

SUBSTITUTE NO. 1 TO ORDINANCE 22-023

AN ORDINANCE TO AUTHORIZE AND APPROVE THE CONTRACT BETWEEN THE CITY OF WILMINGTON AND NEW CASTLE COUNTY COUNCIL FOR THE LIVESTREAMING AND BROADCASTING OF COUNTY COUNCIL MEETINGS

**Rev. 1
#0164**

Sponsor:

**Council
Member
Johnson**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, New Castle County Council desires to provide high quality live streaming and on-demand video recording of the County Council’s regular council and committee meetings held in the Louis L. Redding City/County Building; and

WHEREAS, WITN22 Wilmington Television ("WITN,") a division of the Wilmington City Council, provides high quality live streaming and on-demand video production services to Wilmington City Council; and

WHEREAS, County Council desires to have the City, through WITN provide certain services related to County Council public meetings; and

WHEREAS, the City and the County have agreed that to enter into an agreement regarding live streaming and broadcasting of county council meetings.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Contract titled “Agreement Between The City Of Wilmington And New Castle County Council Regarding Live Streaming And Broadcasting Of County Council Meetings” between the City of Wilmington and New Castle County Council, a copy of which Contract, in substantial form, is attached hereto as Exhibit “A,” for the period

beginning June 1, at an estimated cost to New Castle County Council of thirty-four thousand five-hundred dollars (\$34,500.00), with the possibility of two (2) automatic renewals of one (1) year thereafter with the same terms and conditions, at the option of the parties, is hereby approved, and the Mayor and the City Clerk are hereby authorized to execute as many copies of the Contract, as well as to take all additional undertakings related thereto, as may be necessary.

SECTION 2. This Substitute Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... April 21, 2022
Second Reading..... April 21, 2022
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2022.

Mayor

SYNOPSIS: This Substitute Ordinance authorizes the execution of the multi-year agreement between the City of Wilmington and New Castle County Council for the livestreaming and

broadcasting of County Council meetings for the period beginning June 1, 2022, at an estimated cost to New Castle County Council thirty-four thousand five-hundred dollars (\$34,500.00), with the possibility of two (2) automatic renewals of one (1) year thereafter with the same terms and conditions, at the option of the parties.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period beginning June 1, 2022, at an estimated cost to New Castle County Council of thirty-four thousand five-hundred dollars (\$34,500.00).

DRAFT

Introduced by: Mr. Carter, Mr. Smiley
Date of introduction: May 10, 2022

RESOLUTION NO. 22-

**AUTHORIZING A CONTRACT BETWEEN THE
CITY OF WILMINGTON AND NEW CASTLE COUNTY COUNCIL
REGARDING LIVE STREAMING AND BROADCASTING OF
COUNTY COUNCIL MEETINGS AND THE EXECUTION THEREOF
AND ANY OTHER NECESSARY DOCUMENTS BY COUNTY COUNCIL,
AND FOR COUNTY COUNCIL TO TAKE ANY AND ALL NECESSARY
ACTIONS RELATED THERETO, INCLUDING ISSUANCE
OF A PURCHASE ORDER TO THE EXTENT NECESSARY**

WHEREAS, since March 2019, the City of Wilmington (via WITN Ch. 22) has supported New Castle County Council with live streaming and broadcasting services during County Council meetings; and

WHEREAS, the initial contract between the City and County Council has naturally expired pursuant to its terms; and

WHEREAS, the City and County Council are satisfied with the existing services and arrangement and, accordingly, the parties would like to continue their relationship; and

WHEREAS, the parties have agreed to maintain the original cost structure for the services, which provides a substantial savings to County Council considering, among other elements, that the City has agreed to continue to share the use of the City's equipment located in the City-County Chamber, for which County Council, absent this relationship, would need to purchase its own equipment at a substantial cost to County Council; and

WHEREAS, *New Castle County Code* § 2.02.004 requires a contract involving expenditure of funds in excess of \$50,000.00 in the aggregate to one vendor in a fiscal year, which is not competitively bid, be approved by Resolution of New Castle County Council; and

WHEREAS, attached hereto as Exhibit A is the proposed contract between the City (via WITN Ch. 22) and County Council, which totals \$34,500.00 per year, and, thus, is substantially below the dollar limitation that mandates approval by County Council; and

