

AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
December 13, 2016
SEAFORD CITY HALL - 414 HIGH STREET

- 7:00 P.M.** - Mayor David Genshaw calls the Regular Meeting to Order.
- Invocation
 - Pledge of Allegiance to the Flag of the United States of America.
 - Changes to agenda for this meeting.
 - Approval of minutes of the regular meeting on November 22, 2016.

CORRESPONDENCE:

1. Letter from Comcast about Price Changes.

7:05 P.M. PUBLIC HEARING:

- 1) **Case No. S-24-16: Liborio Watergate, LLC, property owners of the undeveloped acreage on Bridgeville Hwy, to be known as "Melanie's Ridge" identified as Tax Map and Parcel 331-5.00- 11.00 and the undeveloped acreage on Bridgeville Hwy, which was formerly known as "Lawrence", Tax Map and Parcel 331-5.0-11.01 is seeking a subdivision for the realignment of the property lines for the purpose of creating ~~one~~four parcels.**
- 2) **Case No. R-25-16: Liborio Watergate, LLC property owners of Tax Map and Parcel(s) 331-5.00-11.00 & 11.01, undeveloped lands on Bridgeville, is seeking a rezoning to adjust the R-3 High Density Residential District and the C-2 Highway Commercial District to match the new parcels.**
- 3) **Liborio Watergate, LLC., properties owners of Tax Map and Parcel(s) 331-5.00-11.00 & 11.01, is seeking a preliminary site plan review and approval for the development of 10,000± square feet of commercial frontage on Bridgeville Hwy. and a two hundred eighty-eight (288) unit apartment complex to the rear.**

Mayor Genshaw closes Public Hearing and reopens Regular Council Meeting.

Mayor solicits action by Council on the Public Hearing requests presented.

AGENDA

REGULAR MEETING OF THE MAYOR AND COUNCIL
December 13, 2016

NEW BUSINESS:

1. Motion to approve Mayor Genshaw to sign the following documents for the FY17 Delaware CDBG Application through Sussex County, Delaware:
 - Delaware State Housing Authority (DSHA) - FY17 Delaware CDGB Application Form
 - Citizen Participation Certificate of Assurance
 - Federal Fair Housing Resolution
 - Resolution Endorsing Project to be submitted to the DE State Housing Authority for funding from the U. S. Department of Housing and Urban Development Authorizing Todd F. Lawson, Sussex County Administrator, to submit application.
 - Certificate by Applications for the DE CDBG Program
 - **ROLL CALL VOTE TO APPROVE ABOVE**
2. Mayor Genshaw to appoint Special Annexation Election Board for the Bierman Family, LLC lands.
3. Present the resolution for the Special Annexation Election of the Bierman Family, LLC lands.
4. Present for approval a Settlement Agreement Franchise Fee Audit/Review with Comcast.
5. Letter from Delaware State Housing Authority notifying their award of financing to Sussex County Habitat for Humanity for two homes as part of the Downtown Seaford Phase II Project in Seaford.
6. Mayor Genshaw to present recommended persons for the Rental License Committee.
7. Present Agreement with Fiber Technologies Networks, LLC for the Communications Right-of-Way Use Agreement for approval.
8. Present Agreement with Fiber Technologies Networks, LLC for the Pole Attachment License Agreement for approval.

AGENDA

REGULAR MEETING OF THE MAYOR AND COUNCIL

December 13, 2016

OLD BUSINESS:

1. Charles Anderson, ACM to present draft amendments to Chapter 6, Article 22 "Renewable Energy" as the second reading for the amendments.
2. Present a recommendation for sanitary sewer extension to serve the Bierman lands at 1602 Sussex Highway.
3. Mayor Genshaw to request from Council any follow-up questions or comments regarding the General Pension Benefit Plan presentation by Buck Consultants.

REMINDER OF MEETINGS & SETTING NEW MEETINGS

1. City Offices closed for the Christmas Holiday on December 23rd and 26th.
2. City Offices closed for the New Year Holiday on January 2nd 2017.

LEAF MACHINE WILL BE IN OPERATION STARTING OCTOBER 1ST THROUGH DECEMBER 31ST. In rain events help us to help you by clearing a catch basin or calling Public Works to have the catch basin cleaned at 302-629-8307 or after hours 302-629-4550.

COMMITTEE REPORTS:

1. Police & Fire - Councilwoman Leanne Phillips-Lowe
2. Administration - Councilman Orlando Holland
3. Code, Parks and Recreation - Councilwoman Grace Peterson
4. Public Works & WWTF - Councilman William Mulvaney
5. Electric - Councilman Dan Henderson

NOTICE: The December 27, 2016 Regular Council meeting will not be held due to the Christmas Holidays.

Mayor Genshaw solicits a motion to adjourn the regular council meeting.

NOTE: Agenda shall be subject to change to include or delete Additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))



C-1
12/13/16

November 18, 2016

Ms. Dolores Slatcher
City Manager
Seaford
City of Seaford
Seaford, DE 19973

RE: Important Information on Price Changes

Dear Ms. Slatcher:

We are committed to delivering the entertainment and services our customers in Seaford rely on today, and the new experiences they will love down the road. As we continue to make improvements to our products and services, and as programmers charge more to carry their networks, our cost of doing business increases. As a result, starting January 1, 2017 prices for certain services and fees will be going up.

Fortunately, we've been able to identify some charges to be reduced or eliminated. We've simplified charges for In-Home Service Visits. Customers will no longer be charged separately for the services performed during a service call and will instead get everything they need—including installation, activation, and relocation of additional outlets after an initial installation of service, in-home service charges and more—all for a flat rate of \$40.*

While some prices may have increased, we are always investing in technology to drive innovation. We are working hard to bring our customers great value every day and exciting new developments in the near future, including the following:

- The most TV shows and movies available On Demand
- Innovative X1 Voice Remote that makes searching for shows and movies easier
- Self-service options to save our customers time and adapt to their schedule
- Access to Netflix content on XFINITY X1
- Fastest, most reliable in-home WiFi
- Fastest Internet in America according to Speedtest.net
- More than 14 million WiFi hot spots nationwide

Customers will receive notice about these changes within their bill received after November 20, 2016. A copy of the notice is enclosed. If you have any questions about these changes, please feel free to contact me at 301-836-9461.

Sincerely,

Mr. Yantee Neufville
Manager, Government Affairs-Beltway Region

cc: Chris Comer, Director of Government and Regulatory Affairs- Beltway Region

* Does not apply to XFINITY Home. Prices do not include taxes and fees.
* Enclosure- Customer Notice





C-1
12-13-16

November 30, 2016

Ms. Dolores Slatcher
City Manager
Seaford
P O box 1100
Seaford, DE 19973

Dear Franchise Administrator:

As part of our ongoing commitment to keep you informed, we want to let you know that Comcast's right to continue carrying:

- Fox College Sports Atlantic;
- Fox College Sports Central; and
- Fox College Sports Pacific

(collectively referred to as "Fox College Sports") will expire on December 31, 2016. At that time, we lose authorization to continue carrying Fox College Sports signals, so we must remove the programming from our lineup on January 1, 2017.

We are committed to keeping you and our customers abreast of the expiration of upcoming programming agreements. We regularly inform our customers in their bills, and our customers and franchising authorities in our annual notices, that we maintain a website (www.xfinitytv.com/contractrenewals) and toll free number ((866) 216-8634) that are updated regularly to reflect the programming contracts that are set to expire each month and the channels we might lose the rights to continue to carry.

Sincerely,

Donna Rattley Washington
Vice President, Government and Regulatory Affairs
Beltway Region

N.B.1
12-13-16

**DELAWARE STATE HOUSING AUTHORITY (DSHA)
FY17 DELAWARE CDBG APPLICATION FORM**

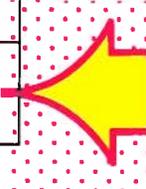
I. General Application Information

A. Name, address, phone number, DUNS number, and EIN number of Applicant:

Sussex County Council
2 The Circle Georgetown, DE 19947
302-855-7743
EIN #: 51-6000241
DUNS #: 052642915

B. Name, position and signature of Person Submitting Application:

Todd F. Lawson
County Administrator
Signature and Date:

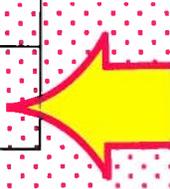


C. Application on behalf of:

City of Seaford P.O. Box 1100 Seaford, DE 19973

Name and position of authorizing official:

David Genshaw	Mayor
Signature and Date:	



D. For "On Behalf of" applications, written documentation authorizing each "on behalf of" application request must be attached as Exhibit 1. If information contained in a county's application for its unincorporated areas is to be repeated in the body of the "on behalf of" applications, e.g. administrative budget, management capacity, etc., then these sections contained in the "on behalf of" applications may simply reference the appropriate section in the county's application.

E. Name, address and phone number of Contact Person (if different from B above):

Brad D. Whaley, Director 302-855-7777

N.B. /
12-18-16

**CITIZEN PARTICIPATION
CERTIFICATE OF ASSURANCE**

It is hereby assured and certified to the Delaware State Housing Authority that Sussex County, Delaware has met application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and procedures) citizen participation requirements, and that Sussex County has:

- (1) made available information concerning the amount of funds that may be applied for;
- (2) made known the range of activities that may be undertaken with these funds;
- (3) made known the fact that more applications will be submitted to the State of Delaware than can be funded;
- (4) outlined the processes to be followed in soliciting and responding to the views and proposals of citizens, communities, nonprofit agencies, and others in a timely manner; and
- (5) provided a summary of other important program requirements.

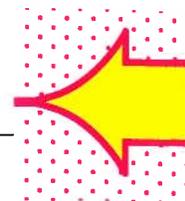
The City of Seaford has held a public hearing on November 22, 2016 with required notice for all citizens, including low and moderate-income persons, to have an opportunity to present their views and proposals.

The City of Seaford has by resolution and after one public hearing, endorsed this application.

ATTEST:

CITY OF SEAFORD

David Genshaw
Mayor



D.P.1
2-13-16

RESOLUTION

WHEREAS, City of Seaford recognizes the importance of fair housing for the citizens of Seaford; and

WHEREAS, the City of Seaford supports the goals of the Federal Fair Housing Law,

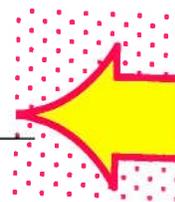
NOW THEREFORE,

BE IT RESOLVED, that the City of Seaford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Seaford to insure that no person shall, on the grounds of race, color, national origin, religion, creed, sex, marital status, familial status, age, sexual orientation or disability be discriminated against or denied a fair and equal opportunity to housing; and

BE IT FURTHER RESOLVED, that the City of Seaford, when acting as administrator of a Community Block Grant, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

Respectfully submitted,

David Genshaw
Mayor



RESOLUTION NO.

N.B.1
12-13-16

Councilman

submitted to the Council the following Proposed Resolution:

ENDORISING PROJECT TO BE SUBMITTED TO THE DELAWARE STATE HOUSING AUTHORITY FOR FUNDING FROM THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AUTHORIZING TODD F. LAWSON, SUSSEX COUNTY ADMINISTRATOR, TO SUBMIT APPLICATION

WHEREAS, the City of Seaford resolves to apply for Community Development funds from the Delaware State Housing Authority in accordance with appropriate regulations governing Community Development Block Grants State of Delaware Program for Block Grants as contained in (Sections 570.488-499 24 CFR U. S. Department of Housing and Urban Development); and

WHEREAS, the City of Seaford has met the application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and Procedures) Citizen Participation requirements; and

WHEREAS, Sussex County plans on accomplishing the requested projects with CDBG funds; and

WHEREAS, the City of Seaford hereby agrees to allow Sussex County to accomplish the projects in the targeted areas of Seaford; and

WHEREAS, the City of Seaford and Sussex County are in agreement with this activity,

NOW, THEREFORE,

BE IT RESOLVED by the City of Seaford and Sussex County that they endorse and grant permission for the following activity:

APPLICATION: Rehabilitation/Infrastructure/Demolition

Total infrastructure project cost is \$_____, total CDBG grant request is \$_____, Matching funds in the amount of \$_____ will be provided by the City of Seaford general funds. **Note: To be used for Infrastructure projects only.**

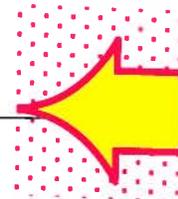
I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. PASSED BY THE CITY OF SEAFORD SUSSEX COUNTY, ON THE 22ND DAY OF NOVEMBER, 2016.

WE GIVE MAYOR AUTHORIZATION TO SIGN RESOLUTION.

Council Members

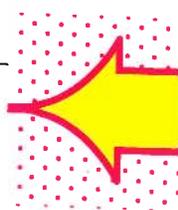


David Genshaw
Mayor



I DO HEREBY CERTIFY THAT THE FOREGOING TITLE OF RESOLUTION NO. ADOPTED BY THE CITY OF SEAFORD IS THE SAME TITLE OF RESOLUTION NO. ADOPTED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE _____ DAY OF _____

Robin A. Griffith
Clerk of the County Council



N.B. /
12/13-14

**CERTIFICATION BY APPLICATIONS
FOR
THE DELAWARE CDBG PROGRAM**

The application hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements with respect to the acceptance and use of Federal funds for this federally-assisted program. Also, the applicant gives assurance and certifies with respect to the program that:

- (a) It possesses legal authority to make an application and to execute a community development program.
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the applicant to submit this application, all understanding and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the submission of the application and to provide such additional information as may be required.
- (c) That prior to submission of its application to DSHA, the applicant has met the following citizen participation requirements:
 - 1) Each applicant shall have provided all citizens, especially those living within the area(s) affected by the proposed application, with adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of its community housing and development plans and all CDBG applications related thereto. At the time of preparation of any application for funds under this program, the applicant shall provide adequate information to citizens including reasonable access to records on the past use of CDBG funds; and hold at least one public meeting (pursuant to advertisement in a publication of general local circulation) so that citizens will have the opportunity to comment on the community's past performance under the CDBG Program. A copy of the legal advertisement announcing the date, place and time of the meeting, and a transcript or summary of the comments received at the meeting must be included with the application. (Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its community development program.);
 - 2) Each applicant certifies that it has obtained the review and comment of its Community Development Advisory Committee as required by the Delaware CDBG Citizen Participation Plan dated May 15, 2013 and Section 508 of the Housing and Community Development Act of 1987; and
 - 3) Each applicant certifies that it has included in its notice of public meeting the following language:

“...In accordance with the Section 106 Review Process established by the National Historic Preservation Act of 1966, as amended, comments are especially encouraged from interested agencies and individuals with respect to undertakings that may affect historic properties of significance to such agencies and individuals...”
- (d) It has developed its application so as to give maximum feasible priority to activities which benefit low-and moderate-income families or aid in the prevention or elimination of slums and blight; and activities which the application certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs.
- (e) Its chief executive officer or other officer of the applicant approved by DSHA:
 - (1) Consents to assume the state of a responsible Federal official under the National Environmental Policy Act of 1969 and other authorities as specified in 24 CFR 58.1(a)(3) and carry out this responsibility in accordance with the “Overview of Environmental Review Procedures” issued for the Delaware CDBG Program and dated July 1989; and meet the requirement of 24 CFR Part 58 and 24 CFR 570.604; and

- (2) Is authorized and consents on behalf of the applicant and himself/herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.
- (f) The program will be conducted and administered in compliance with:
- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued in 24CFR Part 1;
 - (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, and implementing regulations;
 - (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto (24 CFR Section 570.601);
 - (4) Section 3 of the Housing and Urban Development Act of 1968, as amended and implementing regulations of 24 CFR Part 135;
 - (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086 and implementing regulations issued at 41 CFR Chapter 60; and the state review requirements of the Architectural Accessibility Act (Chapter 73, Title 29, Delaware Code) and the applicable rules and regulations promulgated by the State Architectural Accessibility Board;
 - (6) Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 CFR Part 107;
 - (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended and implementing regulations at 24 CFR Part 8;
 - (8) The Age Discrimination Act of 1975 (Pub. L. 94-135) and implementing regulations when published;
 - (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 24 CFR Part 42 and all applicable regulations of the Delaware Uniform Relocation Act (Chapter 93, Title 29, Delaware Code);
 - (10) The labor standard requirements as set forth in 24 CFR, Parts 3 and 5, and HUD regulations issued to implement such requirements;
 - (11) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution;
 - (12) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
 - (13) The regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, A-87, A-110, A-122, and A-133 as they relate to the acceptance and use of Federal funds under this federally-assisted program and the Delaware CDBG Financial Management Handbook;
 - (14) Section 106 of the National Historic Preservation Act 1966, As amended via the Advisory Council on Historic Preservation's regulations, Protection of Historic and Cultural Properties (36 CFR 80);
 - (15) The provisions of the Hatch Act, which limits the political activity of employees;
 - (16) The lead-based paint requirements of 24CFR Part 35, Subpart B issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.).

