

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: NOVEMBER 10, 2014 AGENDA ITEM NUMBER: 9

**SUBJECT: RESOLUTION AUTHORIZING THE GRANT AND EXECUTION OF AN EASEMENT AGREEMENT BETWEEN FORSYTH COUNTY AND TIME WARNER CABLE TO PROVIDE ACCESS TO A PORTION OF TANGLEWOOD PARK PROPERTY FOR THE PROVISION OF CABLE SERVICES (TANGLEWOOD PARK)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

### SUMMARY OF INFORMATION:

See attached

ATTACHMENTS:  YES  NO

SIGNATURE: *J. Dudley Watts, Jr.* DATE: November 4, 2014  
COUNTY MANAGER

**RESOLUTION AUTHORIZING THE  
GRANT AND EXECUTION OF AN EASEMENT AGREEMENT  
BETWEEN FORSYTH COUNTY AND TIME WARNER CABLE  
TO PROVIDE ACCESS TO A PORTION OF TANGLEWOOD PARK  
PROPERTY FOR THE PROVISION OF CABLE SERVICES  
(TANGLEWOOD PARK)**

**WHEREAS**, Time Warner Cable Southeast LLC d/b/a Time Warner Cable has requested an easement across a portion of Tanglewood Park property to a building, as more particularly described in the attached Right of Entry Agreement, to obtain access to provide cable television, data, Internet, telecommunication, WiFi, and other entertainment services to occupants of the property; and

**WHEREAS**, the said Right of Entry Agreement does not include any consideration to the County, however, Time Warner Cable does agree to maintain commercial general liability insurance at the Company's expense with limits of not less than Two Million Dollars combined single limit per occurrence for bodily injury, sickness or death, and property damage as outlined in the attached Right of Entry Agreement; and

**WHEREAS** Forsyth County is authorized pursuant to the provisions of N.C.G.S. 153A-176 and 160A-273 to grant an easement to Time Warner Cable Southeast LLC d/b/a Time Warner Cable under the terms and provisions outlined herein.

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby authorizes the grant of an easement across a portion of Tanglewood Park property to a building as outlined in the attached Right of Entry Agreement to allow ingress and egress to Time Warner Cable Southeast LLC d/b/a Time Warner Cable to provide cable television, data, Internet, telecommunication, WiFi, and other entertainment services to occupants of the property for the term and consideration outlined in the attached Right of Entry Agreement.

**BE IT FURTHER RESOLVED** by the Forsyth County Board of Commissioners, that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the Right of Entry Agreement and any other necessary documents to grant the above-described easement to Time Warner Cable, subject to a pre-audit certificate thereon by the Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 10<sup>th</sup> day of November 2014.

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (this "Agreement") is by and between Forsyth County Government [INSERT NAME OF PROPERTY OWNER], a NC County Government [INSERT TYPE OF ENTITY AND JURISDICTION OF ORGANIZATION] (hereinafter the "Owner"), whose address is 201 N Chestnut St, Winston-Salem, NC 27101 [INSERT MAILING ADDRESS OF PROPERTY OWNER] and Time Warner Cable Southeast LLC, a Delaware limited liability company, d/b/a Time Warner Cable, by itself and on behalf of its affiliates (collectively, the "Operator"), whose address is Time Warner Cable Business Class, Attn: Market Development, 13840 Ballantyne Corporate Place, Suite 200, Charlotte, North Carolina 28277. Operator and Owner may individually be referred to as a "Party" or collectively as the "Parties." This Agreement commences on the later of the execution dates set forth below the signatures (the "Commencement Date").

1. Owner represents and warrants that Owner: (a) is the fee simple owner of the land, improvements, and building which constitute the Property (defined below) and has full power and authority to grant to Operator the rights set forth in this Agreement; or (b) through written agreement with the fee simple owner of the Property, has the full power and authority to grant to Operator the rights set forth in this Agreement.