WHEREAS, although the proposed contract does not fall within the scope of Section 2.02.004, it is being brought to County Council for its consideration during a public meeting as a matter of good government and transparency; and

WHEREAS, additionally, the services and/or supplies to be provided pursuant to the contract between County Council and the City are "supplies, contractual, and professional services purchases from other governments" and, thus, fall within the scope of *New Castle County Code* Section 2.05.502.C. (providing an exception for supplies, contractual, and

professional services purchases from other governments and cooperative purchasing agreements); and

WHEREAS, furthermore, the services and/or supplies to be provided pursuant to the contract between County Council and the City also fall within the scope of *New Castle County Code* Section 2.05.502.A.7. (sole source exception), Section 2.05.502.A.13. (sole source exception), and/or Section 2.05.502.B.7. (professional services); and

WHEREAS, pursuant to the terms of the contract, the City of Wilmington proposes to continue to provide professional services to County Council, including technical support and broadcasting and Video Production Services, necessary to continue to enable County Council to provide to the public on-demand video and live streaming of County Council meetings as required under *New Castle County Code* Sections 2.02.501 and 2.02.502.

NOW, THEREFORE, BE IT RESOLVED by and for the County Council of New Castle County that County Council hereby authorizes: the contract attached hereto as Exhibit A between County Council and the City of Wilmington regarding on-demand video, live streaming, and broadcasting of County Council meetings, execution thereof and any other necessary documents by County Council, and for County Council to take any and all necessary actions related thereto, including issuance of a purchase order to the extent necessary.

Adopted by County Council
of New Castle County on:

President of County Council
of New Castle County

SYNOPSIS: This Resolution authorizes the attached contract totaling \$34,500.00 per year between the City of Wilmington (WITN Ch. 22) and County Council pursuant to which the City will continue to provide on-demand video, live streaming, and broadcasting of Council meetings. The contract is for an initial term of one year, renewable up to two times, for a year each time, for a total of three years, maximum.

Pursuant to the contract, the City of Wilmington (WITN Ch. 22) will provide professional services and the technical support necessary to enable County Council to provide on-demand video and to live stream its meetings as mandated under *New Castle County Code*. Among other services, WITN will provide a live, real-time, unedited audiovisual feed and/or broadcast of Council meetings to Council's streaming and hosting provider, in an acceptable format. The aforementioned Video Production Services will include delivery by WITN of the audiovisual feed to a network or connection identified by County Council's chosen Broadcast provider.

New Castle County Council

City of Wilmington contract - \$34,500.00, total, per year, for a potential total of three years, maximum.

FISCAL IMPACT: This contract and the services provided hereunder are necessary to implement on-demand and video streaming of County Council meetings as required under *New Castle County Code* Sections 2.02.501 and 2.02.502.

The Resolution approves a one-year contract, which may be extended up to two times for up to a maximum of three (3) years, in total, between the City of Wilmington and New Castle County Council. The total obligation under the contract for County Council is \$34,500 per year. In addition, the Resolution authorizes County Council to execute the contract and any documents related thereto, and to take any and all necessary actions related thereto, including the issuance of a purchase order if necessary. Funding for year 1 is included in the FY2023 Approved Operating Budget.

Under the contract, the City of Wilmington (through WITN Ch. 22) will provide professional services to Council - namely technical support including the broadcasting and Video Production Services provided for in the contract - necessary to enable Council to provide on-demand video and live streaming of County Council meetings as required under *New Castle County Code*.

Michael Smith
Chief Financial Officer

Exhibit A

**AGREEMENT BETWEEN THE CITY OF WILMINGTON
AND NEW CASTLE COUNTY COUNCIL REGARDING
LIVE STREAMING AND BROADCASTING
OF COUNTY COUNCIL MEETINGS**

THIS AGREEMENT (“Agreement”), effective on June 1, 2022 (the “Effective Date”), is made by and between the City of Wilmington (the “City,” used interchangeably with “WITN,” as defined below) and New Castle County Council (“County Council”).