- (g) It will comply with the CDBG Regulation CFR 570.611, which prohibits conflicts of interest and with HUD Standards of Conduct issued on November 1, 1985.
- (h) No member, officer, or employee of the applicant, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the program assisted under the CDBG Program, and that it shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification;
- (i) It will give HUD, DSHA and the State Auditor and the Federal and State Comptroller Generals or any authorized representatives access to all records, books, papers, or documents related to the CDBG Program.
- (j) It certifies to affirmatively further fair housing in accordance with Section 104(b)(2) of the Act as amended, and agrees to participate in fair housing planning by cooperating in any analysis to identify impediments to fair housing choice within the jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and to maintain records reflecting the analysis and actions in this regard.
- (k) Because HUD has not issued final regulations implementing the 1983 and 1984 amendments to the Housing and Community Development Act of 1974, as amended, the following "special condition" is incorporated into these Program Guidelines as a certification by the applicant and will also be utilized in all CDBG contracts:

Notwithstanding any other provisions of these Program Guidelines, requirements of the Amendments to Title I of the Housing and Community Development Act of 1974, and HUD's final regulations related thereto, which supersede or are not provided in the FY17 Program Guidelines shall govern the use of the assistance provided by the state to local government units in FY17-FY18.

- (l) It will not attempt to recover any capital costs of public improvements assisted in whole or part with the Title I funds by assessing any amount against properties owned and occupied by persons of low-and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
 - 1) assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than Title I funds; or
 - 2) for purposes of assessing any amount against properties owned and occupied by persons of low- and moderate-income who are not persons of very low income.
- (m) It certifies to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-44, (the 1990 HUD Appropriations Act).

Date

Signature of Authorized Official

Title of Official



Memorandum

TO: Council

FR: Mayor David Genshaw

RE: Special Annexation Election Board

Date: December 7, 2016

I am presenting the following names to serve as the Special Annexation Election Board for the Bierman Family, LLC annexation of lands to be held on Wednesday, January 18, 2017.

Elaine Vincent, Presiding Officer

Patricia Shannon, City of Seaford property owner and resident

Frank Czerwinski, authorized representative of the Bierman Family, LLC as the property owner in the territory being requested for annexation.



N.B.3
12-13-16

RESOLUTION

On the 18th day of January, 2017, at the City Hall, 414 High Street, Seaford, Sussex County, Delaware, between the hours of seven o'clock a.m., prevailing time, and three o'clock p.m., prevailing time, there will be held a Special Election to determine whether the City of Seaford shall annex lands located contiguous to the present corporate limits of the City of Seaford being more particularly described in "Exhibit A" attached hereto and incorporated herein.

Particulars concerning the Special Election are contained in a Resolution of the City Council of the City of Seaford which was passed at a meeting held on December 13, 2016, a copy of which is as follows:

Whereas, pursuant to a Resolution adopted by the City Council of the City of Seaford, a committee appointed by the Mayor of the City of Seaford according to the requirements of Section 2 of the Charter of the City of Seaford, as amended, recommend in its report that certain territory located contiguous to the present corporate limits of the City of Seaford be annexed.

Whereas, after notice duly published according to the requirements of Section 2 of the Charter of the City of Seaford, as amended, a public hearing was held on the 22nd day of November 2016, upon the proposal of the City Council of the City of Seaford to annex certain territory located and contiguous to the present corporate limits of the City of Seaford.

Whereas, in the opinion and judgment of the individual members of the City Council, no cause has been shown why the territory located and contiguous to the present corporate limits of the City of Seaford should not be annexed and it positively appearing that said territory should be annexed in the event that a majority of the duly qualified electors in the City of Seaford and in the territory proposed to be annexed shall approve for.

Now, Therefore, Be It Resolved, by the City Council of the City of Seaford that a Special Election shall be held on the 18th day of January, 2017, at the City Hall, 414 High Street, Sussex County, Seaford, Delaware between the hours of seven o'clock a.m., prevailing time and three o'clock p.m., prevailing time, at which Special Election the duly qualified voters both in the City of Seaford and in the territory proposed to be annexed shall vote for or against the annexation to the City of Seaford or territory located contiguous to the present corporate limits of the City of Seaford, said territory being more particularly described in "Exhibit A" attached hereto and incorporated herein.

And Be It Further Resolved, that the City Manager of the City of Seaford is hereby authorized and directed to cause a notice which shall consist of a true copy of this Resolution to be printed in a newspaper published in the City of Seaford and having a general circulation both in the City of Seaford and in the territory proposed to be annexed in its issues published within thirty (30) days immediately preceding the date of Special Election;

And Be It Further Resolved, that at the Special Election, every resident and property owner, whether individual, a partnership, or a corporation in the City of Seaford and in the territory proposed to be annexed shall have one (1) vote; provided, however, that a person who owns property both in the City of Seaford and in the territory proposed to be annexed and resides in either place may vote only where he resides; and provided further that a person who owns property both in the

OFFICIAL BALLOT
THE CITY OF SEAFORD

THIS BALLOT CASTS ONE (1) VOTE

CHECK ONE:

- FOR THE PROPOSED ANNEXATION
 AGAINST THE PROPOSED ANNEXATION

And Be It Further Resolved, that the purpose of legally conducting this said Special Election on the 18th day of January 2016, providing two (2) ballots, one for those persons, firms, or corporations who are authorized to vote as residents, and property owners of the City of Seaford and one for those person, firms, or corporations who are authorized to vote as residents and property owners of the territory proposed to be annexed, determined who is and who is not lawfully qualified to vote there at, taking reasonable steps to see that the law pertaining to said Special Election receives compliance, and for the purpose of counting the votes and certifying the results of said Special Election to the City Council of the City of Seaford, Elaine Vincent is hereby appointed as the presiding officer of the Board of Special Elections, Patricia Shannon is hereby appointed as the resident and property owner residing in the City of Seaford, and Frank Czerwinski is hereby appointed as the resident or property owner in the territory(s) proposed to be annexed.

I, Dolores J. Slatcher, City Manager of the City of Seaford do hereby certify that the foregoing Resolution was passed by the City Council of the City of Seaford at its meeting held on the 13th day of December, 2016, at which a quorum was present and voting throughout and that the same is still in full force and effect.

Dolores J. Slatcher
City Manager

DATED: _____

Exhibit "A": BIERMAN FAMILY, LLC
Tax Map and Parcel 331-5.00-101.00
1602 Sussex Hwy

N.B. 4
12-13-16

**SETTLEMENT AGREEMENT
FRANCHISE FEE AUDIT/REVIEW**

This Settlement Agreement (the "Settlement Agreement") is dated this ____ day of _____ 2016, between Comcast of Delmarva, LLC ("Comcast"), and the City of Seaford, DE (the "City"). Comcast and the City may be individually referred to hereafter as a "Party" or jointly as the "Parties."

RECITALS

WHEREAS, Section 3 of the City's Franchise Agreement requires Comcast to pay a franchise fee in the amount of three percent of Comcast's gross revenues (the "Franchise Fee");

WHEREAS, the City engaged the firm of Cohen Law Group to conduct a review of Comcast's Franchise Fee payments for the period from June 1, 2012 through May 31, 2015 ("Audit Period");

WHEREAS, the City has provided Comcast with a copy of a report prepared by Cohen Law Group dated December 1, 2016 ("Report"), which report concludes that Comcast owes additional franchise fees for the Audit Period;

WHEREAS, the Parties deem it to be to their mutual benefit to settle their differences for all Franchise Fee payment issues for the period of June 1, 2012 through October 31, 2016 (the "Settlement Period"), by this Settlement Agreement, resolve all such disputes and specify the terms under which Comcast will pay the City the sum of \$15,473.43 in full settlement of all Franchise Fee payment obligations for the Settlement Period.

NOW THEREFORE, in exchange for the mutual benefits and undertakings described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **PAYMENT BY COMCAST**

Within thirty (30) days of delivery to Comcast of a counterpart original of this Settlement Agreement executed by the City, Comcast shall deliver to the City a check made payable to the City of Seaford in the amount of \$15,473.43. Comcast reserves the right to pass through to customers any such sums of this franchise fee payment which have not already been collected as franchise fees.

2. **RELEASE OF ALL CLAIMS AND FINAL SATISFACTION AND RELEASE OF PAYMENT OBLIGATIONS**

The Parties hereby release and discharge each other from all claims related to Franchise Fee payments for the Settlement Period. Payment by Comcast to the City pursuant to Section 1 hereof shall be deemed full and final satisfaction and release of

Comcast's Franchise Fee payment obligations for the Settlement Period.

3. NO WAIVER OR CONCESSION OF THE METHOD OF CALCULATION OF GROSS REVENUES

The Parties mutually agree that this Settlement Agreement controls only the Settlement Period and is neither precedent nor waiver by either Party of any claim, methodology or interpretation of the Franchisee's gross revenues for any future audit of periods not within the Settlement Period.

4. GENERAL PROVISIONS

(a) Each Party covenants and agrees that it will not make, assert or maintain any claim, demand, action or cause of action that is discharged by this Settlement Agreement against the other Party; provided, however, that either Party may bring an action against the other Party to enforce this Settlement Agreement.

(b) Each Party represents that it has not conveyed or assigned any claims released by this Settlement Agreement to any third parties. Each Party represents and warrants that it has the power and authority to enter into this Settlement Agreement. Any breach of this Settlement Agreement shall be subject to all remedies available to the Parties at law or in equity. In addition, any breach of this Settlement Agreement shall be deemed a breach of the Franchise Agreement, and shall be subject to all of the remedies available under the Franchise Agreement.

(c) The Settlement Agreement sets forth the entire agreement of the Parties with respect to its subject matter, there being no other promise or inducement to or for the execution of this Settlement Agreement other than the consideration cited above. There are no contingencies, conditions precedent, representations, warranties, or other agreement, oral or otherwise, regarding settlement between the Parties not stated herein.

(d) The Parties acknowledge that this Settlement Agreement is the product of negotiations between the Parties and does not constitute, and shall not be construed as, an admission of liability on the part of any Party.

(e) This Settlement Agreement shall inure to the benefit of, and shall be binding on, the Parties' respective successors and assigns.

(f) This Settlement Agreement may not be modified or amended, nor any of its terms waived, except by an amendment signed by duly authorized representatives of the Parties.

(g) This Settlement Agreement shall be construed and enforced in accordance with the laws of the State of Delaware without regard to conflicts of law principles. All actions or suits brought hereunder or arising out of this Settlement Agreement shall be brought in the appropriate State or Federal courts in Delaware, and in no other courts.

(h) This Settlement Agreement shall be effective upon the date when it is executed on behalf of the City.

(i) All time frames expressed in terms of days shall mean calendar days, and if the time allowed for action required hereunder shall expire on a Saturday, Sunday, or holiday as defined, and if the time allowed for action required hereunder shall expire on a Saturday, Sunday, or holiday as defined by the laws of the State of Delaware, then the expiration shall automatically be the next calendar day that is not a Saturday, Sunday, or holiday. All time frames are agreed to be of the essence.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by duly authorized representatives of each Party on the dates written below.

CITY OF SEAFORD, DE

By: _____

Name: _____

Title: _____

Date: _____

COMCAST OF DELMARVA, LLC

By: _____

Name: _____

Title: _____

Date: _____

N.B.5
12-13-16



(302) 739-4263
(302) 739-1118 FAX
(302) 739-7428 TDD

DEVELOPMENT SECTION
18 THE GREEN
DOVER, DELAWARE 19901
TOLL FREE: (888) 363-8808

November 16, 2016

The Honorable David C. Genshaw
Mayor
City of Seaford
P.O. Box 1100, 414 High Street
Seaford, DE 19973

**Re: Sussex County Habitat for Humanity
Downtown Seaford, Phase II
Financing Approval**

Dear Mayor Genshaw:

I am writing as a follow up to our letter of September 6, 2016 regarding an application to the Delaware State Housing Authority (DSHA) on behalf of Sussex County Habitat for Humanity requesting Housing Development Fund financing for the new construction/ acquisition/ rehabilitation of two (2) homes as part of the Downtown Seaford Phase II Project in Seaford, Delaware. DSHA would like to inform you that the Council on Housing recommended, and the Director of Housing did approve, this funding request on November 9, 2016.

If you have any questions, please contact Marlana Gibson at (302) 739-0290 or by e-mail at marlena@destatehousing.com.

Sincerely,

ANAS BEN ADDI
Director

sla

cc: Marlana Gibson

NBL
12-13-16

MEMO

TO: City Council

FR: David Genshaw, Mayor

RE: Rental License Committee

Date: December 2, 2016

I am presenting the following names for appointment to the Rental License Committee. I am forming this committee to consider alternative solutions to the housing concerns and property conditions in the City of Seaford.

David Genshaw, Mayor - Chair
Dan Henderson, Councilman
Mark Hardesty
Deric Parker
Vergonda Thomason
Harry Daisey
Tim Elder
Frank Parks
George Farnell
Craig Aleman
Jim King
Charles Anderson, ACM
Josh Littleton, Building Official

26

N.B.7
12-13-16

COMMUNICATIONS RIGHT-OF-WAY USE AGREEMENT

This Communications Right-of-Way Use Agreement (hereinafter referred to as the "Agreement") is made as of the 30th day of November, 2016 (hereinafter referred to as the "Effective Date"), by and between the City of Seaford, in the County of Sussex, State of Delaware (hereinafter referred to as the "City"), and Fiber Technologies Networks, L.L.C. (hereinafter referred to as "Lighttower").

RECITALS

WHEREAS, Lighttower is a limited liability company duly organized and existing under the laws of the State of Delaware that provides Telecommunications Services and/or Information Services (as defined herein); and

WHEREAS, Lighttower desires to construct, install, maintain and operate Facilities (as defined herein) within the Public Rights-of-Way (as defined herein) for the purposes of providing Telecommunications Services and/or Information Services; and

WHEREAS, the City has the legal authority to grant Lighttower access to the Public Rights-of-Way, manage the Public Rights-of-Way with respect to Lighttower, and to obtain fees for the use of the Public Rights-of-Way.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and Lighttower agree as follows:

SECTION 1
DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "**Facilities**" means wires, cables conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located or to be located by Lighttower in the Public Rights-of-Way of the City and used for the transmission of Telecommunications Services and/or Information Services.

(b) "**Dark fiber network**" - wires, lines, optical fibers, converters, conductors, transmission lines, equipment or facilities designed and constructed for the purpose of producing, receiving, storing, processing, transmitting, amplifying, scrambling and distributing audio, video, digital, and other forms of electronic or electrical signals to subscribing members of the public for a fixed or period fee. Data transmission occurs at the initiation of and with equipment provided by the end user or customer.