2. In consideration of the mutual benefits and obligations set forth herein, Owner grants to Operator and Operator's employees, agents, and contractors a non-exclusive right of entry for ingress and egress to the property and building(s), (including building roof top(s)), located at 4058 Nature Trail Dr, Clemmons, NC [INSERT ADDRESS OF THE PROPERTY] (the "Property") for the purpose of installing, attaching, operating, repairing, replacing, removing, and maintaining all necessary equipment, including, without limitation, lines, wires, poles, conduits, pipes, converters, amplifiers, splitters, lock boxes, antennas, wireless delivery system equipment and facilities (collectively, the "System") in order to sell, market, and provide Operator's cable television, data, Internet, telecommunication, WiFi, and other entertainment services (collectively, "Services") to occupants of the Property (collectively, "Occupants"). The rights granted hereunder shall be deemed to include use of available power, along with a right for Operator to have access to those areas in addition to and a right to use, all risers in the building, house wiring, utility easements, underground conduit, ducts, building entrance facilities, building utility entrance facilities, utility closets in the building, whether in common areas or in an Occupant's premises (with Occupants' approval), rights-of-way, private roads and other areas on the Property as reasonably required for the purpose set forth above. Operator shall determine in its sole discretion the economic feasibility and appropriate date to begin construction and/or installation of the System on the Property. Upon request from the Owner, the Operator shall provide the Owner with a WiFi site survey for the Property and the attachment location for any wireless delivery system equipment that Operator will be attaching to the Property. Operator will have the right to advertise, market and otherwise promote the Property as a public WiFi hotspot in any and all forms of media, in Operator's sole discretion, and Owner grants Operator a license to use the names, trademarks and logos of Owner and the Property for such purposes.

3. The term of this Agreement commences on the Commencement Date and shall remain in full force and effect until the later of: (a) the date that is 5 years after the Commencement Date; or (b) the date that is 6 months after the date that Operator ceases to provide Services to Occupant(s) at the Property (the "Term").

4. Occupants, if they desire to receive Services, shall be charged and billed individually for such Services by Operator. Operator shall be responsible for any and all material damages directly caused to the Property by Operator's installation, operation, maintenance and removal of the System.

5. Ownership of all parts of the System shall be and remain the personal property of the Operator. No entity or person, other than Operator, may use any part of the System. Owner shall not, and Owner shall not authorize any third party to, tamper with, make alterations to, or remove any components of the System. The System is not, and shall not be deemed to be, affixed to or a fixture of the Property. Operator shall install, operate and maintain the System on the Property at its own expense and in accordance with all applicable laws. If Owner requests, Operator shall submit for advanced approval the drawings and/or plans for the installation of the System, and such approval shall not be unreasonably withheld, conditioned, or delayed by Owner.

6. Operator agrees to maintain Commercial General Liability Insurance, with limits of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, sickness or death, and property damage.

7. This Agreement may be freely assigned by either Party, provided that the assignee agrees to be bound by all of the terms and conditions hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives and assigns.

8. OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED-- REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL OPERATOR OR OWNER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

9. Owner reserves the right to grant other easements on or rights of access to the Property, but will not allow such other grants to interfere with the rights conveyed in this Agreement.

10. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart together shall constitute one and the same instrument.

11. This Agreement shall be construed in accordance with the laws of the State where the Property is located.

IN WITNESS WHEREOF, Owner and Operator have executed this Agreement on the dates set forth below.

TIME WARNER CABLE SOUTHEAST LLC  
D/B/A TIME WARNER CABLE

By: \_\_\_\_\_  
Name: Jonathan Bentley  
Title: Sr. Manager, Market Development  
Date: \_\_\_\_\_

[PRINT OWNER'S NAME]

By:  
Name:  
Title:  
Date:

Primary On-Site Contact:

Print Name: Gary Koontz

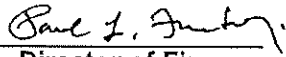
Phone Number: 336 703-2543

Email Address: gary@forsyth.cc

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

10/15/2014

Date

  
Director of Finance