WHEREAS, County Council desires to have the City, through WITN22 Wilmington Television (“WITN,” and collectively with the City and County Council, the “Parties;” and each individually, a “Party”), provide certain services related to County Council public meetings; and

WHEREAS, the City and the County have agreed that the City shall provide the aforementioned services as provided herein.

NOW THEREFORE, WITNESSETH that the Parties, in connection with their mutual promises made below, agree as follows:

A. Definitions.

- (1) *Broadcast*. The real-time transmission of audiovisual signals through the internet.
- (2) *Meetings*. All regularly scheduled New Castle County Council general meetings and committee meetings, or other meetings as agreed to in writing, held for the purpose of discussing or taking action on public business, or as otherwise agreed in writing by the Parties.
- (3) *Video Production Services*. The provision of a live, real-time, unedited audiovisual feed (herein used interchangeably with the term *broadcast*) of Meetings to County Council’s streaming and hosting provider in an acceptable format. *Video Production Services* shall include delivery of the audiovisual feed to a network or connection identified by County Council’s chosen Broadcast provider.

B. Scope of Services.

- (1) Overall Coverage. WITN shall provide County Council with Video Production Services for all County Council general meetings and County Council committee meetings, or other meetings as agreed to in writing by the Parties, held in the Louis L. Redding City/County Building (the “Building”).
- (2) Broadcast. WITN is responsible for the broadcasting, but not the live-streaming, archiving, or hosting of recordings of County Council Meetings. These listed services, excluding broadcasting, are to be provided by County Council’s chosen provider.

(3) **Equipment.** WITN shall use the City's equipment located in the City Council - County Council Chamber of the Building for coverage of County Council meetings. WITN shall use County Council's equipment located on the 8th floor of the Building for coverage of any County Council committee meetings held on the 8th floor. The City expressly waives any and all claims against the County Council or any officers, directors, employees, or agents thereof relating to the City's use of such equipment.

a. **Waiver of Liability Regarding Equipment.** County Council hereby expressly waives any and all claims against the City, WITN, or any officers, directors, employees, or agents thereof or WITN, for damage in the ordinary course to the County Council's equipment on the 8th floor that occurs in the performance of this Agreement and that is due to reasonable wear and tear. Moreover, in the first instance the Parties agree to look to any applicable warranty or agreement that provides for coverage or resolution of such damage, including without limitation any warranty with The Lerro Corporation ("Lerro") and/or the *M&T Agreement*, defined below.

(4) **Notice.** County Council, through the Clerk of Council or designee thereof, shall provide WITN at least seven (7) calendar days' notice of all regularly-scheduled County Council Meetings. The notice shall be provided in writing to the following email addresses: (i) wraulston@wilmingtonde.gov, (ii) mbasnigh@wilmingtonde.gov, and (iii) tcongo@wilmingtonde.gov.

a. **Failure to Provide Notice.** WITN shall not be required, but may choose, to provide Video Production Services for any County Council Meeting if the County Council fails to provide the aforementioned notice to WITN.

C. **Maintenance and technical support.** The Parties agree to share in the benefit from and share in the cost (identified below) for services provided pursuant to that certain agreement between the City of Wilmington and Lerro, dated March 5, 2021 (attached hereto as Exhibit A)(the "M&T Agreement"). The Parties further agree that the monthly compensation of \$1,250.00 to be paid to Lerro for its services pursuant to Paragraph C of the M&T Agreement will be paid evenly by the City and County Council, with each party responsible for paying exactly ½ of the total monthly cost (*i.e.*, \$625.00 per month, per Party) and will continue (1) for so long as the Parties are engaged under the terms of this Agreement, including any extension thereof, and (2) for so long as the M&T Agreement, or an extension thereof, is in place; the Parties further agree that, aside from the above-noted ½ share of the total monthly cost of \$625.00 per Party, County Council shall have no other or further obligation related to the M&T Agreement.

D. **Term.** Subject to the provisions herein, the term of this Agreement shall be for up to three (3) years, with the initial term of one (1) year commencing on June 1, 2022. Unless either Party provides written notice to the other Party by no later than one-hundred and twenty (120) calendar days prior to completion of the initial term (*i.e.*, Year 1), upon completion of Year 1 the Agreement shall automatically renew for one

(1) additional year (*i.e.*, Year 2), commencing on June 1, 2023. If the Agreement is continued to Year 2, unless either Party provides written notice to the other Party by no later than one-hundred and twenty (120) calendar days prior to completion of Year 2, the Agreement shall automatically renew for one (1) final year (*i.e.*, Year 3), commencing on June 1, 2024.