(c) "Gross Revenue" means any and all payments made to, or compensation in any form whatsoever received directly or indirectly by Lightower or any Affiliated Person from or in connection with the operation of the Dark Fiber Network, within the territorial limits of the City. For services originating within the City but terminating elsewhere Gross Revenue will be adjusted to reflect the portion of the service occurring within the City. The value of any Service provided hereunder to the City or to any other governmental entity shall not constitute Gross Revenue.

(d) "Adjusted Gross Revenues" shall mean Gross Revenue including offset for: (i) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government; (ii) any pole attachment, make-ready, conduit access, or other fees payable to the City as owner of poles, conduit, or other utility infrastructure; and (iii) non-operating revenues such as interest income or gain from the sale of an asset.

(e) "Information Services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via Telecommunications (as defined herein), and includes electronic publishing, but does not include any use of such capability for the management, control or operation of a Telecommunications System or the management of Telecommunications Services.

(f) "Permit" means the written authorization granted by the City for the use of the Public Rights-of-Way in the City for the purpose of providing Telecommunications Services or Information Services.

(g) "Public Rights-of-Way" means the surface and the area across, in, over, along, upon and below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, bridges, highways and places and other rights-of-way as the same now or may thereafter exist that are under the jurisdiction or control of the City.

(h) "Restore" or "Restoration" means the process by which a Public Right-of-Way is returned to a state that is as good as or better than its condition before construction.

(i) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(j) "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(k) "Telecommunications System" means a system that offers Telecommunications Services.

SECTION 2
CONSTRUCTION, MAINTENANCE, OPERATION
AND USE OF THE FACILITIES

2.1 Access

Subject to the provision of this Agreement, and all applicable laws and regulations, the City hereby grants to Lighttower the non-exclusive right to construct, install, maintain, locate, move, operate, place, relocate, remove and replace Facilities, in, under, over, across, upon and along the Public Rights-of-Way for the purpose of providing Telecommunications Services and/or Information Services.

2.2 No Interference

Lighttower shall not interfere in any manner with the existence and operation of any and all sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, cable system wires, or other Telecommunications, utility and municipal property without the prior written approval of the owner(s) of the affected property or properties; provided, however, that Lighttower is granted the right of ingress and egress to and from Public Rights-of-Way as Lighttower may need to exercise its rights under this Agreement.

2.3 No Property Interest

This Agreement is not a grant by the City of any fee simple or other property interest and is made subject to the right of the City to use the Public Rights-of-Way for any legally authorized public purpose.

2.4 Police Powers

Lighttower's rights under this Agreement are subject to the police powers of the City to adopt and enforce laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

2.5 Application for Permits

Prior to entering upon or occupying the Public Rights-of-Way for the purpose of providing Telecommunications Services and/or Information Services, Lighttower shall apply for and obtain a Permit from the City. Lighttower shall complete a permit application prepared by the City. Lighttower shall furnish detailed plans of the Facilities it plans to install or maintain in the Public Rights-of-Way, and shall pay all permit fees prior to issuance of a permit. In addition, Lighttower shall have applied for and received any and all required regulatory approvals, permits or authorizations from the appropriate

federal and state authorities. Upon request of the City, Lighttower shall submit written evidence of its applications for and receipt of all such approvals, permits and authorizations.

2.6 Maps

Lighttower shall maintain accurate maps showing the location of its Facilities in the City. Such maps shall be provided to the City in a format mutually agreed upon between the City and Lighttower. As-built drawings of any new construction of Facilities shall be furnished to the City within sixty (60) days of completion of such construction.

2.7 Issuance of Permits

Upon execution of this Agreement, Lighttower's performance of the obligations set forth in Section 2.5 above and the City's review of the permit application and accompanying information to the City's satisfaction, the City shall issue all permits necessary to the installation of the Facilities in accordance with the City's standard permitting procedures.

2.8 Manner of Construction

The construction, installation, operation, maintenance and removal of Lighttower's Facilities shall be accomplished without cost to the City and in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, sidewalk or other access thereon within the Public Rights-of-Way. All Lighttower construction, maintenance, operating and repair personnel shall be thoroughly trained in the safe use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all federal, state, and local laws and regulations. Lighttower shall routinely inspect and maintain all Facilities so that conditions that could develop into safety hazards are corrected before they become a hazard. The construction, installation, operation, maintenance and removal of its Facilities shall meet or exceed the standards of the National Electrical Safety Code, the National Electric Code and any other applicable federal, state and local laws and regulations.

2.9 Conditions of Facilities

Lighttower agrees to keep its Facilities in good and safe condition and free from any nuisance. All wires, cables, and other equipment shall be installed parallel with electric and telephone lines, and multiple configurations shall be arranged in parallel and bundles with due respect for engineering considerations.

2.10 Relocation for City Purposes

Lighttower shall relocate, in cooperation with the City, any Facilities installed and maintained under this Agreement if and when made necessary by any lawful action by the City, including but not limited to, change of grade, alignment or width of any street,

including the construction, maintenance or operation of any underground subway or viaduct by the City and/or the construction, maintenance or operation of any other of the City's underground or above-ground Facilities; provided, however, that all similarly situated entities located in the area in which such change or alignment occurs shall also be required to relocate their respective Facilities. Lightower will be reimbursed for the actual cost of relocations in the event that the City has been awarded or receives grant funding or other reimbursement compensation for the purpose of utility relocation or beautification relocation efforts.

2.11 Removal and Abandonment

If Lightower decides to abandon all or a portion of its Facilities, it shall notify the City no later than sixty (60) days after its decision. Lightower shall promptly vacate and remove the Facilities at its own cost. If this Agreement is lawfully revoked by the City pursuant to Section 4.5 of this Agreement, Lightower shall promptly vacate and remove the Facilities at its own cost. If removal is not completed within six (6) months of Lightower's decision to abandon or the City's revocation of this Agreement, the City may remove the Facilities at Lightower's cost.

2.12 Undergrounding of Facilities

Lightower shall place its Facilities underground if required by the City; provided, however, that all similarly situated entities located in areas in which the City shall require the Facilities to be placed underground shall also be required to bury their Facilities under the same terms and conditions.

2.13 Restoration

Whenever Lightower or any subcontractor disturbs any pavement, sidewalk or other improvement on any private property, the same shall be repaired and restored within thirty (30) days of the completion of the disturbance at the sole cost of Lightower. Additionally, Lightower and/or any subcontractor may disturb any pavement, sidewalk or other improvement on any Public Rights-of-Way only after first securing the necessary permit from the City. Upon completion of the work and upon written notice to the City from Lightower and/or any subcontractor, the City pursuant to the applicable ordinance, shall restore any such paving within any Public Rights-of-Way which have been disturbed and bill Lightower and/or said subcontractor the cost thereof. Lightower and/or any subcontractor shall restore any sidewalk and/or any other improvement within the Public Rights-of-Way within thirty (30) days of completion of the disturbance at the sole cost of Lightower and in default of such restoration, the City may perform such work. Lightower shall in all events remain responsible for all such cost of restoration and in default of payment, Lightower shall be responsible for the cost along with any liquidated damages applied by the City in accordance with Section 4.4 below.

SECTION 3
TERM AND COMPENSATION

3.1 Term

The term of this Agreement shall be for a period of five (5) years commencing on the Effective Date and expiring on November 29, 2021, unless the Agreement is lawfully terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

3.2 Fees Lightower shall pay to the City an annual franchise fee a sum equal to three percent (3%) of its Adjusted Gross Revenues from Subscribers in the City actually received by the Franchisee during the period of operation. The said annual payments shall be made on or before July 1 of each year with the first annual payment to be made on or before December 31, 2016 for the period beginning July 1, 2015 and ending December 31, 2015. This fee may be increased by the City with 90 days' notice to a maximum of five percent (5%) of its Adjusted Gross Revenues from Subscribers in the City actually received by the Franchisee during the period of operation, provided such increase is applied nondiscriminatory manner to all providers of telecommunication services in the City. Satisfactory notice shall be deemed a letter from the City Manager of the City of Seaford to Lightower notifying them of the change.

3.3 Non-Discrimination

Notwithstanding anything in this Agreement to the contrary, in the event the City enters into a Communications Right-of-Way Agreement(s) ("ROW Agreements") with one or more similarly situated Services or Information Services providers after the Effective Date, the City agrees that Lightower shall not be assessed any fee, charge, cost or compensation that is (a) in excess of that amount permitted by then applicable laws and regulations; or (b) that is not also being assessed by the City in a similar manner upon said other Telecommunications Services or Information Services providers that have entered into such ROW Agreements with the City.

SECTION 4
INDEMNIFICATION, INSURANCE AND ENFORCEMENT

4.1 Indemnification

Lightower agrees to indemnify, defend (with counsel reasonably acceptable to the City) and hold harmless the City, its elected and appointed officials officers, employees and agents from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs caused by or connected with any act or omission of Lightower, its officers, agents, subcontractors or employees, arising out of, but not limited to, the construction, installation, operation, maintenance or removal of any of Lightower's Facilities. The obligation to indemnify shall include, but

not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees and expert fees.

4.2 Insurance

(a) Lighttower shall obtain and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

(1) Workers' compensation insurance covering all employees of Lighttower. Contractors, employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Lighttower hereunder, shall be required by Lighttower to take out and maintain such insurance, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

(2) Public liability and property damage liability insurance covering all operations under this Agreement limits for bodily injury or death not less than \$1,000,000 for one person and \$500,000 for each accident for property damage, not less than \$2,000,000 for each accident and \$2,000,000 aggregate for accidents during the policy period.

(3) Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired; public liability limits of not less than \$1,000,000 for one person and \$2,000,000 for each accident; property damage limit of \$1,000,000 for each accident.

(b) The policies of insurance shall be in such form and issued by such insurer as shall meet the reasonable satisfaction of the City.

(c) Lighttower shall furnish to the City, at least annually or at the request of owner, a certificate evidencing compliance with the foregoing requirements. This certificate will list the City, its appointed and elected officials, officers, servants, agents and employees as additional insureds and will provide that in the event of cancellation of any of the said policies of insurance, the insuring company shall give all parties named as insureds thirty (30) days prior notice of such cancellation.

(d) To the extent allowed by applicable law, Lighttower shall not be prohibited from self-insuring and will provide the City with proof of self-insurance.

4.3 Construction Bond

Upon commencement of construction of the Facilities, Lighttower shall deposit with the City a surety bond or irrevocable letter of credit naming the City as an obligee in

the amount of Fifty Thousand Dollars (\$50,000). Lightower's obligation to maintain such surety bond or letter of credit shall terminate thirty (30) days following completion of construction of the initial Facilities. The City may draw against such surety bond or letter of credit, up to its full-face amount, for any loss or damage to the Public Rights-of-Way utilized by Lightower during construction of the initial Facilities to the extent that the City previously has not otherwise been compensated for such damage by Lightower.

4.4 Enforcement

(a) If the City has reason to believe that Lightower violated any provision of this Agreement, it shall notify Lightower in writing of the specific violation and the section of this Agreement that it believes has been violated. If the City does not notify Lightower of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Lightower shall have thirty (30) days to cure such violation after written notice is received from the City by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances outside of Lightower's control, the period of time in which Lightower must cure the violation will be extended by the City for such additional time necessary to complete the cure, provided that Lightower shall have promptly commenced to cure and is diligently pursuing its efforts to cure.

(c) Because Lightower's failure to comply with provisions of this Agreement will result in injury to the City, and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Lightower in the amount of two hundred fifty dollars (\$250) per day for each day the violation continues, provided Lightower has had an opportunity to cure in accordance with Section 4.4(b) above. Such damages shall not be a substitute for other legal or equitable remedies that may be available to the City or Lightower.

4.5 Revocation

In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke Lightower's permission to occupy the Public Rights-of-Way to provide Telecommunications Services and/or Information Services if:

(a) Lightower practices fraud or deceit upon the City in any of its activities pursuant to this Agreement;

(b) Lightower fails to pay to the City permit fees pursuant to Section 2.5 of this Agreement, administrative fees pursuant to Section 3.2(a) of this Agreement, or right-of-way management fees pursuant to Section 3.2(b) of this Agreement; or

(c) Lighttower repeatedly violates, after notice and opportunity to cure, one or more of the material terms and conditions of this Agreement.

SECTION 5 **MISCELLANEOUS**

5.1 Assignment

Notwithstanding any provision of this Agreement, Lighttower may assign or collaterally assign, in whole or in part, its rights, interests and obligations hereunder without limitation to any of its affiliates, any party providing financing to Lighttower and any successors and assigns of the foregoing without the consent of the City. Lighttower will provide the City with prior written notice of any assignment. Any assignee of Lighttower shall be bound by all of the terms and conditions of this Agreement to the same extent as Lighttower.

5.2 Right-of-Way Ordinance

Lighttower agrees herein to comply with and abide by any future right-of-way ordinance or other applicable ordinance enacted by the City relating to use of the Public Rights-of-Way, including any fees contained therein, provided that such ordinance is consistent with federal and state law and is applicable to all similarly situated entities.

5.3 Preservation

In placing its Facilities upon and along the Public Rights-of-Way, Lighttower shall not injure, or in any manner, cut or trim trees along and in the Public Rights-of-Way without prior written consent from the City. All such trimmings shall be performed in a safe and orderly manner and, to the extent practicable for the proper maintenance and use of its Facilities or any other Facilities, in compliance with the guidelines set forth in any applicable arboreal source reference. Furthermore, Lighttower shall be solely responsible for obtaining any required consents from any parties to the extent that Lighttower's tree trimmings may require consent from such parties.

5.4 Reservation of Rights

Both the City and Lighttower reserve and may seek any and all remedies available at law. Neither the City nor Lighttower shall be deemed to have waived any rights or remedies at law by virtue of executing this Agreement.

5.5 Notices

All notices required or permitted to be given under this Agreement shall be in writing, addressed as set forth below, and shall be hand-delivered to the addressee,

sent by Federal Express or similar overnight delivery service, or sent by U.S. Mail, certified and return receipt requested.

To the City: City of Seaford
 PO Box 1100
 414 High Street (for overnight deliveries, etc.)
 Seaford, DE 19973
 Attn: City Manager

To Lightower: Fiber Technologies Networks, L.L.C.
 Attn: Natasha Ernst, VP and Associate General Counsel
 300 Meridian Centre
 Rochester, NY 14618

5.6 Severability

The invalidity or unenforceability of any provision of this Agreement shall not impair or affect the validity or enforceability of any other provision of this Agreement.

5.7 Successors

This Agreement shall inure to the benefit of, and shall be binding upon the parties hereto and their respective successors and assigns.

5.8 Governing Law; Venue

This Agreement shall be governed and construed by and in accordance with the laws of the United States of America and the State of Delaware with venue in the Court of Common Pleas of Sussex County.

5.9 Entire Agreement

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Lightower.

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

CITY OF SEAFORD

By: _____

Date: _____

FIBER TECHNOLOGIES NETWORKS, L.L.C.

By:  *SVP*

Date: 11-30-16

N.B.8
12-13-16

POLE ATTACHMENT LICENSE AGREEMENT

Between

CITY OF SEAFORD

and

FIBER TECHNOLOGIES NETWORKS, L.L.C.

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APPENDICES

Exhibit A: Schedule of Fees

Exhibit B: Rules and Practices of the City for Attachments

Exhibit B-1: Permit Application and Response to Application

Exhibit B-2: Make Ready Cost Estimate and Invoice for Make Ready Construction Work

Exhibit B-3: Notification of Consent to Attach and Request for Certification

Exhibit B-4: Permit for Attachment

Exhibit B-5: Disclosure of Secondary Pole Attachments and Request for Permit

Exhibit B-6: Notification of Unauthorized Attachment

Exhibit B-7: Notification of Non-Compliant Attachment

Exhibit B-8: Certificate of Correction

Exhibit B-9: Notice of Discontinuance of Attachment to Poles

POLE ATTACHMENT LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is effective this 30th day of November, 2016 (the "Effective Date") by and between the City of Seaford, a municipality located in Sussex County, (hereinafter called the "City") and Fiber Technologies Networks, L.L.C., organized under the laws of the State of Delaware and authorized to engage in business in the State of Delaware (hereinafter called "Licensee").

