

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS AGREEMENT dated as of November __, 2021, is made and entered into by and between **TOWN OF MOORESVILLE** ("Mooresville"), **TOWN OF DAVIDSON**, ("Davidson"), **TOWN OF CORNELIUS**, ("Cornelius"), **COUNTY OF MECKLENBURG** ("Mecklenburg"), and **MI CONNECTION COMMUNICATION SYSTEM d/b/a CONTINUUM** ("Continuum").

Background and Purpose

A. Mooresville and Davidson are plaintiffs and counterclaim defendants, Cornelius and Mecklenburg are defendants and counterclaim plaintiffs, and Continuum is a third-party counterclaim defendant in an action pending in the General Court of Justice, Superior Court Division, Iredell County, North Carolina, file no. 20-CVS-308 (the "Action").

B. The Action arises out of and relates to three contracts (the "Contracts"). The first is "An Interlocal Agreement for the Joint Operation of a Communications System," as amended, (the "Interlocal Agreement") entered between Mooresville, Davidson, Cornelius, and Mecklenburg on or about August 14, 2007, pertaining to the purchase and operation of system assets providing cable TV, internet and related services to subscribers in the signatories' respective jurisdictions (the "System"). In the Interlocal Agreement, the signatories agreed to create a joint agency, Continuum, to own and operate the System. The Interlocal Agreement made Mooresville and Davidson the "operating parties" responsible for owning and operating the System through Continuum. In two "Transfer Agreements" entered into contemporaneously

with the Interlocal Agreement, Cornelius and Mecklenburg transferred their rights to own and operate the System to Mooresville and Davidson.

C. Mooresville, Davidson, and Continuum sold the System on December 31, 2019. The Action arises out of a dispute about whether that sale triggered rights to payment under the Contracts. The Transfer Agreements state that, in the event of a sale of the entire System, Cornelius and Mecklenburg are entitled to certain payments “[i]f the proceeds and other assets of [Continuum] are sufficient to enable payment of all liabilities and debts.” Cornelius and Mecklenburg contend that the proceeds from the December 31, 2019, sale were sufficient to enable payment of Continuum’s liabilities and debts, and that therefore they are entitled to payments under the Transfer Agreements. Mooresville and Davidson, which provided amounts of money to subsidize the purchase and operation of the System over the term of their ownership and operation, contend they are entitled to reimbursement for such amounts, and therefore dispute that Cornelius and Mecklenburg are entitled to anything under the Transfer Agreements. Mooresville and Davidson commenced the Action seeking a judicial declaration that they do not owe any money to Cornelius and Mecklenburg under the Transfer Agreements. Cornelius and Mecklenburg brought counterclaims against Mooresville, Davidson, and Continuum seeking payments under those agreements.

D. In compromise of disputed claims, Mooresville, Davidson, Continuum, Cornelius, and Mecklenburg have now agreed on a lump sum amount payable as a compromise settlement of the Action as to all parties.

Agreement and Releases

In consideration of the premises and the mutual covenants and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and their successors and assigns, agree as follows:

1. Within fourteen (14) days of the date of this Agreement, Mooresville and Davidson shall pay Cornelius and Mecklenburg, jointly, a total sum of five hundred and seventy-five thousand dollars (\$575,000.00), which sum shall constitute full and final payment for any and all amounts that may be owed to Cornelius and Mecklenburg under the Transfer Agreements or otherwise arising from or related in any way to the Contracts or the System and the claims that were or might have been raised in the Action, including without limitation, for principal amounts, interest, attorney's fees and costs. Said payment shall be made by wire transfer from Mooresville to counsel of record in the Action for Cornelius and Mecklenburg.

2. For and in consideration of the payment to be made pursuant to paragraph 1, Cornelius and Mecklenburg, jointly and severally, forever release and fully discharge Mooresville, Davidson, and Continuum, jointly and severally, and their respective commissioners, board members, officers, employees, attorneys, and agents, and their respective heirs, successors and assigns, from any and all claims, demands, liens, actions, liabilities, obligations, and causes of action, arising out of or relating to the Action, the System, or the Contracts, whether known or unknown,

contingent or not contingent, liquidated or unliquidated, except claims for enforcement of this Agreement.

3. Effective upon complete execution of this Agreement, Mooresville, Davidson, and Continuum, jointly and severally, forever release and fully discharge Cornelius and Mecklenburg and their respective commissioners, board members, officers, employees, attorneys and agents, and their heirs, successors and assigns, from any and all claims, demands, liens, actions, liabilities, obligations and causes of action, arising out of or relating to the Action, the System, or the Contracts, whether known or unknown, contingent or not contingent, liquidated or unliquidated, except claims for the enforcement of this Agreement.

4. The parties have agreed to issue a joint public statement concerning the settlement of this matter.

5. Within seven (7) days of payment pursuant to the provisions of paragraph 1 hereof, the parties, through counsel, shall execute and file a stipulation of dismissal of the Action, with prejudice, in the form of Exhibit A hereto.