- E. Compensation.** County Council shall pay the City, in total per year, twenty-seven thousand dollars (\$27,000.00) for the services provided by WITN under this Agreement (excluding the services and related cost set forth in Paragraph C., above). County Council shall pay this total amount in twelve (12) equal monthly payments (*i.e.*, \$2,250.00/month per year). County Council shall pay for WITN’s services within thirty (30) days of receipt of invoices for the services.
- F. Property rights.** The Parties agree that County Council is the owner of all property rights, title, and interest in the broadcasts and/or transmissions, and all information and material that is live streamed and/or broadcast pursuant to this Agreement as part of the Video Production Services including, but not limited to, copyright and trademark rights (the above collectively referred to as the “Property”). The Parties further agree that the City does not have any ownership rights or interest in the Property. Upon the termination or natural conclusion of this Agreement, the City and/or WITN will provide to the County Council any and all Property in its possession or in the possession of any party over which the City and/or WITN has control. In addition, the Parties further agree that neither the City nor WITN will provide the Property or any material related thereto to any third party without the express prior written consent of County Council.
- G. General Terms and Conditions.** The City of Wilmington General Terms and Conditions, attached as Exhibit B to this Agreement, are incorporated herein and shall become an integral part of this Agreement.

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

CITY OF WILMINGTON

Witness

Ernest “Trippi” Congo
Wilmington City Council President
800 North French Street, 9th Floor
Wilmington, DE 19801

NEW CASTLE COUNTY COUNCIL

Witness

Name:
Title:
Address:

Exhibit A

**AGREEMENT BETWEEN THE CITY OF WILMINGTON
AND THE LERRO CORPORATION**

THIS AGREEMENT (this "Agreement"), dated the 5 day of March, 2021, is made by and between the **CITY OF WILMINGTON** (the "City"), by and through Wilmington City Council, and **THE LERRO CORPORATION** ("Lerro").

WHEREAS, the City desires to obtain on-site engineering services at the WITN TV station on a monthly basis; and

WHEREAS, the City has engaged Lerro to perform the aforementioned services.

NOW THEREFORE, WITNESSETH that the City and Lerro, in connection with their mutual promises made below, agree as follows:

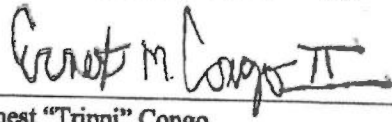
- A. **Scope of Services.** Lerro shall provide on-site engineering services to the City at the City's WITN TV station on a monthly basis as directed by the City. These services shall include, but not be limited to, the services specified herein.
- (1) Lerro shall provide at least one (1) monthly on-site visit to the City to perform engineering services, including, but not limited to, maintenance checks of all video equipment. The City is entitled to a maximum of two (2) on-site visits per month.
 - (2) WITN will keep a list of work that needs to be performed by Lerro. On the scheduled service day(s), Lerro shall complete as much of that work as possible. Lerro shall perform the jobs that WITN prioritizes as the most important first. Lerro shall use the remainder of the service day(s) for routine preventive maintenance. Routine preventive maintenance includes cleaning all video recorders, equipment setup, and adjustment or reconfiguration of equipment.
 - (3) If there is unfinished work that cannot wait until the next month's service time, Lerro shall perform the work during the current month and either bill the City for the additional time at a rate agreed upon by the City and Lerro or use the scheduled service time for the next month to complete the unfinished work in the current month. If such a situation arises, Lerro shall contact the City and allow the City to choose the option it prefers.
 - (4) On-site repair, if possible, of any malfunction that occurs during normal use of the equipment shall be covered by this Agreement.
- B. **Term.** The term of this Agreement shall be from March 1, 2021 to December 31, 2024.
- C. **Compensation.** For services rendered by Lerro to the City under this Agreement, the City shall pay to Lerro One Thousand Two Hundred Fifty Dollars (\$1,250.00)

per month, for a total amount of Fifteen Thousand Dollars (\$15,000.00) per year. The monthly service charge does not include the cost of replacement parts or repairs to equipment that must be sent to Lerro's service facility for repairs. Lerro shall submit monthly bills and reports of its services to the City starting one month from the commencement date of this Agreement. The City shall make payments for Lerro's services within thirty (30) days of receipt of undisputed invoices for the services. In the event that any funds paid by the City under this Agreement are used for purposes other than those specifically stated herein or otherwise approved by the City in writing, Lerro may be required to reimburse the City up to the total amount of such funds.