WHEREAS, Licensee furnishes services to customers in the State of Delaware, and desires to place and maintain aerial cables, wires and associated facilities and equipment on the poles of the City in the area to be served (the "Service Area"); and

WHEREAS, the City is willing to permit, to the extent it may lawfully and contractually do so, the attachment of said aerial cables, wires, and facilities (the "Attachment(s)") to its poles subject to the terms and conditions of this Agreement in the service area; and

WHEREAS, the aforesaid Poles owned by the City are public properties acquired and maintained by the City at significant expense to the taxpayers and the right to use said Poles owned by the City is a valuable property right; and

WHEREAS, the City desires to protect and manage the use of the aforesaid Poles, ensure public safety within public rights-of-way, and obtain financial compensation for Licensee's use of the City's Poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE 1 SCOPE OF AGREEMENT

1.1 Subject to the provisions of this Agreement, the City agrees to issue to Licensee, for the Attachment(s) of Licensee's facilities to the City's poles for the purpose of providing any and all lawful services, a revocable, non-exclusive license hereinafter referred to as "Permit" authorizing the attachment of Licensee's facilities to the City's poles. This Agreement governs the fees, charges, terms and conditions under which the City issues such Permit(s) to Licensee. This Agreement is not in and of itself a license, and before making any Attachment to any utility pole, Licensee must apply for and obtain a Permit for each Attachment it desires to make to any pole.

1.2 This Agreement supersedes all previous agreements between the City and Licensee for the attachment of Licensee's facilities to the poles of the City in the Service Area. This Agreement shall govern all existing Licenses, Permits, and other forms of permission for pole Attachments of Licensee's facilities to the City's poles in the Service Area as well as all Permits issued subsequent to execution of this Agreement.

1.3 No use, however extended, of the City's pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles except as expressly provided by this Agreement.

1.4 Nothing contained in this Agreement shall be construed to require the City to construct, retain, extend, place, or maintain any pole or other facilities not needed for the City's own service requirements.

1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the City entering into agreements with other parties regarding the poles covered by this Agreement, provided such agreement shall be on terms no more favorable to the any other service providers having similar licensing agreements and provide services similar to those in this Agreement.

1.6 Nothing contained in this Agreement shall be construed to require the City to grant a Permit where there is insufficient capacity or where access is not possible for reasons of safety, reliability and generally applicable engineering requirements. The City may reserve space on its poles for its core utility service pursuant to a bona fide plan that reasonably and specifically projects a need for the space in the provisions of the City's core business needs, or the use of the City's facilities by other parties, or create a hazardous or unsafe condition. The City shall allow Licensee to attach to such reserved space until the City has a need for that space, at which time, Licensee shall vacate that reserved space and the City shall provide Licensee an opportunity to maintain its Attachment, at Licensee's expense.

1.7 Various provisions in this Agreement may or may not be applicable in all instances as the context warrants such as those provisions that are specific to existing vs. new Attachments.

ARTICLE 2 TERM OF AGREEMENT

2.1 This Agreement shall continue in force and effect for a period of five (5) years commencing on the Effective Date, unless this Agreement is terminated prior to the expiration date in accordance with the terms and conditions contained herein.

ARTICLE 3 SPECIFICATIONS

3.1 Licensee's Attachments on the City's poles covered by this Agreement shall be placed and maintained at all times in accordance with the requirements, specifications, rules and regulations of the latest edition of the National Electrical Safety Code, latest edition (the "NESC") and subsequent revisions thereof, any governing authority having jurisdiction, and this Agreement including the Rules and Practices of the City for Attachments (the "Rules") as set forth in Exhibit B attached hereto and made a part hereof by reference and consistent with generally accepted industry standards.

3.2 The City shall require all attachments to be identified at all times by an identifying marker stating the name of Licensee. The marker shall, at a minimum, (a) be reasonably durable under the typical weather conditions in the area and (b) have coloring unique to Licensee. Within thirty (30) days of the Effective Date, the City will require tagging by Licensee. Licensee shall tag each cable segment adjacent to each pole (within 6") with facilities attached with a utility grade, color coded, unique identification tag designed and manufactured for the intended purpose. Such tags shall be capable of being read unaided from the ground by a person with normal vision. The required tag type, color, method of attachment and size shall be submitted to the City Superintendent of Electric for approval prior to installation.

3.3 Licensee acknowledges that this Agreement is not an exclusive contract for pole attachment rights. Licensee's use of the City's poles shall not interfere with the rights or operations of other users. Licensee shall not move, remove, adjust or change the attachments of others without the specific written consent of the other user and of the City.

ARTICLE 4 ATTACHMENT FEES

4.1 Licensee shall pay an annual per Attachment, per pole fee in the amount shown in Exhibit A, attached hereto and made a part hereof by reference, for each pole to which Licensee has one or more Attachments (the "Attachment Fee"). In addition, Licensee shall pay the Attachment Fee for any pole or overlashing, for which the Make-Ready Construction Work, as defined in Article 5.3, has been requested and completed unless Licensee notifies the City within 45 days of completion of the Make-Ready Construction Work that it will not attach. Upon such notification, the Permit Application(s) for the specified Attachment(s) will become void.

4.2 On or about the first day of each January and July, the City shall invoice Licensee, in advance, one half (1/2) of the Attachment Fees and other charges due the City that have not been previously invoiced. Licensee shall pay any invoice within thirty (30) days of receipt thereof. Any unpaid invoice shall be subject to interest accruing on the unpaid amount at twelve percent (12%) per annum beginning on the 31st day from the date of invoice until paid.

4.3 Commencing not less than one (1) year following the Effective Date and no more frequently than every five (5) years, an inventory of Attachments may be made by the City or the City's representative at the expense of Licensee. The City agrees that the expense to Licensee shall be the normal market cost for such service and that work done at the same time for the benefit of the City will not be charged to Licensee. The City agrees that the inventory may be performed by a neutral contractor or through a joint field check with Licensee. If the Attachment inventory is made for the benefit of more than one Licensee, then each Licensee shall pay its proportionate share of the Cost, such Cost to be allocated based on the number of Attachments identified in the inventory. Inventory results will be made available to all Licensees included in the inventory.

4.4 The City and Licensee shall promptly seek to resolve any invoice or payment dispute made in good faith and with reasonable basis that might arise from time to time. Any dispute claim must be presented within sixty (60) days of the day the alleged error was found. In the event either party determines that there is an error or erroneous charge in the amount billed in any statement rendered by the City to Licensee, the error or erroneous charge shall be adjusted within thirty (30) days of a final determination of whether an error has occurred and the parties will be made whole accordingly.

ARTICLE 5 PROCESS FOR PERMITTING NEW ATTACHMENTS

5.1 Licensee's Attachments existing at the time of the Effective Date of this Agreement shall not be considered new attachments for the purposes of this Article 5. The Rules as set forth in Exhibit B provide procedures for implementing the process for permitting Attachments, except to Secondary Poles that are outlined in Article 6.

5.2 To obtain a Permit, Licensee must submit Exhibit B-1 Permit Application (the "Application") following the procedures in the Rules. Licensee shall at the same time pay the non-refundable Application Fee stated in Exhibit A. Licensee's Application shall be accompanied by Licensee's construction plans and drawings, which will, at a minimum, contain the information specified in the Rules. Application fees will not be refunded if Licensee chooses not to proceed however, such fee paid will be credited toward the Make Ready Engineering Fee in those instances where engineering work continues and/or Licensee proceeds with attached its facilities.

5.3 Within thirty (30) days after the receipt of the Application, the City will notify Licensee of the charges (the "Make Ready Engineering Fee"), specified in the lower portion of Exhibit B-1, for engineering the required modifications to the City's poles necessary to accommodate Licensee's Attachments. The City shall also provide to Licensee a schedule for completing the make ready engineering work. Licensee and the City may agree to complete a joint ride-out to assess the necessary modifications to accommodate Licensee's Attachments. Such joint ride-out shall occur as expeditiously as possible and in any event, Licensee will be notified of the Make Ready Engineering Fee no later than the thirty (30) days following submission of an Application.

5.4 After receipt of the Make Ready Engineering Fee, the City will begin preparing engineering plans (the "Engineering Plans") for the Construction Work. The City shall notify Licensee of the City's Cost of any necessary Make Ready Construction Work (the "Make Ready Construction Cost Estimate") and shall provide Licensee a good faith estimate of the timeframe required to complete the Construction Work, as shown in Exhibit B-2. The City shall provide Licensee with a copy of the Engineering Plans, which specify how and where Licensee's Attachments are to be made on the City's poles.

5.5 Licensee shall pay the City the amount specified in the Construction Cost Estimate and after receipt of such payment, the City shall proceed with the Construction Work as a part of its normal work schedule. The City will make reasonable efforts to complete Construction Work within sixty (60) days after payment for such work is received. The City may give consideration to a request by Licensee for an expedited construction schedule. Licensee will be responsible for additional Costs incurred by the City if the work is expedited.

5.6 When the Construction Work is complete, the City shall notify Licensee by way of the Notification of Consent to Attach (upper portion of Exhibit B-3) and Licensee shall then have the right to make the specified Attachments in accordance with the Engineering Plans. Licensee shall, at its own expense, make Attachments in such manner as not to interfere with the service of the City or others who are attached to the City's poles nor shall Licensee make any changes to the attachments of others unless authorized by Engineering Plans.

5.7 Licensee must make its Attachments to the City's poles within one hundred twenty (120) days of receipt of notification that the Construction Work is complete as set forth in Exhibit B-3. Such timeframe may be extended by the City provided Licensee makes a written request for such extension and is diligently pursuing its work. If Licensee's work for any Attachment is not complete within the one hundred twenty (120) day period or its extension, then the City may terminate its approval for Licensee's Attachment and Licensee shall have no further right to place that Attachment except by following the procedures specified above for new Attachments.

5.8 No later than thirty (30) days after Licensee adds the last Attachment for the Permit Application, Licensee shall send to the City a Certificate of Compliance signed by an authorized representative of the Licensee that the Attachments are of sound engineering design and fully comply with the Rules in this Agreement and the NESC and were constructed substantially as provided in the Engineering Plans. The form of Certificate of Compliance is illustrated as the lower portion of Exhibit B-3 of the Rules. Within thirty (30) days of receipt of said certificate, the City shall issue the Permit that will authorize Licensee's Attachments to the poles that were certified. The Permit form is illustrated in Exhibit B-4 of the Rules. If the Certificate of Compliance is not received within the thirty-day (30) period, the City may declare the Attachment an Unauthorized Attachment, hereinafter defined.

5.9 Within sixty (60) days of completion of the Construction Work for each Application, the City may on its own, or in response to written request of Licensee, prepare a revised estimate to reflect the actual City's Cost of the Construction Work. If the revised estimate shows the actual Construction Cost

is less than the Construction Cost Estimate, then the difference shall be refunded to Licensee. If the revised estimate shows the actual construction Cost is more than the Construction Cost Estimate, the difference will be billed to the Licensee to be paid within thirty (30) days of the date of the billing. Interest at twelve (12%) per cent per annum shall accrue on balances unpaid after thirty (30) days.

ARTICLE 6 SECONDARY POLE ATTACHMENTS

6.1 A Secondary Pole is a pole installed for the express purpose of providing required clearances for a service loop to a customer's location. A Secondary Pole typically services only one customer or building as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line, and supports the City's wires with less than 500 volts. For all purposes and obligations of Licensee arising under this Article 6, a Secondary Pole shall not refer to or include a pole originally installed by the City which otherwise fits the description herein but which is owned and maintained by the individual customer on whose private property the pole is located, as opposed to being continually owned and maintained by the City.

6.2 When in the process of installing service for a single customer, Licensee may attach its drop wire to the City's Secondary Pole without advanced notice to the City or Permit first being issued. Licensee is required to maintain all required road clearances, safety requirements and all other commonly accepted engineering practices related to this installation.

6.3 Licensee will disclose all new Secondary Pole Attachment(s) to the City no later than twenty-five (25) days after the end of the month in which the Attachment was placed by submitting a "Disclosure of Secondary Pole Attachments and Request for Permit", the form of which is illustrated in Exhibit B-5 of the Rules, with the required Application Fee.

6.4 The City will, within thirty (30) days of receipt of the disclosure of Secondary Pole Attachments, issue a Permit as requested, unless prior to issuing the Permit, an inspection reveals that the Attachment does not meet the requirements of the Rules or the Code, then the provisions of Article 11 shall apply.

6.5 The City will not be responsible for any line clearance or tree trimming required for drop wires connected to Secondary Poles for the sole benefit of Licensee.

ARTICLE 7 OVERLASHING

7.1 Licensee may overlash its Attachments where such activity will not cause the Attachment to become Non-Compliant. Prior to any overlashing that Licensee can reasonably foresee would cause such facilities to become Non-Compliant, Licensee shall notify the City of the Construction Work, and Licensee and the City shall follow the requirements specified in Article 5 herein. If the City determines that overlashing resulted in the Attachment becoming Non-Compliant, then the requirements specified in Article 11 apply.

7.2 There shall be no additional annual Attachment Fee for overlashing of Licensee's existing facilities by Licensee.

7.3 Licensee shall disclose the identification of any third party that desires to overlash to its facilities on the City's poles and obtain the City's approval in writing. Licensee may not overlash to the facilities of a third party on the City's poles.

7.4 Licensee agrees to remove existing non-working cables from the City's poles if requested to do so by the City.

7.5 Licensee will notify the City in writing of all new overlashings no later than twenty-five (25) days after the end of the month in which the Attachment was overlashed.

ARTICLE 8 EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

8.1 The City does not warrant or assure to Licensee any right-of-way privileges, uses or easements. Licensee shall be responsible, as required by law, for obtaining its own governmental permits and lawful easements from the owner(s), any lien holders, and other appropriate parties. Under no circumstances shall the City be liable to Licensee or any other party in the event Licensee is prevented from placing and/or maintaining its Attachments on the City's poles. Accordingly, the City's acceptance of Licensee's application and issuance of a Permit shall never be construed otherwise.

8.2 Licensee will defend and hold harmless the City against any claims by third parties that the necessary easements were not obtained.

ARTICLE 9 MAINTENANCE AND TRANSFERS

9.1 The City shall, at its own expense, maintain its poles in a serviceable condition in accordance with industry standards and practices and shall replace, reinforce, or repair poles as necessary to keep all poles compliant with such standards, codes and practices, as they become actually known by the City to be unserviceable.

9.2 Licensee shall become a member of the Miss Utility system on or before the execution of this Agreement and installation of facilities. Licensee shall maintain this required membership during the life of this and subsequent agreements with the City.

9.3 Licensee shall insure that all employees, contractors or employees of contractors who work on the City's poles are properly trained in climbing and working on the City's poles safely. Licensee shall specifically and adequately warn, by reasonable means, each and every employee of the inherent dangers of making contact with the City's electrical conductors and/or electrical equipment before employees are permitted to perform work on or near the City's facilities. Licensee shall require, as a part of its process for qualifying contractors, that said contractors notify their employees of the inherent dangers of making contact with electrical facilities.

9.4 The City disclaims any warranty or representation regarding the condition and safety of the City's poles. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed or otherwise worked on by its employees, agents, contractors, or employees of contractors whether for the placement of Attachments, maintaining or rearranging Attachments, or for other reasons. Except for performing transfer work from unserviceable poles to replacement poles, Licensee shall not permit its employees or contractors to work on poles that are unserviceable until the City has corrected the

unserviceable condition or has determined that the pole is serviceable. Licensee will notify the City if any of Licensee employees, agents, contractors, or employees of contractors become aware of unserviceable poles or other condition, whether hazardous or otherwise, that requires the attention of the City for evaluation and possible correction. The City agrees that, upon written notification, it will replace any pole that has become unserviceable at the City's Cost when the City has actually determined that the pole in question is unserviceable for its intended purpose.

