of MDBC or dissolution of MDBC, or its assignee. Failure, after the passage of the applicable time period for MDBC to cure any infractions as set forth in this section, to provide commercially reasonable service or maintenance of the Fiber System at a commercially reasonable rate, or to pay the City the monies due in a commercially reasonable and prompt manner shall constitute a material breach of this Agreement.

19. TERMINATION FOR CONVENIENCE

The performance of work under the Agreement may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the City shall determine that such termination is in the best interest of the City. The City will pay all reasonable costs associated with the Agreement that the MDBC has incurred up to the date of termination, and all reasonable costs associated with termination of the Agreement; provided, however, that the MDBC shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Notwithstanding the foregoing, and except as outlined elsewhere in this Agreement and specifically under Sections 1 and 18, if any termination of this Agreement by the City takes place after the Closing Date, MDBC shall continue to own all title and interest in and to the Fiber System, and shall continue to quietly enjoy the Fiber System sold, transferred, conveyed, assigned and delivered by the City until such time as the court orders a reversion of the Fiber System to the City and the extinguishment of the right-of-way easement.

20. DELAYS AND EXTENSIONS OF TIME

The MDBC agrees to perform the Agreement continuously and diligently in a commercially reasonable manner. No charges or claims for damages shall be made by the MDBC for any delays or hindrance, regardless of cause, in the performance of services under the

Agreement. Time extensions shall be granted only for excusable delays that arise from unforeseeable causes beyond the reasonable control and without the fault or negligence of the MDBC, as outlined in Section 10 of this Agreement.

21. POLITICAL CONTRIBUTION DISCLOSURE

The MDBC shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a City, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. RETENTION OF RECORDS

The MDBC shall retain and maintain all records and documents relating to the Agreement for three years after all payments to the City hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the City.

23. COMPLIANCE WITH LAWS

The MDBC hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of

taxes and employee benefits, and that it shall not become so in arrears during the term of the Agreement;

C. It shall comply with all federal, State and local laws applicable to its activities and obligations under the Agreement; and

D. It shall obtain, at its expense, all applicable licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the Agreement. The City shall reasonably cooperate with the MDBC in its efforts to obtain such licenses, permits, and governmental approvals.

24. LIABILITY FOR LOSS OF DATA

In the event of loss of any data or records necessary for the performance of the Agreement where such loss is due to the negligence of the MDBC, the MDBC shall be responsible, irrespective of cost to the MDBC, for recreating such lost data or records.

25. REPRESENTATIONS

A. Each party to this Agreement represents and warrants to the other that it has full rights, power, and authority to execute this Agreement.

B. City represents and warrants to MDBC that no broker or finder has acted directly or indirectly for the City in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or agreements, arrangements, or understandings made with the City.

C. MDBC represents and warrants to City that no broker or finder has acted directly or indirectly for the MDBC in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or agreements, arrangements, or understandings made with MDBC.

26. WAIVER

The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be, and remain in full force and effect.

27. RULES OF CONSTRUCTION

The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

28. RELATIONSHIP OF THE PARTIES

The relationship between the City and MDBC shall not be that of partners or joint ventures, and nothing contained in this Agreement shall be deemed to constitute a partnership between them for any purposes. The City and MDBC in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

29. SEVERABILITY

If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

30. COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date first set forth above.

WITNESS: **CITY OF SALISBURY, MARYLAND**

BY: _____ **(SEAL)**
Name: _____
Title: _____

WITNESS: **MARYLAND BROADBAND COOPERATIVE, INC.**

BY: _____ **(SEAL)**
Patrick Mitchell, President/CEO

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

S. Mark Tilghman, City Attorney

EXHIBIT 1
FIBER SYSTEM
[insert drawing]

EXHIBIT 2

MAIN STREET MASTERPLAN PROJECT

[insert copy]

EXHIBIT 3

BILL OF SALE

The City of Salisbury, Maryland, a municipal corporation of the State of Maryland acting by and through its City Council (the "Seller") and MARYLAND BROADBAND COOPERATIVE, INC., a Maryland consumer cooperative corporation with its principal offices located at 2129A Northwood Drive, Salisbury, Maryland (the "Purchaser") have entered into a Memorandum of Understanding, dated as of _____, 2015 (the "Agreement"), whereby Seller has agreed to sell, assign and deliver to Purchaser, and Purchaser has agreed to purchase and acquire, certain assets. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Agreement.

NOW, THEREFORE, Seller, for good and valuable consideration, as set forth in the Agreement, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys, assigns, releases, transfers and delivers to Purchaser, its successors and assigns, absolutely to have and to hold the same forever, all of Seller's rights, title and interest in and to, as well as good and marketable title to, the Fiber System, as defined in the Agreement and described in Schedule A attached hereto, and Seller assigns to Purchaser all third party express or implied warranty rights relating to the construction of the Fiber System and materials incorporated into the Fiber System. This Bill of Sale is being executed and delivered as a condition to the Agreement and is expressly hereby made subject to and shall have the benefits of the respective representations, warranties, covenants, terms, conditions, limitation and other provisions of the Agreement.

Seller owns outright and has full legal right, title and authority to sell, transfer, convey, assign and deliver to Purchaser, and except as outlined in the Agreement and specifically under Sections 1 and 18, Purchaser hereby shall have, good, valid and marketable title to and ownership of the Fiber System, free and clear of any and all liens, encumbrances or other restrictions of every kind, nature, description or character whatsoever, including, without limitation, the claims or liens of any back taxes or taxing authority, and any and all claims or rights of others.

Purchaser shall quietly enjoy the Fiber System hereby sold, transferred, conveyed, assigned and delivered.