- D. **General Terms and Conditions.** The City of Wilmington General Terms and Conditions, attached as Exhibit A to this Agreement, are incorporated herein and shall become an integral part of this Agreement.
- E. **Time.** Time is of the essence in this Agreement.
- F. **Lack of Waiver.** Failure by the City to enforce any term of this Agreement shall not constitute a waiver of such term in the future or prevent the City from enforcing such term or otherwise strictly exercising all of its rights under this Agreement at any time.

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

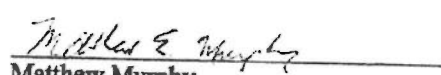
CITY OF WILMINGTON



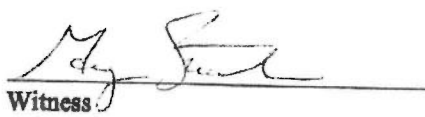
Ernest "Trippi" Congo
City Council President
800 North French Street, 9th Floor
Wilmington, DE 19801

Witness

THE LERRO CORPORATION



Matthew Murphy
Secretary Treasurer
Valley Forge Corporate Center
905 Madison Avenue
Norristown, PA 19403



Witness

EXHIBIT A

CITY OF WILMINGTON GENERAL TERMS AND CONDITIONS

(the Agreement as supplemented by these General Terms and Conditions shall hereinafter be referred to collectively as the "Agreement")

1. **Insurance Coverage.** The Lerro Corporation (the "Contractor") shall provide insurance coverage for itself and all of its employees, if any, used in connection with the Agreement as follows: workers' compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00); and professional liability coverage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the City of Wilmington ("City"). Contractor shall provide the City with a certificate of insurance evidencing the above-stated coverage and naming the City as an additional insured.
2. **Use of Subcontractors.** Contractor may use qualified consultants, subconsultants, or subcontractors to perform the services required under this Agreement upon the approval of the City.
3. **Discrimination and Harassment.** In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.
4. **Indemnification.** Contractor shall defend, indemnify, and hold harmless the City, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorneys' fees, resulting from the negligent acts or omissions of Contractor, its employees, agents, subcontractors, consultants, or subconsultants in performing the services required under this Agreement.
5. **Records.** Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the City or its authorized representatives upon request.
6. **Reports and Information.** Contractor, at such time and in such form as the City may require, shall furnish the City such reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement.
7. **Business License.** Contractor shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

8. **Taxes.** Contractor shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

9. **Findings Confidential.** All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copies, maps, graphics, slides, and documents prepared, assembled, drafted or generated by Contractor under this Agreement are confidential, and Contractor agrees that such documents shall not be made available to anyone, without the prior written approval of the City.

10. **Ownership of Information.** All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, brochures, illustrations, copies, maps, graphics, slides, and documents prepared, assembled, drafted, or generated by Contractor in connection with this Agreement shall become the exclusive property of the City for use by the City as the City deems appropriate. Contractor may keep copies of such documents for its records. Any reuse of the documents without the Contractor's written consent shall be at user's risk and responsibility.

11. **Notices.** Any notice which is required or may be given in connection with this Agreement shall be addressed to the parties as follows:

The City:

~~Patricia Stevens~~ *Marzelle Basnight*
Wilmington City Council
800 North French Street, 9th Floor
Wilmington, DE 19801

The Contractor:

Matthew Murphy
Valley Forge Corporate Center
905 Madison Avenue
Norristown, PA 19403

12. **Independent Contractor.** Contractor (and its employees and agents) is an independent contractor and not an employee or agent of the City.