9.5 Permit(s) shall remain valid for any Attachment transfers to new poles when replacement or relocation is necessary.

9.6 The City may transfer Licensee's Attachment(s) at the time of the pole replacement or relocation and Licensee shall pay the City's Cost upon invoice. In the event the City does such work, except for gross negligence or willful misconduct, the City shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages. The City will not unreasonably withhold consent of a request for extension of time.

9.7 If the City elects not to transfer Licensee's Attachment(s) then the City shall notify Licensee of the need to transfer its Attachment(s) and Licensee shall do so within sixty (60) days of such notice. Licensee shall advise the City when the transfer is complete in the manner specified in the Rules. In the event of extraordinary circumstances, the City may elect to grant an extension of the sixty (60) day period to Licensee.

9.8 If the transfer is not completed by the end of the sixty (60) day period or the extended time period granted by the City, the Unauthorized Attachment Discovery Fee shall apply and the Unauthorized Attachment Daily Fee shall also apply from the date on which the sixty (60) day period or the extended time period expired and shall continue until the City receives notification that Licensee has transferred its Attachment. These fees are referenced in Exhibit A. In addition, if Licensee does not transfer its Attachments within the sixty (60) day period or the extended time period and the delay forces the City to make a special return trip to the job site to remove the old pole, then the Cost incurred by the City to return to the job site and remove the old pole will be paid by the Licensee.

9.9 During the repair and restoration of utility power as a result of a storm event or from other damages to the City's facilities, the City may re-attach downed cables and/or conductors of the Licensee in a temporary fashion to the City's poles. The City will notify the Licensee of such instances. Licensee shall provide the City with the appropriate contact information for such notification on an annual basis; or more frequently should the information change. The Licensee is required to take immediate action to permanently restore such cables and/or conductors within 30 days of the City's temporary placement. The City may invoice Licensee a per-pole storm restoration fee for each cable or conductor re-attached to each pole by the City as shown in Exhibit A.

9.10 The City will not be responsible for any line clearance or tree trimming required for any cables in the communication space which are not owned by the City.

ARTICLE 10 UNAUTHORIZED ATTACHMENTS

10.1 An Unauthorized Attachment is an Attachment placed after the Effective Date without a Permit having been issued or that is not part of the work performed pursuant to Article 5 or Article 6 or Article 7.

When discovered, the City will notify Licensee of any Unauthorized Attachment, as set forth in Exhibit B-6.

10.2 Licensee agrees to pay the City an Unauthorized Attachment Discovery Fee, per pole, in the amount stated in Exhibit A. Licensee shall, within thirty (30) days after being notified, remove such Unauthorized Attachment or will submit Application for a Permit following the provisions of Article 5.

10.3 If Licensee fails to remove the Unauthorized Attachment or to submit Application within the thirty (30) day period, then Licensee shall also pay to the City an Unauthorized Attachment Daily Fee as specified in Exhibit A, which shall continue until a Permit is issued or the Unauthorized Attachment is removed and the City has been notified in writing.

10.4 At any time after the thirty (30) day period, the City may remove the Unauthorized Attachment without liability and Licensee shall pay the City's Cost of such removal and the Unauthorized Attachment Daily Fee shall terminate as of the date of the removal.

ARTICLE 11 NON-COMPLIANT ATTACHMENTS

11.1 A Non-Compliant Attachment is a Permitted Attachment found to be in violation of the Rules, or the NESC, or is not attached in accordance with the Make Ready Engineering Plans. The City will notify Licensee of the Non-Compliant Attachment as provided in Exhibit B-7. Compliance with the NESC and the Rules will be determined with reference to the date the Attachment(s) was made as documented by available records maintained by the City and/or Licensee. Attachments made prior to the date of this Agreement will be considered compliant if they were NESC compliant when installed. Licensee will not be responsible for the cost of correcting Non-Compliant Attachment(s) resulting from "build downs" or which otherwise were or could have been created by the City.

11.2 Licensee will submit to the City its plans for corrective action, including the schedule for completion of all work (the "Correction Plan) for the City's approval, within forty-five (45) days of notification. The time period may be extended by the City if, in the City's sole discretion, Licensee is diligently pursuing development of a plan and implementation of corrective action. If Licensee does not provide the Correction Plan within the forty-five (45) day period, the City may (1) revoke the Permit and declare the Attachment(s) Unauthorized and the provisions of Article 10 apply, or (2) make the corrections and charge Licensee for all Costs reasonably incurred.

11.3 If the City rejects the Correction Plan, the City and Licensee will work together in good faith so that Licensee can develop a Correction Plan that is satisfactory to the City. If, after ninety (90) days of the City's rejection of the initial Correction Plan, the City and Licensee have not agreed on a Correction Plan, then the City may revoke the Permits for the poles involved and declare the Attachment(s) Unauthorized, invoking the provisions of Article 10 or make the corrections and charge Licensee for all Costs reasonably incurred.

11.4 Rearrangements and changes to Licensee's Attachments required by the approved Correction Plan shall be made by Licensee at Licensee's expense unless the Non-Compliant Attachment results from the attachment of other Licensees or the City.

11.5 All work described in the approved Correction Plan must be completed within ninety (90) days of the schedule or, in the event of extraordinary circumstances, the time granted by the City. If Licensee fails to complete such work within said timeframe, the City may revoke the Permit(s) and declare the

Attachment(s) as Unauthorized Attachment(s), invoking the provisions of Article 10 or make the corrections and charge Licensee for all Costs reasonably incurred.

11.6 Licensee shall notify the City of completion of such corrections using the form of Exhibit B-8 attached hereto and the City will issue a Permit for such corrected Pre-Existing Attachment(s) without Licensee making further application.

11.7 In the case of an Attachment that is not compliant with the NESC and is in the City's reasonable judgment a safety hazard, then the thirty (30) day period described in Article 10 and Article 11 may be changed to seven (7) days.

11.8 No act or failure to act by the City with regard to any Attachment that does not conform to the NESC or other requirements of this Agreement shall be deemed as ratification of the Non-Compliant Attachment.

ARTICLE 12 ATTACHMENTS EXISTING AT EFFECTIVE DATE

12.1 The City requires a formal written Permit for any and all Attachments. Any Attachment that existed prior to the Effective Date ("Pre-Existing Attachment") of this Agreement for which a Permit exists will be considered an Authorized Attachment. Licensee will be given an opportunity to produce such Permits and will receive the cooperation of the City with respect to documentation in the City's possession.

12.2 The City may perform an NESC compliance audit of Licensee's Attachments at Licensee's expense.

12.3 Attachments having Permit. Pre-Existing Attachment(s) found to be Non-Compliant with the NESC will require a Correction Plan from the Licensee to correct the compliance problem. Licensee is required to submit such plan within forty-five (45) days of notification of discovery. Licensee shall make all rearrangements, modifications and changes necessary to correct the Non-Compliant Attachment consistent with the provisions of Article 11.

12.4 Attachments without Permit. For each Pre-Existing Attachment without Permit found to be Non-Compliant with the NESC, Licensee shall make application for Permit and pay the Engineering Fee, as shown in Exhibit A, within sixty (60) days of written notice from the City to Licensee of such non-compliance and the provisions of Article 5 apply. Should Licensee fail to make application within the sixty (60) day period required, then the City may declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply.

ARTICLE 13 ATTACHMENTS NOT REMOVED AT END OF TERM

13.1 Licensee shall not make additional Attachments to the City's poles after the Agreement has expired or has been terminated in accordance with the terms and conditions contained herein. Licensee shall remove its existing Attachments from the poles of the City within a mutually agreed upon schedule. Attachments made after the expiration or termination of this Agreement will be considered Unauthorized Attachments provided that the City and Licensee are not engaged in good faith negotiations to extend and/or renew the Agreement.

**ARTICLE 14
RECOVERY OF SPACE BY OWNER**

14.1 The City may, at any time, reasonably require the space occupied by Licensee's Attachments on the City's poles for core business purposes. Licensee shall rearrange its Attachments to other available space on such poles at Licensee's expense or, at Licensee's option, remove such Attachments within forty-five (45) days after receipt of notification from the City of the City's need for such space. If the City requires the space in order to provide service to one of its customers, the forty-five (45) day period is changed to ten (10) days. If the work is not completed within the specified time period, the City may declare the Attachment as an Unauthorized Attachment, invoking the provisions of Article 10 or rearrange or remove the Attachment at Licensee's expense. Costs of replacing existing poles or placing new poles to accommodate the City's business needs shall be borne by the City.

**ARTICLE 15
ABANDONMENT OF POLES**

15.1 The City may abandon pole(s) upon thirty (30) days' notice to Licensee. Licensee must remove or transfer all Attachments from abandoned poles within the same thirty (30) days unless granted additional time by the City. The City will not unreasonably withhold consent of such request for additional time. If the City has no Attachment(s) on said poles and Licensee has not removed or transferred its Attachment(s) therefrom, the City may (1) revoke Licensee's Permit for that pole and declare the Attachment to be Unauthorized or (2) remove Licensee's Attachment(s) at Licensee's expense, with no liability falling on the City except in the case of gross negligence or willful misconduct.

15.2 Licensee may, at any time, discontinue use of a pole by removing therefrom any and all Attachments it may have thereon. Billing shall cease when the City has been notified in writing in accordance with the form provided as Exhibit B-9 of the Rules.

15.3 Following such removal, no Attachment shall again be made to such pole until Licensee submits a Permit Application and receives a new Permit as provided in Article 5 of this Agreement and the Rules.

**ARTICLE 16
RIGHTS OF OTHER PARTIES**

16.1 Nothing herein shall be construed to limit the right of the City, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the poles covered by this Agreement. Rights granted to third parties shall not infringe upon the rights of the Licensee in this Agreement.

16.2 If Licensee's new Attachment requires rearranging any other user's Attachment on the City's pole(s), Licensee shall give notice thereof to such user prior to making its own Attachment and shall cooperate with the other user in the rearrangement of facilities. Licensee hereby acknowledges that it shall bear the expense of necessary rearrangement of Attachment(s), provided such Costs are reasonable. Licensee does not have the right to rearrange the facilities of other users except with written permission from such user. Any Attachment privileges granted to Licensee hereunder shall be subject to any rights or privileges heretofore granted by the City to any user previously attaching.

16.3 If other users require the rearrangement of Licensee's Attachments in order to attach their facilities under the authority of Make Ready Construction plans approved by the City for their work, Licensee agrees to reasonably cooperate with such user in scheduling and performing the work and the other user shall bear the expense of such rearrangement, provided that any Cost charged to the other user shall be reasonable and shall be no more than Licensee's actual cost of doing the work.

ARTICLE 17 ASSIGNMENT OF RIGHTS

17.1 Licensee shall not permit any other user to use its Attachment(s) and may not sublicense any of its rights under this Agreement to any other user without the notice disclosure of such user and prior written approval of the City.

17.2 Licensee shall not assign or otherwise dispose of this Agreement, or of any of its rights or interests hereunder without the prior written approval of the City. Provided, however, Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by, or under common control with Licensee without the consent of the City, but upon thirty (30) days prior written Notice to the City detailing the assignment including the relationship. No such permitted assignment shall relieve Licensee, the permitted assignee, or any other party liable to the City from any obligations, duties, responsibilities, or liabilities to the City under this Agreement and the use is in strict compliance with Paragraph 1.1. This Agreement shall be binding upon the successors and/or assigns of both parties.

17.3 Nothing contained herein is intended to interfere with Licensee's leasing fibers or capacity in its facilities, if such use is in strict compliance with the provisions of Paragraph 1.1. The renting or leasing of fibers or capacity in its facilities specifically does not give Licensee's customer the right to any kind of access to the City's poles and Licensee's customer is specifically prohibited from climbing or otherwise working on the facilities that are attached to the City's poles unless Licensee's customer is working as a contractor for Licensee under the terms of a written agreement.

ARTICLE 18 WAIVER OF TERMS OR CONDITIONS

18.1 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement including the Rules shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 19 INSURANCE

19.1 Licensee shall obtain and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

A. Workers' compensation insurance covering all employees of Licensee. Contractors, employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Licensee hereunder, shall be required by Licensee to take out and maintain such insurance, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation

laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

B. Public liability and property damage liability insurance covering all operations under this Agreement limits for bodily injury or death not less than \$1,000,000 for one person and \$500,000 for each accident for property damage, not less than \$2,000,000 for each accident and \$2,000,000 aggregate for accidents during the policy period.

C. Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired; public liability limits of not less than \$1,000,000 for one person and \$2,000,000 for each accident; property damage limit of \$1,000,000 for each accident.

19.2 The policies of insurance shall be in such form and issued by such insurer as shall meet the reasonable satisfaction of the City.

19.3 Licensee shall furnish to the City, at least annually or at the request of owner, a certificate evidencing compliance with the foregoing requirements. This certificate will list the City, its appointed and elected officials, officers, servants, agents and employees as additional insureds and will provide that in the event of cancellation of any of the said policies of insurance, the insuring company shall give all parties named as insureds thirty (30) days prior notice of such cancellation.

19.4 To the extent allowed by applicable law, Licensee shall not be prohibited from self-insuring and will provide the City with proof of self-insurance.

ARTICLE 20 SERVICE OF NOTICES

20.1 It is expressly agreed and understood between the City and Licensee that any Notice required to be given to either the City or Licensee pursuant to this Agreement shall be in writing and sent by US Mail, or by recognized national overnight delivery service and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the US Postal Service or delivery service as the case may be.

20.2 Notices shall be sent addressed as follows:

If to Licensee: Natasha Ernst
 VP and Assistant General Counsel
 Lighttower Fiber Networks
 300 Meridian Centre
 Rochester, NY 14618

With copy to: Rebecca Hussey
 Associate General Counsel
 Lighttower Fiber Networks
 3503 Sunset Dr.
 Columbus, OH 43221

If to the City: City of Seaford
 PO Box 1100
 Seaford, DE 19973
 Attn: City Manager

or to such other address as either party may designate by Notice to the other party from time to time in accordance with the terms of this Article.

ARTICLE 21 SUPPLEMENTAL AGREEMENTS

21.1 Neither the City nor Licensee is under any obligation, express or implied, to amend, supplement or otherwise change or modify any of the provisions of this Agreement. However, if the City agrees to amend, supplement or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Without any such duly executed, written documentation of any amendment, supplement, change or modification, any oral discussions relating thereto shall not be binding upon the City or Licensee.

21.2 Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE 22 DEFAULT

22.1 The following shall be an event of Default:

(1) If Licensee defaults in the payment of any fees or other sums due and payable to the City under this Agreement and such default continues for a period of fifteen (15) days after Notice of such default has been given by the City to Licensee or,

(2) With regard to Licensee in a matter that does not involve safety, and with regard to the City in any matter, if either party shall violate or default in the performance of any obligations contained herein (other than the payment of fees and other sums) for a period of thirty (30) days after Notice of such violation or default has been given by the non-defaulting party to such defaulting party or, in the case of a default not curable within thirty (30) days, if such defaulting party shall fail to commence to cure the same within thirty (30) days and proceed diligently until corrected, or,

(3) In a matter that does involve safety, if Licensee shall violate or default in the performance of any obligations contained herein and fails to commence to cure the same immediately upon Notice and thereafter proceed to pursue diligently until corrected or (ii) if the correction takes longer than thirty (30) days.