Seller further covenants and agrees that it will, from time to time, make, execute and deliver or cause to be made, executed and delivered all such other instruments, documents and other assurances as Purchaser may reasonably require to confirm or more effectively convey, transfer to and vest in Purchaser title to the assets described above.

This Bill of Sale shall be binding upon the Seller and its successors and assigns, and shall inure to the benefit of and be enforceable by Purchaser and its successors and assigns.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed in its name by its duly authorized officer as of _____, 201__.

CITY OF SALISBURY

By: _____ (SEAL)
Name: _____
Title: _____

EXHIBIT 4

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Easement") is made on _____, 201__ by and between the CITY OF SALISBURY, a municipal corporation of the State of Maryland ("Grantor"), whose address is 125 North Division Street, Salisbury, Maryland 21801, and MARYLAND BROADBAND COOPERATIVE, INC., a Maryland non-stock consumer cooperative corporation ("Grantee"), whose address is 2129A Northwood Drive, Salisbury, Maryland 21801.

Grantor is the owner of certain real estate located at _____ in Salisbury, Maryland, as more particularly described on Exhibit A attached hereto (the "Property"). Grantee has requested that Grantor grant and convey an easement as further described herein to Grantee for the construction and operation of certain telecommunications facilities by Grantee.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby sell, grant and convey to Grantee, its successors and assigns, an easement to construct, erect, install, lay, and thereafter use, operate, inspect, maintain, repair, replace and remove a telecommunications system, consisting of wires, cables, conduits, communications equipment, shelters, generators and other related above ground and subsurface fixtures, equipment, appurtenances and facilities (collectively, the "Facilities") on, under and above the Property, as it exists on the date of this Easement and as depicted on the plat attached hereto as Easement Exhibit B (the "Easement Area"). The term for the easement shall be subject to termination only by court order pursuant to the Memorandum of Understanding between City of Salisbury and Maryland Broadband Cooperative, Inc., dated the ____ day of _____, 2015.

1. Grantee shall use and operate the Facilities at its sole expense in accordance with applicable laws and safety codes, and shall promptly repair any damage to the Property resulting from such construction. The Facilities shall be maintained and repaired at the sole expense of Grantee and shall remain the property of Grantee. Grantee shall have the right to make changes, alterations or substitutions of the Facilities, as Grantee may from time-to-time reasonably deem advisable, provided that such changes, alterations or substitutions do not unreasonably interfere with Grantor's improvements or use of the Property.

2. The Easement granted hereunder includes the right of Grantee to access the Easement Area as needed for exercise its rights hereunder with respect to the Facilities. Except for emergency work, Grantee's access to the Property shall be limited to normal business hours. Grantee's rights of ingress and egress shall not unreasonably interfere with Grantor's improvements or use of the Property.

3. Grantee agrees to indemnify and hold harmless Grantor from, for and against any loss, damage, liability, deficiency or claim (including reasonable attorneys' fees) in connection with any injuries to any person or damage to any property directly resulting from Grantee's (or its contractors') construction, installation, use, operation, inspection, repair, maintenance, renewal, replacement, or removal of the Facilities.

4. Grantor represents, warrants, covenants and agrees that Grantor is the lawful owner of the Property, has good, right and lawful authority to execute and deliver this Easement and that Grantor and its successors and assigns shall warrant and defend the same and will indemnify and hold harmless Grantee forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to the rights of Grantee and its successors and assigns under this Easement.

5. Grantor and Grantee covenant and agree, for themselves and their respective successors and assigns, to execute such other documents, and take such further actions, as may be reasonably requested by the other in order to carry out the provisions of this Easement, including without limitation, in the event the applicable local recorder's office shall refuse or otherwise fail to record this instrument, the execution of another instrument granting the easement herein described in form acceptable for recording.

6. The cash consideration set forth above is paid by Grantee and accepted by Grantor as full and total payment for the rights set forth herein. All provisions of this Easement, including the benefits and burdens, shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, personal representatives, lessees, permittees and licensees, and such provisions shall be deemed to be enforceable equitable servitudes running with the land and shall bind any person having at any time any interest or estate in the Easement Area as though such provisions were recited and stipulated in full in each and every deed of conveyance, license or lease thereof or occupancy agreement pertaining thereto.

7. Except for Grantee's transfer, assignment, lease, permit and or license of the rights granted herein and except for any transfer, assignment, lease, permit and or license of such rights by operation of law or court order, upon dissolution of Grantee under the laws of the State of Maryland, all of Grantee's rights set forth herein shall cease and be of no force and effect.

8. This Easement shall be construed in accordance with, and governed by, the laws of the State of Maryland without regard to principles of conflicts of laws.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Easement Agreement as of the date first written above.

GRANTOR'S NAME AND SIGNATURE:

CITY OF SALISBURY

By: _____ (SEAL)

Name: _____

Title: _____

ACKNOWLEDGMENT BY GRANTOR

STATE OF MARYLAND

COUNTY OF _____

BEFORE ME, the undersigned authority, on this ____ day of _____, 201__, personally appeared the _____ of the City of Salisbury, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

Notary Public in and for said State

[SEAL]

My Commission Expires: _____

GRANTEE'S NAME AND SIGNATURE:

MARYLAND BROADBAND COOPERATIVE, INC.

By: _____ (SEAL)
William Patrick Mitchell
President and CEO

ACKNOWLEDGMENT BY GRANTEE

STATE OF MARYLAND

COUNTY OF _____

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__, personally appeared William Patrick Mitchell, the President and CEO of MARYLAND BROADBAND COOPERATIVE, INC. a Maryland non-stock consumer cooperative corporation, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed on behalf of the corporation and for the purposes and consideration therein expressed.

Notary Public in and for said State

[SEAL]

My Commission Expires: _____

Insert Property Exhibits "A" and "B"