13. **Oral Modifications.** This Agreement may not be changed orally, but only by an agreement in writing and signed by both parties.

14. **Conflict Between Provisions.** To the extent that there is any conflict between these General Terms and Conditions and other portions of the Agreement, the terms set forth in these General Terms and Conditions shall govern.

15. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and Contractor, and their respective legal representatives, successors, and assigns.

16. **Termination.** The City may terminate this Agreement at its convenience upon two weeks' notice. In the event of termination, the City shall pay to Contractor any fees then due for services performed by Contractor through the effective date of termination, if such services have been performed as specified in the Agreement. Contractor, upon receipt of such payment, shall deliver to City any deliverables, reports, or other documents to the extent then completed.

17. **Severability.** The Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

18. **Payment.** Payment shall be made by the City to the Contractor as provided in this Agreement after the satisfactory completion of the work specified in this Agreement and upon proper, undisputed invoice to the City.

19. **Applicable Law and Dispute Resolution.** The laws of the State of Delaware shall govern this Agreement. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware. Contractor agrees to submit exclusively to the jurisdiction and venue of said courts.

20. **Signed Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

W0113151

EXHIBIT B

CITY OF WILMINGTON (“City”) GENERAL TERMS AND CONDITIONS

(the Agreement as supplemented by these General Terms and Conditions shall hereinafter be referred to collectively as the “Agreement”)

1. **Discrimination and harassment.** In the performance of this Agreement, the Parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin, sexual orientation, or any other legally-recognized protected class.

2. **Indemnification.** The City shall defend, indemnify, and hold harmless County Council, its employees, agents, and officers from and against any and all claims, damages, actions, liabilities and reasonable expenses resulting from the negligent acts or omissions of the City, its employees, agents, subcontractors, consultants, or subconsultants with respect to this Agreement.

3. **Taxes.** County Council shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.

4. **Notices.** Any notice which is required or may be given in connection with this Agreement shall be addressed to the Parties as follows:

The City:

Ernest “Trippi” Congo - tcongo@wilmingtonde.gov
Wendell Raulston - wraulston@wilmingtonde.gov
Marchelle Basnigh - mbasnigh@wilmingtonde.gov

The County Council:

Nellie Hill – nellie.hill@newcastlede.gov
Tara Finnigan – tara.finnigan@newcastlede.gov
Michael P. Migliore – michael.migliore@newcastlede.gov

5. **Independent contractor.** The City (and its employees and agents) and WITN (and its employees and agents) are independent contractors and not employees or agents of County Council.

6. **Oral modifications.** This Agreement may not be changed orally, but only by an agreement in writing and signed by the Parties.

7. **Conflict between provisions.** To the extent that there is any conflict between these General Terms and Conditions and other portions of the Agreement, the terms set forth in these General Terms and Conditions shall govern.

8. **Force majeure.** No Party shall be deemed to be in default of its obligations under this Agreement if and to the extent that such Party is unable to perform such obligations as a result of fire or other casualty, act of God, strike or other labor unrest, unavailability of materials, war, terrorist activity, riot or other civil commotion, or any other cause beyond the control of such Party (which shall not include the inability of such Party to meet its financial obligations or in any event apply to the payments of any amounts due to any Party under this Agreement).

9. **Assignment.** No Party may assign this Agreement without prior written consent of the Parties.

10. **Successors and assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and County Council, and their respective legal representatives, successors, and assigns.

11. **Termination.** A Party may terminate this Agreement at any time upon a material breach of the terms of the Agreement and failure of the responsible Party to cure, or take substantial steps to cure, the material breach within 15 business days of notification of such a breach. Notice of the breach shall be provided by electronic mail to all individuals identified in the *Notices* section herein at Paragraph 4.

12. **Severability.** The Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

13. **Applicable Law and dispute resolution.** The laws of the State of Delaware shall govern this Agreement. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware. The Parties agree to submit exclusively to the jurisdiction and venue of said courts. The Parties further agree that, prior to resorting to litigation in a court, the Parties, in good faith, will attempt to mediate a resolution of any disagreement. If, after 60 calendar days, the Parties have in good faith attempted unsuccessfully to resolve their dispute, a Party may initiate legal action in a court.

14. **Signed counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.