22.2 In the event of Default, the City may at any time thereafter for so long as the default condition exists upon Notice of Default do any one or all of the following: (1) Declare this Agreement to be terminated in its entirety; (2) Terminate the Permits covering the pole or poles in respect to which such default or non-compliance shall have occurred; (3) Refuse to issue any more Permits; or, (4) Stop all

Make Ready Construction Work and retain any monies that have been paid, or any combination of these remedies and those set out herein and in Section 22.3.

22.3 Whenever the City finds that Licensee is allegedly in Default of this Agreement, a written notice shall be given to Licensee. The written notice shall describe in reasonable detail the alleged Default so as to afford the Licensee an opportunity to remedy the violation. Licensee shall have thirty (30) days subsequent to receipt of the notice in which to correct the Default before the City may exercise any of the above-referenced remedies.

22.4 If Licensee defaults in the performance of any work, which it is obligated to do under this Agreement, the City may elect to do such work, and Licensee shall reimburse the City of the City's reasonable Cost. If the City elects to do such work, except for gross negligence or willful misconduct, the City shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages.

22.5 The remedies set forth in this Article are cumulative and in addition to any and all other remedies the City may have at law or in equity.

ARTICLE 23 INDEMNIFICATION

23.1 Licensee shall indemnify, defend and hold harmless the City, its elected and appointed officials, agents and employees against any and all claims for liability, injury, loss, cost, damage, fine or expense arising in whole or in part from, incident to, caused by, or resulting from the installation, presence, operation, use, maintenance or removal of Licensee's Attachments on Poles (each a "Claim"), as long as such Claim is directly caused by the gross negligence or by the willful misconduct of Licensee or Licensee's agents or Contractors relating to said Poles. The obligation to indemnify, defend and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, liabilities, damages, penalties, attorneys' fees, expert fees, courts costs and all other costs and expenses of litigation.

23.2 No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of the provisions of the Delaware Tort Claims Act or any other law limiting municipal liability.

23.3 The City shall indemnify, defend and hold harmless Licensee, its directors and employees against any and all claims for liability, injury, loss, cost, damage, fine or expense arising in whole or in part from, incident to, caused by, or resulting from the gross negligence or willful misconduct of the City or the City's agents or Contractors relating to said Poles. The obligation to indemnify, defend and hold the Licensee harmless shall include, but not be limited to, the obligation to pay judgments, liabilities, damages, penalties, attorneys' fees, expert fees, courts costs and all other costs and expenses of litigation.

ARTICLE 24 FORCE MAJEURE

24.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement resulting from Force Majeure, defined herein as acts of God, acts of civil or military authority, epidemics, war, acts of public enemies, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligation(s) under this Agreement, the due date for the performance of the

original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying party shall perform its obligations at a performance level no less than that which it uses for its own operations.

ARTICLE 25 OWNER'S COST

25.1 "The City's Cost" and "Cost" when used in this Agreement shall include reasonable material and labor costs, the cost of outside contractors and consultants, equipment, engineering, permits, right-of-way, land clearing, insurance and overhead. The City intends that the costs of outside contractors and consultants shall be at fair market value.

ARTICLE 26 MISCELLANEOUS PROVISIONS

26.1 Neither party, by mere lapse of time, shall be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

26.2 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be illegal, void or unenforceable, such provisions shall be deemed to be severed from the remaining provisions of this Agreement and the remaining provisions of the Agreement shall remain in full force and effect.

26.3 Nothing contained in this document, or in any amendment or supplement thereto or inferable herefrom, shall be deemed or constructed to (1) make Licensee the agent, servant, employee, joint venturer, associate, or partner of the City, or (2) create or establish any partnership, joint venture, agency relationship or other affiliation or association between the City and Licensee. The parties hereto are and shall remain independent contractors. Neither party shall have the right to obligate or bind the other party in any manner to any third party. It is understood that this document enables only a license in favor of Licensee strictly in accordance with its written provisions.

26.4 Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

26.5 This Agreement is deemed executed in and shall be construed under the laws of the State of Delaware.

26.6 Within this Agreement, words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only. They do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein", "hereof", "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire Agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

WITNESS our hands and official seals, this 30th day of November, 2016.

CITY OF SEAFORD

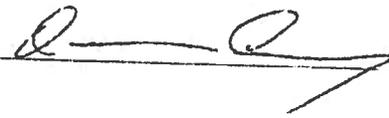
By: _____

Print Name:

Print Title:

Date:

FIBER TECHNOLOGIES NETWORKS, L.L.C.

By:  _____

Print Name:

OWEN DENNEY

Print Title:

SUP - Operations

Date:

11-30-16

**EXHIBIT A
SCHEDULE OF FEES**

Application Fee: for new Attachments	\$100.00	Per Attachment per pole.
NESC Audit/Inspection Fee:	\$60.00	Per pole.
Make Ready Engineering Fee:	TBD	To be provided for Each Permit request based on level of effort.

Attachment Fee per Pole Per Year

Date

Year 2016	\$21.00
Year 2017	\$22.00
Year 2018	\$23.00
Year 2019	\$24.00

Other Fees

Pole Transfer Fee	\$100 Per Pole
Unauthorized Attachment Discovery Fee	\$150.00 Per Pole
Unauthorized Attachment Daily Fee	\$5.00 Per Pole
Storm Restoration Fee	\$100.00 Per Pole

EXHIBIT B

RULES AND PRACTICES OF THE CITY OF SEAFORD FOR ATTACHMENTS

This Exhibit provides implementation details in connection with the process for Licensee's applying for and ultimately receiving a Permit to attach to the City's pole(s). These procedures are subject to modification by the City from time to time.

A. Process for Permitting Attachments (Make Ready)

1. Application for Permit shall be made on the Permit Application attached as Exhibit B-1. Licensee shall also indicate the poles to which it desires to attach by including a drawing made on system maps of the City which Licensee may purchase from the City at reasonable cost.
2. Licensee's Construction Plans shall contain full specifications of the facilities to be installed including:
 - a) Size and type of messenger including weight/ft and design tension.
 - b) Size and type Attachments including weight/ft and diameter.
 - c) Specification drawings depicting type of bolt Attachments and bolt patterns.
 - d) Specification drawings of the installation rating and type of guy and anchor assemblies proposed to be used by Licensee.
 - e) Proposed minimum clearance dimensions of all cable crossings of all roads, parking lots or similar vehicular throughways.
 - f) Sag and tension tables for all installed cable span segments.
 - g) Locations of proposed storage loops.
3. The City shall respond to Licensee within the timeframe provided in Article 5 by sending Response to Application, attached hereto as the lower portion of Exhibit B-1.
4. The Make Ready Construction Cost Estimate and Invoice will be sent to Licensee using the form attached hereto as Exhibit B-2. When the City receives payment, the Make Ready Construction Schedule will be sent to Licensee using the lower portion of Exhibit B-2.
5. When the Make Ready Construction Work is complete or if an inspection reveals no work is needed, the City shall send Licensee Notification of Consent to Attach and Request for Certification using the form attached hereto as Exhibit B-3.
6. Licensee's Certificate of Compliance shall be the lower portion of the form attached hereto as Exhibit B-3.
7. The Permit for Attachment shall be the form attached hereto as Exhibit B-4.

B. Secondary Poles

In connection with Article 6 of the Agreement, Licensee shall use the Disclosure of Secondary Pole Attachments form attached hereto as Exhibit B-5 for the notification.

C. Procedures for Notification of Pole Transfers

The City will notify Licensee in the event of a pole transfer. Licensee shall provide the City with the appropriate contact information for such notification on an annual basis; or more frequently should the information change. Licensee is required to take immediate action to relocate and reattach any cables and/or conductors within 30 days of the City's notification. The City may invoice Licensee a per-pole temporary attachment fee for each cable or conductor re-attached to each pole by the City as shown in Exhibit A.

D. Supplemental Rules Regarding Licensee's Attachments

1. All Licensee's Attachments to poles shall be installed in a manner to ensure compliance with the requirements of the NESC in effect at the time of the installation as clarified or exceeded by the City's specifications below:
 - (a) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 15.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over all areas which are subject to truck traffic. Truck traffic is defined as any mobile unit exceeding a total height of eight feet. These areas would allow and be susceptible to truck traffic under the line because of a lack of any type of physical obstruction, even though truck traffic under the line would not be a normal occurrence. This requirement includes, but is not limited to, roads, streets, driveways, unpaved vehicular passages, parking lots, open areas where it would be possible for a truck to pass under the line, etc.
 - (b) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 13.0 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that would not normally be susceptible to truck traffic. These areas are areas that are accessible by truck traffic, but the access is not easy or normally anticipated because of some physical obstruction, such as fences, hillsides, ditches, embankments, maintained lawns, wood lines, hedges, etc. These areas do include the ground under lines that would be accessible by the City's equipment for the purpose of line maintenance, restoration work, and right-of-way maintenance.
 - (c) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 9.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that are impossible for a vehicle to travel under the line and only a person on foot can walk under the line. These areas are defined as having permanent impediments that would prohibit the passage of a vehicle, including the City's equipment.
 - (d) All Attachments installed before the Effective Date shall have at least thirty (30) inches vertical clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment which is energized at 12,470 volts or less from the neutral. Clearances not specified in this rule shall be determined by reference to the NESC. If Licensee has made any Attachments which would otherwise have been in compliance with the requirement above, and after which the City has made any enhancements or improvements to the City's system that have placed such Attachments in non-compliance with this requirement, any steps necessary to bring such Attachments back into compliance shall be the responsibility of the City at its sole expense.

(e) All new Secondary Pole Attachments (less than 600 volts) shall have at least forty (40) inches vertical clearance to the top of all conduit or underground riser guard coverings.

(f) All new Primary Pole Attachments shall have at least twelve (12) inches vertical clearance to the top of all conduit or underground riser guard coverings.

2. It shall be the responsibility of Licensee to attach at proper height, to achieve proper clearance, and to construct their facilities in accordance with the Agreement. If Licensee finds that it cannot make an Attachment on a pole and be in compliance with the Agreement then it shall be immediately brought to the attention of the City in writing and by telephone so the pole can be re-surveyed and appropriate measures taken to make it ready for attachment.

3. All Attachments, cabinets and enclosures, that are separated by a distance of six (6) feet or less, must be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.

Bonding must be provided between all above ground metallic power and communications apparatus (pedestals, terminals, apparatus cases, transformer cases, etc.) that are separated by a distance of six (6) feet or less.

4. No bolt used by Licensee to attach its facilities shall extend or project more than two (2) inches beyond its nut.

5. All Attachments or facilities of Licensee shall have at least two (2) inches clearance from unbonded hardware.

6. The location of all power supplies and connecting wires and cables on the City's poles shall be approved in writing by the City. No Attachments shall be made without prior approval of the City. No power supply service connections shall be made by the City until Licensee has completed installation of an approved fused service disconnect switch or circuit breaker, and, if required, following an electrical inspection from appropriate government officials. An application for service must be made by Licensee to the City before service is connected.

7. All communications protective devices will be designed and installed with operating limits sufficient for the voltage and current which maybe impressed on the communications plant in the event of a contact with the supply conductors.

8. All anchors and guys shall be installed and in effect prior to the installation of any of Licensee's messenger wires or cables. Licensee's guylead must be of sufficient length and strength to accommodate loads applied by the Attachments. No anchor shall be placed within five (5) feet of any existing anchor unless approved in writing by the City. Guy markers shall be installed on every guy attached to the City's pole.

9. Licensee shall not attach any down guy to the City's anchors or to other attaching user's anchors without prior written permission from the City or such other user as the case may be.

10. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of "through" bolts. Such bolts placed in a "bucking" position shall have at least three (3) inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling poles with such Attachments.
11. The City shall perform all Make Ready Work required for the preparation of the City's poles for proper attachment by Licensee.
12. All Attachments installed after the Effective Date shall have at least forty (40) inches vertical clearance under the effectively grounded neutral of the City at supports. The City may increase the forty (40) inch clearance if, in the City's judgment, the City may require additional space on the pole for its future service requirements.
13. The City requires strand maps to be furnished which show all Attachment poles (excluding secondary and service poles for individual service drops except when such poles are depicted on maps prepared by Licensee in the ordinary course of its business.)

E. Removing Attachments from the City's Poles

Prior to Licensee's removing Attachments from the City's poles, Licensee shall notify the City by sending the Notice of Discontinuance of Attachment to Poles form attached as Exhibit B-9.

F. Plant Conditions Requiring Attention:

If Licensee becomes aware of an unsafe plant condition or other condition that requires the attention of the City, then Licensee shall as soon as possible provide written notice to the City.

EXHIBIT B-1

PERMIT APPLICATION

TO: City of Seaford
414 High Street
P.O. Box 1100
Seaford, DE 19973

ATTN: City Building Official

DATE:

LICENSEE'S TRACKING NUMBER: _____

This is to request a Permit to attach to certain of your poles under the terms and conditions of our License Agreement dated _____.

The poles, including proposed construction by the City, if necessary, for which permission is requested are listed by pole number on the attached and further identified on the attached map, which also bears the above date and Tracking Number.

(For identification of Attachments to be installed, please include on your list the City's pole number, size and type of strand, size and type of cable, and the number of existing cables and strands)

This Company understands the need to obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for Licensee's proposed service and to obtain all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles and will do so prior to providing any service that involves your poles.

Signed: _____

Company: _____

Name: _____

Title: _____

Tel: _____

Email: _____

✂ _____ ✂

RESPONSE TO APPLICATION

TO:

DATE:

LICENSEE'S TRACKING NUMBER: _____

This is to advise you that the above request for Permitting Attachments to certain poles of this system is approved for the poles shown on the attached, subject to the terms of the Agreement.

The Make Ready Engineering Fee is \$ _____. Please remit this amount so that Make Ready Engineering Plans can be prepared. A schedule for completion of the Make Ready Engineering Plans (not to exceed ninety (90) days for applications involving 30 or fewer poles) is attached.

Name: _____
City of Seaford

Signed: _____

EXHIBIT B-2

**MAKE READY CONSTRUCTION COST
ESTIMATE AND INVOICE**

TO:

DATE:

JOB NUMBER (Tracking Number): _____

In connection with the above referenced work request, attached is the Make Ready Construction Cost Estimate for attaching Licensee's facilities to the City's poles pursuant to the plans submitted by Licensee and reviewed by the City.

Please remit payment for the Cost estimate in the amount of \$_____ so that the Make Ready Construction Work can be scheduled for the poles requiring make ready work.

No. of poles: _____ Location: _____

Name: _____ Signed: _____

City of Seaford

Title: _____

Tel: _____

✂ _____ ✂

MAKE READY CONSTRUCTION SCHEDULE

TO:

DATE:

JOB NUMBER (Tracking Number): _____

It is estimated that the completion of the Make Ready Construction Work will require _____ weeks beginning on the _____ day of _____, 20____.

Name: _____ Signed: _____

City of Seaford

Title: _____

Tel: _____

EXHIBIT B-3

**NOTIFICATION OF CONSENT TO ATTACH
AND REQUEST FOR CERTIFICATION**

TO:

DATE:

The Make Ready Construction Work for the approved poles is complete. Attachments in connection with Job Number _____ may be made within 120 days of the date above. Annual rental for the poles will begin on _____ (date).

A Permit for these Attachments will be issued upon receipt of the Certification below.

Name: _____ Signed: _____

City of Seaford

Title: _____

Tel: _____

✂-----✂

CERTIFICATE OF COMPLIANCE

TO: City of Seaford
414 High Street
PO Box 1100
Seaford, DE 1993

DATE:

ATTN: Billing Department

JOB NUMBER: _____

-OR-

LICENSEE: _____

TRACKING NUMBER: _____

I HEREBY CERTIFY that the Attachments made under the above Job/Tracking Number are of sound engineering design and fully comply with the NESC, Article 3 of the Agreement and the Rules and were constructed substantially as provided in the Make Ready Engineering Plans.