6. This Agreement is the result of a good faith compromise of disputed claims, and neither this Agreement nor the releases contained herein shall be construed to be an admission of any liability, responsibility, fault, or wrongdoing by any party in this Action. Mooresville, Davidson, Continuum, Cornelius, and Mecklenburg are entering into this Agreement to avoid the expense, disruption and

uncertainty of further litigation and because each has concluded that the settlement is fair and reasonable.

7. This Agreement is entered into freely and voluntarily. Mooresville, Davidson, Continuum, Cornelius, and Mecklenburg acknowledge that they have been represented by counsel of their own choice in the negotiations that preceded the execution of this Agreement, and in connection with its preparation and execution.

8. No supplement, modification, waiver, or amendment with respect to this Agreement shall be binding unless executed in writing by the party against whom enforcement thereof is sought.

9. This Agreement constitutes the entire agreement between the signatories hereto pertaining to the final resolution of their disputes and obligations relating to the Action and the Contracts. This Agreement supersedes all prior and contemporaneous agreements not specifically provided for in this Agreement and all prior representations and undertakings of the parties, which are deemed merged into this Agreement.

10. The parties warrant and represent that they have not assigned any right hereunder, in whole or in part, to any person not a party to this agreement.

11. The signatories to this Agreement warrant and represent that they have authority to execute this Agreement and bind the parties on whose behalf they

execute this Agreement, and that this Agreement does not conflict with or contravene the terms of any agreement, law, governmental regulation, judgment, or order binding upon or enforceable against the signing party.

12. Severability. If any provision or portion of this Agreement is determined to be invalid or unenforceable according to its terms, the remaining provisions of the Agreement shall remain in full force and effect, and shall be fully enforceable according to their terms. The affected provision or portion shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

[Signatures Follow]

TOWN OF MOORESVILLE

By:

Attest:

Miles Atkins, Mayor

Genevieve Glaser, Town Clerk

TOWN OF DAVIDSON

By:

Attest:

Rusty Knox, Mayor

Betsy Shores, Town Clerk

TOWN OF CORNELIUS

By:

Attest:

Woody Washam, Mayor

Lori Harrell, Town Clerk

COUNTY OF MECKLENBURG

By:

Attest:

Dina R. Diorio, County Manager

Kristine Smith, County Clerk

MI CONNECTION COMMUNICATION SYSTEM d/b/a CONTINUUM

By:

Attest:

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

Finance Officer for Mooresville

Exhibit A
Form of Stipulation of Dismissal

**STATE OF NORTH CAROLINA
COUNTY OF IREDELL**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO.: 20-CVS-308**

**TOWN OF MOORESVILLE and TOWN OF
DAVIDSON,**

Plaintiffs,

v.

**TOWN OF CORNELIUS and COUNTY OF
MECKLENBURG**

Defendants,

v.

**MI CONNECTION COMMUNICATION
SYSTEM d/b/a CONTINUUM**

Counterclaim Defendant.

**STIPULATION OF DISMISSAL WITH
PREJUDICE**

Pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, Plaintiff Town of Mooresville (“Mooresville”), Plaintiff Town of Davidson (“Davidson”), Defendant Town of Cornelius (“Cornelius”), Defendant County of Mecklenburg (“Mecklenburg”) and Counterclaim Defendant MI Connection Communication System d/b/a Continuum (“Continuum”) (collectively, the “Parties”) hereby stipulate to the dismissal, with prejudice, of all claims, counterclaims and causes of action asserted, or that might have been asserted, between and among them in this action, with the Parties to bear their own respective costs, fees and expenses associated with this action. For the avoidance of doubt, the Parties stipulate to the dismissal of, and waive and release all claims or rights, whether asserted or not, to seek the recovery of their respective attorneys’ fees, expenses or costs associated with any claim asserted herein.

This ___ day of November, 2021.

J. Dickson Phillips, III
N.C. Bar No. 8941
dphillips@robinsonbradshaw.com
Andrew R. Wagner
N.C. Bar. No. 53649
awagner@robinsonbradshaw.com

ROBINSON, BRADSHAW & HINSON,
P.A.
1450 Raleigh Road, Ste. 100
Chapel Hill, North Carolina 27517
Telephone: 919.328.8808
Facsimile: 919.328.8794

*Attorneys for Mooresville, Davidson and
Continuum*

Brian A. Kahn
NC Bar No. 29291
BKahn@mcguirewoods.com

Colby Bourne Stevenson
NC State Bar No. 43236
CStevenson@mcguirewoods.com

McGUIREWOODS LLP
201 North Tryon Street (Suite 3000)
Charlotte, NC 28202
Telephone: (704) 343-2393
Facsimile: (704) 444-8746

Attorneys for Cornelius and Mecklenburg

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing document was served via email to all counsel of record.

This ___ day of November, 2021

J. Dickson Phillips, III