Note: If this Certifies only a portion of the poles under this Request Number, please include a list of the poles to which this Certificate applies and the number of Attachments on each pole being certified.

BY: _____ Title: _____

(Signature)

Print Name: _____

EXHIBIT B-5

**DISCLOSURE OF SECONDARY POLE ATTACHMENTS
AND REQUEST FOR PERMIT**

TO: City of Seaford
414 High Street
PO Box 1100
Seaford, DE 1993

DATE:

ATTN: Billing Department

LICENSEE: _____

Licensee has placed Attachments on the following Secondary Poles and **CERTIFIES** that all requirements of the Agreement have been met: (If no Attachments were placed during the month, indicate by entering "None" under the Address of Customer Served.)

Address & Meter No. of Customer Served	Map No. of the City's Pole to which Attachment is Being Made OR Map No. of the Primary Pole from which Line Extends	Date Attachment Made

SUBMITTED BY: _____
Signature

APPROVED BY: _____
Signature

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B-8

CERTIFICATE OF CORRECTION

(To be made within thirty (30) days after correction of non-compliance)

TO: City of Seaford
414 High Street
P.O. Box 1100
Seaford, DE 19973

ATTN: Superintendent of Electric

DATE:

LICENSEE: _____

I HEREBY CERTIFY that Licensee's Attachments to the poles of the City of Seaford, Circuit No. _____ and Section No. _____, which were found to be Non-Compliant, have been corrected.

These Attachments were corrected according to sound engineering design principals and fully comply with the NESC.

All corrections were constructed substantially as provided in the proposed correction plan presented by Licensee.

SIGNATURE: _____

Name: _____

Title: _____

Tel: _____

N.B. 2
11-22-16
O.B. 1
12-13-16

ORDINANCE #2016-02

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEAFORD, an ordinance to amend Chapter 6, of the Municipal Code of Seaford, Delaware relating to "Electricity", in the manner following, to wit:

Chapter 6 of the Municipal Code of Seaford, Delaware is hereby amended by striking out all of Article 22 "Renewable Energy" and substituting in lieu thereof a new Article 22 "Renewable Energy" to read as shown on the following pages.

11/22/2016	First Reading Date
	Second Reading Date & Adoption
	Advertisement Date
	Effective Date of Ordinance

CITY OF SEAFORD

By: _____
Mayor

Witness: _____

Attest: _____
City Manager

ARTICLE 22 – RENEWABLE ENERGY

[Amended on 01/10/2012 by Ordinance #2011-04]

[Amended on 06/24/2014 by Ordinance #2014-01]

[Amended on ___/___/_____ by Ordinance #2016-02]

§ 6.22.1 Green Energy Program.

- A. In order to fulfill the requirements of the State's renewable energy portfolio standards; a Green Energy Fund charge was established. The money collected will be used for the development, promotion and support of energy management programs.
- B. These costs can be found in the "City of Seaford Schedule of Fees and Rates".

§ 6.22.2 Net Energy Metering policy; purpose.

- A. The Net Metering policy is intended to provide a program of net metering for electric utility customers with small-scale, electric generating facilities utilizing approved renewable fuels.
- B. It is to encourage private investment in renewable energy sources, provide customers with options to reduce demand for utility provided power, increase energy independence and security, enhance the continued diversification of energy resources and abide with the provisions of the Delaware Code, Title 26, Chapter 10
- C. This policy addresses Net Energy Metering (NEM), Aggregated Net Energy Metering (ANEM), and Community Energy Facility Metering (CEFM) methodologies.

§ 6.22.3 Net Metering.

- A. Net Metering measures the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator over the applicable billing period which is intended primarily to offset part or all of the customer-generator's requirements for electricity.
- B. Net energy meters are used to measure the flow of electricity in either direction, automatically "netting" the two readings.

§ 6.22.4 Availability of Net Energy Metering (NEM)

- A. Net Energy Metering is available to customers who own and operate, lease and operate, or contract with an approved ~~third party~~ provider that owns and operates an electric generation facility on the customer's premises. A Purchase Power Agreement (PPA), or any other form of agreement that constitutes the sale of electric energy to a customer within the City of Seaford service territory is prohibited. Leases and/or agreements shall be provided to the City for verification of this requirement. Approval of the agreement/contract form is at the sole discretion of the City of Seaford.
- B. The capacity of the customer's system must not be more than 25 kilowatts (AC) for residential customers, not more than 1 megawatt (AC) for non-residential customers.
- C. The primary source of fuel must be a City approved source of renewable energy such as Photovoltaic (solar), wind, hydro, a fuel cell, or gas from the anaerobic digestion of organic material.

- D. This policy is applicable to generation interconnected and operated in parallel with The City of Seaford's transmission and/or distribution facilities.
- E. Any customer who elects to participate in this program must apply by completing the NEM Service Application Form at least ninety (90) days in advance of the proposed activation date.
- F. Approval of the application by the City of Seaford must be granted prior to activation of the electric generation facility.
- G. Customer-generator system must be designed to produce no more than ~~110~~100% of the Customer's expected individual meter electrical consumption, calculated on the average of the two previous 12 month periods of actual electrical usage at the time of installation of the energy generating equipment and subject to the capacity limits specified above. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at ~~110~~100% of the consumption of units of similar size and characteristics at the time of installation of the energy generating equipment and subject to the same capacity limits specified above.
 - 1. Should the annual kWh output of the generator exceed the 100% limit greater than 10% as calculated in Paragraph G above during any calendar year of operation, the facility shall be deemed non-compliant and the facility owner or operator shall be required to take any and all corrective actions necessary to bring the facility into compliance.
 - 2. If for any reason the City believes the annual electrical consumption of the customer has been reduced to a level such that kWh credits accumulated at the end of the year will exceed 10% of the average annual consumption as calculated in Paragraph G above, the City may require the generator to be disconnected until the cause of the excessive kWh credit accumulation can be determined and corrected. The reasons for such actions to be taken would include but not be limited to: a change in building occupancy, whether seasonal or permanent; building vacancy (owner or tenant moves out); or significant energy efficiency improvements within the building.
- H. If the total generating capacity of all Customer-generation using net metering systems served by the City exceeds five percent (5%) of the capacity necessary to meet the electric utility's aggregated Customer monthly peak demand for a particular calendar year, the City may elect not to provide net metering services to any additional Customer-generators. Should net metering services be closed for these reasons, the City will periodically re-evaluate the City's peak demand vs. the total customer generation using net metering in order to determine whether net metering services can be reopened. The re-evaluation period shall not exceed 12 months but may be shorter. Customers may submit the necessary NEM Service Application as described above and it will be maintained on-file with the City of Seaford for a period of two years. Should re-evaluation of the City's peak demand permit the connection of additional net metering installations; the City will provide net metering services on a first come first serve basis of the applications on-file with the City.

§ 6.22.5 Availability of Aggregated Net Energy Metering (ANEM).

- A. Aggregated Net Energy metering is available to customers with multiple meters who own and operate, lease and operate, or contract with a third party that owns and operates an electric generation facility on the customer's premises.
- B. The capacity of a residential customer's system must be not more than 25 kilowatts (AC) per City meter, for non-residential customers not more than 1 megawatt (AC) per City meter. When the Customer's multiple meters include multiple service classifications, the maximum facility capacity will be the cumulative total of these meter capacity limits subject to the limit described in Section 6.22.5.G below
- C. The primary source of fuel must be a City approved source of renewable energy such as Photovoltaic (solar), wind, hydro, a fuel cell, or gas from the anaerobic digestion of organic material.
- D. This policy is applicable to generation interconnected and operated in parallel with The City of Seaford's transmission and/or distribution facilities.
- E. Any customer who elects to participate in this program must apply by completing the Municipality Generator Interconnection Application Form at least ninety (90) days in advance of the proposed activation date.
- F. Approval of the application by the City of Seaford must be granted prior to activation of the electric generation facility.
- G. Customer-generator system must be designed to produce no more than ~~110~~100% of the Host Customer's expected aggregated meters electrical consumption, calculated on the average of the two previous 12 month periods of actual electrical usage at the time of installation of the energy generating equipment and subject to the capacity limits specified above. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at ~~110~~100% of the consumption of units of similar size and characteristics at the time of installation of the energy generating equipment and subject to the same capacity limits specified above.
 - 1. Should the annual kWh output of the generator system exceed the 100% limit greater than 10% as calculated in Paragraph G above during any calendar year of operation, the facility shall be deemed non-compliant and the facility owner or operator shall be required to take any and all corrective actions necessary to bring the facility into compliance.
 - 2. If for any reason the City believes the annual electrical consumption of the aggregated loads has been reduced to a level such that kWh credits accumulated at the end of the year will exceed 10% of the average annual consumption as calculated in Paragraph G above, the City may require the generator to be disconnected until the cause of the excessive kWh credit accumulation can be determined and corrected. The reasons for such actions to be taken would include but not be limited to: a change in building occupancy, whether seasonal or permanent; building vacancy (owner or tenant moves out); or significant energy efficiency improvements within the building.
- H. Customer-generator system is owned by one Customer that is the same person or legal entity which has multiple meters under the same account or different accounts, regardless of the physical location and rate class. The Customer may aggregate the

meters for the purpose of net metering regardless of which individual meter receives energy from a Customer Generator Facility provided that:

1. City of Seaford shall allow meter aggregation for Customer accounts of which City of Seaford provides electric supply service; and
 2. The Customer-Generator Facility complies with Sections 6.22.5.A through 6.22.5.H above; and
 3. At least ninety (90) days before a Customer can participate under this tariff, the Customer shall file an ANEM Service Application Form with the City and include the following information:
 - (a) a list of individual meters the Customer seeks to aggregate, identified by name, address, rate schedule, and account number, and ranked according to the order in which the Customer desires to apply credit; and
 - (b) a description of the Customer-Generator Facility, including the facility's location, capacity, and fuel type or generating technology,
 4. The Customer may change its list of aggregated meters no more than once annually by providing ninety days' written notice; and
 - (a) Credit shall be applied first to the meter through which the Customer-Generator Facility supplies electricity, then through the remaining meters for the Customer's accounts according to the rank order as specified in accordance with Section H.3(a); and
 - (b) Credit in kilowatt-hours (kWh) shall be valued according to Section 6.22.11 and each account's rate schedule as specified in Section H.3(a); and
 - (c) City of Seaford may require that a Customer's aggregated meters be read on the same billing cycle.
- I. If the total generating capacity of all Customer-generation using net metering systems served by the City exceeds five percent (5%) of the capacity necessary to meet the electric utility's aggregated Customer monthly peak demand for a particular calendar year, the City may elect not to provide net metering services to any additional Customer-generators. Should net metering services be closed for these reasons, the City will periodically re-evaluate the City's peak demand vs. the total customer generation using net metering in order to determine whether net metering services can be reopened. The re-evaluation period shall not exceed 12 months but may be shorter. Customers may submit the necessary ANEM Service Application as described above and it will be maintained on-file with the City of Seaford for a period of two years. Should re-evaluation of the City's peak demand permit the connection of additional net metering connections; the City will allow them in a first come first serve basis of the applications on-file with the City.

§ 6.22.6 Availability of Community Energy Facility Metering (CEFM)

- A. A Community Energy Facility (CEF) is an energy generating facility located in the City of Seaford service territory that has multiple owners or customers who share the energy production of the Community Energy Facility, which is designed as a stand-

alone facility with its own meter, or behind the meter of a subscriber that is an owner or customer designated as a 'Host'.

- B.** Community Energy Facility metering is available to any customer who becomes one of multiple owners or customers, as the Host or Subscriber, who share the energy production of a Community Energy Facility with meters served under Service Classifications "R", "C" or "I". This metering is available to any Community Energy Facility that:
1. For residential customers which have a capacity of not more than 25 kilowatts (AC) per City meter, for non-residential customers, a capacity of not more than 1 megawatt (AC) per City meter, and for farm customers, a capacity that will not exceed 100 kilowatts (AC) per City meter unless granted a waiver in accordance with Delaware Code – Title 26, Section 1014(d)(1)b;
 2. The primary source of fuel is a City approved source of renewable energy such as Photovoltaic (solar), wind, hydro, a fuel cell, or gas from the anaerobic digestion of organic material.
 3. Is interconnected and operated in parallel with the City's transmission and/or distribution facilities;
 4. A Community Energy Facility is designed to produce no more than ~~110~~100% of the community's aggregate electrical consumption of its individual Host and Subscriber(s), calculated on the average of the two previous 12 month periods of actual electrical usage. For new building construction or in instances where less than two previous 12 month periods of actual usage is available, electrical consumption will be estimated at ~~110~~100% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment;
 - (a) Should the annual kWh output of the facility exceed the 100% limit by greater than 10% as calculated in Paragraph 4 above during any calendar year of operation, the facility shall be deemed non-compliant and the facility owner or operator shall be required to take any and all corrective actions necessary to bring the facility into compliance.
 - (b) If for any reason the City believes the annual electrical consumption of the aggregated loads has been reduced to a level such that the total kWh credits will exceed 10% of the average annual consumption as calculated in Paragraph 4 above, the City may require the generator to be disconnected until the cause of the excessive kWh credit accumulation can be determined and corrected. The reasons for such actions to be taken would include but not be limited to: a change in building occupancy, whether seasonal or permanent; building vacancy (owner or tenant moves out); or significant energy efficiency improvements within the building.
 5. If the total generating capacity of all Customer-generation using net metering systems served by ~~an electric utility~~ the City exceeds five percent (5%) of the capacity necessary to meet the electric ~~Supplier's~~ utility's aggregated Customer monthly peak demand for a particular calendar year, the ~~Electric Supplier~~ City may elect not to provide net metering services to any additional ~~customers~~ Customer-generators; Should net metering services be closed for these reasons, the City will periodically re-evaluate the City's peak demand vs. the total customer

generation using net metering in order to determine whether net metering services can be reopened. The re-evaluation period shall not exceed 12 months but may be shorter. Customers may submit the necessary CEFM Service Application as described above and it will be maintained on-file with the City of Seaford for a period of two years. Should re-evaluation of the City's peak demand permit the connection of additional net metering connections; the City will allow them in a first come first serve basis of the applications on-file with the City.

6. A community includes customers sharing a unique set of interests;
7. The City may require all meters to be read on the same billing cycle;
8. Before a Community Energy Facility may be formed and served by City of Seaford, the community proposing a Community Energy Facility shall file a CEFM Service Application with the City of Seaford the following information:
 - (a) a list of individual meters the community is entitled to aggregate identified by name, address, rate schedule, and account number; and
 - (b) a description of the Community Energy Facility, including the facility's physical location, the Host customer's physical location, capacity, fuel type or generating technology, and how the Subscribers share a unique set of interests;
 - (c) the share of kWh credits to be attributed to each meter;
9. At least ninety (90) days before a Community Energy Facility can participate under this Policy the Host must submit a completed CEFM Service application to be reviewed and approved by the City;
10. Each generator participating as a Community Energy Facility shall be connected in parallel operation with the City's electric system and shall have adequate protective equipment as described in Section 6.17;
11. A community proposing a Community Energy Facility may change its list of aggregated meters as specified in Section 6.22.6.B.8(a) no more than quarterly by providing ninety (90) days' written notice to City of Seaford;
12. If the community proposing a Community Energy Facility removes individual customer/Subscribers from the list of aggregated meters as specified in Section 6.22.6.B.8(a), then that community shall either replace the removed customer Subscriber(s) or reduce the generating capacity of the Community Energy Facility to remain compliant with the provisions provided under Sections 6.22.B.1 and 6.22.B.4 above;.
13. City of Seaford requires the installation of a separate meter on the generation equipment of the Community Energy Facility; and
14. Neither Host customers nor owners of Community Energy Facility shall be subject to regulation as either public utilities or an Electric Supplier.

§ 6.22.7 Net Metering Issues.

Three (3) primary issues that must be addressed at the utility when a customer is authorized to produce electricity on-site are as follows.

A. Safety and Reliability:

Of the utmost importance to the utility, its personnel, utility customers and property is that the interconnection of the customer owned generation with the utility be maintained in a safe and reliable manner. The City utility must approve and insure all customer owned generation is properly interconnected and that all protective & disconnect devices are in place before the utility permits interconnection and energization.

B. Legal & Regulatory:

All potential Net Metering customers must complete and submit the appropriate "Generator Interconnection Application" form for review and approval by The City of Seaford prior to any interconnection to the utility system.

C. Financial and Retail Rates:

Retail net metering customers will be billed on the same bundled retail rates as all other retail customers in the same rate classification, which includes the cost for power supply, delivery (wires) services, transmission costs, meter reading costs, billing costs, administrative costs, accounting & financial costs, utility operating costs and net margins of the utility.

§ 6.22.8 Connection to the City's electric utility system.

- A.** The electric generation system cannot be connected to the City's Electric Utility system unless it meets all applicable safety and performance standards set forth by the following:
- 1.** The Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than one (1) Megawatt and Interconnected with the City of Seaford, including all IEEE standards referenced within. (Refer to §6.17)
 - 2.** National Electric Code, with special attention to sections 690 and 705
 - 3.** Underwriter Laboratories
 - 4.** All other applicable City of Seaford Electric Rules and Regulations
- B.** The customer must, at their expense, obtain any and all necessary permits, inspections and approvals required by any local public authorities and any other governing regulations in effect at that time.

§ 6.22.9 Delivered voltage.

The delivered voltage and delivery point of the customer's electric generation shall be at the same delivered voltage and delivery point that would be supplied by the City if the customer purchased all of its electricity from the City.

§ 6.22.10 Contract term.

The contract term shall be as long as the customer conforms to the Safety, Reliability and Legal rules and regulations within this policy, and all other requirements of electric utility customers.

§ 6.22.11 Rates and Credit for Excess Generation.

- A. The monthly rates, rate components and billing unit provisions shall be those as stated under the Customer's applicable Service Classification.
- B. During any billing period when a Customer-Generator Facility produces more energy than that consumed by the Customer, the City will Credit the Customer in kWh's as follows:
 1. NEM Customers: During any billing period when a Customer Generator Facility produces more energy than that consumed by the Customer, the City will credit the Customer in kWh's, valued at an amount per kWh equal to the retail rate charges according to the Customer's rate schedule in the applicable billing period.
 - (a) Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used. During any subsequent billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the customer for the equivalent volumetric energy kWh at the applicable retail rates. In the case of a rental or leased property where the landlord is the owner or lessor of the generator system, the account holder i.e. the tenant will receive any kWh credits applied to subsequent billing periods. Payment for any kWh credits remaining at the end of the Annualized Billing Period or at the time the account is terminated by the tenant, will be made to the landlord in accordance with Paragraph (b) below. This may be modified by a contractual arrangement between the tenant and the landlord that is acceptable to the City and approved by the City in writing prior to generation of kWh to be credited.
 - (b) At the end of the Annualized Billing Period, a Customer may request a payment from the City for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the Energy Supply Cost in effect at the end of the Customer's Annualized Billing Period, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. If such payment would be less than \$25.00, the City may credit the Customer's account through monthly billing. In no case will payment be made for excess kWh credits exceeding 10% of the customer's average annual consumption as calculated in §6.22.4.G above.
 2. ANEM Customers: During any billing period when a Customer Generator Facility produces more energy than the Customer's aggregate total kWh consumed, the City will credit the Customer in kWh's, valued at an amount per kWh equal to the retail rates according to each account's rate schedule in the applicable billing period. Excess credits beyond those consumed by the Host account will be applied to the Customer's other meters in the sequence requested in the Customer's ANEM Service Application Form.
 - (a) Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used.

During any subsequent billing period prior to the end of the Annualized Billing period, the crediting of excess energy kWh will result in the reduction of cost paid by the customer for the equivalent volumetric energy kWh at the applicable retail rates.

- (b) At the end of the Annualized Billing Period, a Customer may request a payment from the City for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the Energy Supply Cost in effect at the end of the Customer's Annualized Billing Period, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. If such payment would be less than \$25.00, the City may credit the Customer's account through monthly billing. In no case will payment be made for excess kWh credits exceeding 10% of the customer's average annual aggregate consumption as calculated in §6.22.5.G above.
3. CEFM Customers: during any billing period when the energy produced by the Community Energy Facility exceeds the consumption of the Host Customer, payment for the value of the excess kWh credits will be made to the Host Customer on a monthly basis. Payment shall be calculated by multiplying the excess kWh credits by the Energy Supply Cost in effect at the end of the monthly billing period. Payment will be made to the Host Customer only. It will be the responsibility of the Host Customer to distribute this payment to the other Subscribers participating in the Community Energy Facility. Only for the purposes under this section 6.22.11.B.3 will this not be considered "resale" of electricity but will be considered distribution of dividends for a Community Energy Facility. CEFM Subscribers shall be metered and billed normally at their applicable rates. In no case will payment be made for excess kWh credits when the total of kWh credits accumulated in the calendar year exceeds 110% of the customer's average annual aggregate consumption as calculated in §6.22.6.B.4 above.
- C. Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the City.
- D. The City shall assess the stand-alone Community Energy Facility or Host Customer of Community Energy Facility a customer charge equivalent to the load and energy output characteristics of the generating facility which would be equivalent to the load and energy characteristics of a similarly situated retail electric customer, i.e., an equivalent retail rate.
- E. The Customer shall retain ownership of Renewable Energy Credits (RECs) associated with electric energy produced from all eligible energy resources of the Customer-Generator Facility and consumed by the Customer unless the Customer has relinquished such ownership by contractual agreement with a third party.
- F. The City shall provide net-metered Customers electric service at nondiscriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not net-metering would be charged. The City shall not charge a net-metering Customer any stand-by fees or similar charges.
- G. If a net metered (NEM, ANEM or CEFM) customer terminates its service with the City, the City shall treat the end of service period as if it were the end of the Annualized Billing Period for any excess kWh credits.

- H. Until the City has issued a written approval to the Customer-Generator Facility authorizing connection to the distribution and /or transmission system and the customer has met all other requirements of this Policy, no current or past excess credits will be issued to the Customer account(s).

§ 6.22.12 Metering.

- A. The City will furnish, install, maintain and own all metering equipment needed for the measurement of the service supplied.
- B. Under this policy, the City shall provide, install and maintain at no additional direct charge to the Customer, a watt-hour energy meter programmed to measure the net watt-hours consumed by the Customer or the net watt-hours delivered by the Customer to the City for the monthly billing period.
- C. Where a larger capacity meter is required to serve the Customer that has an electric generation facility, or a larger capacity meter is requested by the Customer, the Customer shall pay the City the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's Service Classification.
- D. The City will require a revenue quality watt-hour meter ("generator meter") to be installed on the customer generator output prior to the customer's load. The meter shall be capable of measuring the total AC watt-hour energy output of the customer generator and shall be used by the City to determine the actual energy output of the generator system and to monitor the status of the customer's load. The generator meter shall be unidirectional and shall be equipped with detents to prevent it from running backward. The customer shall provide and install the meter pan and wiring in accordance with City specifications. The City shall provide, install and maintain the generator meter. Each meter installed at any location shall be clearly labeled as to its function. Labeling shall be in accordance with City of Seaford requirements.

§ 6.22.13 Protective equipment and cessation of parallel operation.

- A. Interconnection with the City's system requires the installation of protective equipment which provides safety for personnel, affords adequate protection against damage to the City's system or to the Customer's property, and prevents any interference with the City's delivery and supply of service to other Customers.
- B. Such protective equipment shall be installed, owned and maintained by the Customer at the Customer's expense.
- C. The Customer's equipment must be installed and configured so that parallel operation must cease immediately and automatically during system outages or loss of the City's primary electric source.
- D. The Customer must also cease parallel operation upon notification by the City of a system emergency, abnormal condition, or in cases where such operation is determined to be unsafe, interferes with the supply of service to other Customers, or interferes with the City's system maintenance or operation.
- E. Generation systems and equipment that comply with the standards established in Section 6.22.6 shall be deemed by the City to have generally complied with the requirements of this section.

6.22.14 Modification of the City's system and liability.

- A. If it is necessary for the City to extend or modify portions of its systems to accommodate the delivery of electricity from the electric generation facility, such extension or modification shall be performed by the City at the Customer's expense.
- B. For new services, such expense shall be determined by the difference between total costs and the investment the City would make to install a normal service without the Customer's electric generation facility.
- C. The City accepts no responsibility whatsoever for damage or injury to any person or property caused by failure of the Customer to operate in compliance with City's requirements.
- D. The City shall not be liable for any loss, cost, damage or expense to any party resulting from the use or presence of electric current or potential which originates from the Customer's electric generation facility, except as the City would otherwise be liable under the City's Electric Rules and Regulations.
- E. Connection by the City under this Policy does not imply that the City has inspected or certified that any Customer-generator's facility has complied with any necessary local codes or applicable safety or performance standards.
- F. All inspections, certifications and compliance with applicable local codes and safety requirements are the sole responsibility of the Customer-generator and must be provided to the City prior to system acceptance and parallel operation with the utility system.
- G. Any requirements necessary to permit interconnected operations between the Net Energy Metering Customer and the City, and the costs associated with such requirements, shall be dealt with in a manner consistent with the Electric Rules and Regulations of the City of Seaford.
- H. The City shall not require eligible Net Energy Metering customers who meet all applicable safety and performance standards to install excessive controls, perform or pay for unnecessary tests, or purchase excessive liability insurance.
- I. The equivalent retail tariff shall also be used to assess the stand-alone Community Energy Facility non-volumetric charges to recover the otherwise applicable supply, transmission, and distribution delivery costs. Subscribers to the stand-alone Community Energy Facility remain subject to only their otherwise applicable Commission-approved tariff.

§ 6.22.15 Failure to comply.

- A. The City may disconnect the Customer's service from the City's electric utility system if the customer fails to comply with any of the stipulations of this policy; The Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than One (1) Megawatt and Interconnected with the City of Seaford Electric System, the National Electric Code, Underwriters Laboratories, Interstate Renewable Energy Council Model Interconnection Rules and Best Practices as identified by the U. S. Department of Energy, the Generator Interconnection

Application Form and Chapter 6 of this code, the City of Seaford Electric Rules and Regulations.

§ 6.22.16 Public Utilities Tax.

- A. In addition to the charges provided for in these Service Classifications, the Delaware State Public Utilities Tax shall apply to all services, including any applicable electric supply services, rendered hereunder, unless the Customer is exempt from such tax.

§ 6.22.17 through § 6.22.99 RESERVED

December 7, 2016

TO: Mayor and Council

FR: Dolores Slatcher, City Manager /KOP

RE: Sewer Extension – Annexation Bierman/Cerwin

Based on the review of the engineering information, discussion of three options at the last Council meeting on November 22, 2016, there remain two options to consider.

Option 1 - The short view without any future benefit to the City's economic development on Sussex Highway and one that will create additional maintenance by the City to serve only this property is Option E – Force Main Extension across Route 13/Sussex Highway. This is a single sewer lateral to serve just this property. Therefore while the City has to own the force main crossing Route 13/Sussex Highway for it to be in public right-of-way the owner should bear the cost of installation and future maintenance of the pump. Estimated cost \$74,635.00.

Option 2 - The long view taking into consideration the opportunity to serve additional properties discharging into the Nanticoke River and Williams Pond and redevelopment along Route 13/Sussex Highway would be Option B – Gravity Sewer Extension across Route 13/Sussex Highway. The estimated cost is \$510,522.38. In addition based on Mr. Czerwinski's email desiring to pay \$69,000 in lieu of \$88,000 this will add \$19,000 to the City's investment. This option will be less maintenance cost. The recommended method of payment would be through reserves that have been set aside for future infrastructure projects creating economic development.

Background on the funding:

First Mr. Czerwinski had an estimate of \$88,000 for a force main connection to the lift station north of Popeye's to just serve his site. He advised he had in his budget for the service \$50,000. He requested the City review options and advise if they could provide sanitary sewer service to his new business. There was engagement of our engineers George, Miles, and Buhr to prepare options. These options were taken to the Economic Development Committee and from there it was requested another option be reviewed and priced, which was done. This was presented to City Council on November 22, 2016. Due to the small difference in cost of the two options for gravity sanitary sewer extension and one being able to serve multiple future properties Option B is being recommended for Council consideration.

- The recommended reserves and owner contribution are listed here:
 - Realty Transfer Tax - \$169,000
 - Sewer Impact - \$150,000
 - Downstream Impact - \$122,522.38
 - Owner Contribution - \$ 69,000 (#Owner's offer as of 11-18-16)

These are the two options being presented for your consideration in extending sanitary sewer to serve this new business. Per his information they would like to be open for business if annexed by late summer/early fall 2017 if the annexation is successful and utilities can be available to his property. This creates an aggressive time line for the City to design, bid and construction all the utilities as we would serve electric too.

I did attach the previous memorandums for you convenience in reviewing past presentations.

MEMORANDUM

November 18, 2016

TO: Mayor and Council

FR: Dolores J. Slatcher, City Manager

RE: Cerwin/Bierman Sewer Extension

All,

Attached is the memorandum given to the Economic Development Committee for review. In addition as of today Mr. Czerwinski, the purchaser and developer of the Bierman Family, LLC property has contacted me after my email to him advising the City is seeking the \$88,000 from him for the sewer extension.

He has sought a negotiation which will have to be up to the Mayor and Council. His offer is to provide \$69,000 which is one-half between the \$88,000 originally shown for force main construction just to serve his property (These numbers were his original project estimate.) and what he sought to pay being \$50,000. I had advised him I believed the City would need more than \$50,000 due to the cost for the sewer extension. He wanted to split the cost. Also he will be paying all of the fees the Building Official puts forth once the drawings are complete and approved for construction. Based on very preliminary information the estimated fees are \$33,696.60, which I advised would have to be paid in addition to the \$69,000.

If we agree to do this then the \$19,000 would be suggested to come from the Realty Transfer Tax Reserve, since this is principally for economic development and re-development of one of the primary entrances to the City of Seaford creating a first impression.

This is an amendment to the memo provided to the Economic Development Committee on November 4, 2016.

November 4, 2016

TO: Economic Development Committee

FR: Dolores Slatcher, City Manager

RE: Sewer Extension – Annexation Bierman/Cerwin

Based on the review of the engineering information and options there are two options to consider.

Option 1 - The short view without any future benefit to the City's economic development on Sussex Highway and one that will create additional maintenance by the City to serve only this property is Option E – Force Main Extension across Route 13/Sussex Highway. This is a single sewer lateral to serve just this property. Therefore while the City has to own the force main crossing Route 13/Sussex Highway for it to be in public right-of-way the owner should bear the cost of installation and future maintenance of the pump. Estimated cost \$74,635.00.

Option 2 - The long view taking into consideration the opportunity to serve additional properties discharging into the Nanticoke River and Williams Pond and redevelopment along Route 13/Sussex Highway would be Option B – Gravity Sewer Extension across Route 13/Sussex Highway. The estimated cost is \$510,522.38. This option is less maintenance cost too. The recommended method of payment would be through reserves that have been set aside for future infrastructure projects creating economic development.

- The recommended reserves and owner contribution are listed here:
 - Realty Transfer Tax - \$150,000
 - Sewer Impact - \$150,000
 - Downstream Impact - \$122,522.38
 - Owner Contribution - \$ 88,000 (#Owner's Estimate originally provided for Force Main)

These two options are for your consideration in making a recommendation to Council for a path forward. Also once Council decides then the owner can be advised and they will make their decision to pursue the annexation or withdraw from continuing in the process.