

SETTLEMENT AGREEMENT AND RELEASE

THE CITY OF LAKE WORTH BEACH (“**City**”) and BELLSOUTH TELECOMMUNICATIONS, LLC, D/B/A AT&T FLORIDA (“**AT&T**”) collectively “Parties,” for settlement purposes and through their undersigned agents agree as follows:

WHEREAS, the City and AT&T currently have a “joint use” arrangement to allow one another to hang wireline facilities on one another’s utility poles; and

WHEREAS, although the Parties did not have an executed Joint Use Agreement, the Parties have been operating under the terms of an unexecuted agreement, General Agreement for Joint Use of Poles, dated January 1, 2006 (the “Unexecuted Agreement”); and

WHEREAS, in accordance with the Unexecuted Agreement, AT&T has been paying to City an annual rental fee of \$15.78 for the use of each electric pole and City has been paying AT&T \$19.73 for the use of each telephone pole; and

WHEREAS, as of January 1, 2006, the City owned 4,267 electric poles and AT&T owned 1,362 telephone poles; and

WHEREAS, In August of 2018, the City completed an inventory of its electric poles in which AT&T did not participate, and determined that AT&T now has wires attached to 5,955 of City’s electric poles (“Inventory Results”); and

WHEREAS AT&T conducted an audit of the Inventory Results and has agreed to the use of them; and

WHEREAS, AT&T intends to conduct an inventory of City’s attachments to AT&T’s poles; and

WHEREAS, the City believes that AT&T owes the City remuneration for at least 5 years of unpaid back rent due to the increased amount of City electric poles to which AT&T has attached since 2006 (“Back Rent”); and

WHEREAS, the City also believes that AT&T owes the City for a portion of the costs of the pole inventory conducted by the City in 2018 (“Inventory Costs”); and

WHEREAS, AT&T disputes that it owes Back Rent in the amount claimed by City and disputes that it owes City for Inventory Costs; and

WHEREAS, the City and AT&T have agreed to settle the matter according to the terms and conditions set forth in this Settlement Agreement and Release (“Settlement Agreement”).

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the sufficiency of which is acknowledged by both Parties, the Parties hereby enter into this Settlement Agreement and agree as follows:

1. **Payment for Back Rent.** AT&T shall pay City \$106,546.56 as compensation for the additional 1,688 Lake Worth poles to which AT&T is attached, as per Lake Worth's inventory. This payment consists of: (a) \$26,636.64 attributable to 2018 rent for the additional poles, already paid as part of the payment of the invoice for 2018, and (b) a supplemental payment, no later than forty-five (45) days after the final approval by the City Commission of this Settlement Agreement, of \$79,909.92 (which is \$106,546.56 less the \$26,636.64 attributable to 2018 rent for the additional poles).

2. **Payment for Inventory Costs.**

a. **City Inventory.** AT&T shall pay City \$16,000 as AT&T's share of the inventory costs, no later than forty-five (45) days after the final approval by the City Commission of this Settlement Agreement.

b. **AT&T Inventory.** Following completion of AT&T's inventory of its poles, AT&T shall provide the City with a copy of the audit. AT&T will invoice City for its share of that inventory based on the proportion of AT&T poles attached to by City, out of all attachers, including AT&T. City shall pay such invoice within forty five (45) days after receipt of the copy of the audit.

3. **Pole Attachment Agreement.** The parties have negotiated an agreement to govern the rates, terms and conditions of AT&T's access to the City's electric poles ("Joint Use Pole Attachment Agreement" or the "Joint Use Agreement"), attached hereto as Exhibit A, which awaits final City commission approval. Pursuant to the Joint Use Agreement, AT&T shall pay an annual rental fee of \$16.50 per pole for the first 5 years of the Joint Use Agreement. The City shall pay AT&T \$20.68 per pole for every AT&T pole to which the City is attached. In the event it is determined, pursuant a future inventory, that AT&T is attached to fewer than 5,955 poles, the pole count upon which rent is assessed shall be reduced.

4. **Mutual Limited Release.** Upon the final approval by the City commission of this Settlement Agreement, **each Party** and its respective directors, officers, shareholders, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, predecessors, successors, assigns, and executors ("Releasing Party") hereby mutually releases **the other Party** and its respective directors, officers, shareholders, agents, representatives, employees, related or affiliated companies, subsidiaries, beneficiaries, heirs, predecessors, successors, assigns, and executors ("Released Party") from and against any and all claims, rights, damages, actions or liabilities, at law or in equity, known or unknown, matured or unmatured, foreseeable or unforeseeable, which the Releasing Party now has or ever had against the Released Party arising out of or related to compensation for Back Rent and Inventory Costs and the Inventory Results ("Disputes") prior to the date of this settlement except as

provided herein. The Parties acknowledge and agree that although they may hereafter discover facts in addition to or different from those which they know or believe to be true as of the Effective Date, it is their respective and mutual intentions hereby to fully, finally and forever, with respect to each other, settle and release the Disputes and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. Each of the Parties expressly waives whatever rights it may have under any applicable law providing that a general release does not extend to claims that a party does not know or suspect to exist in its favor as of the Effective Date, and do so under the advice of counsel and in full understanding of the significance of that waiver. Nothing in this Agreement shall be construed as a waiver of sovereign immunity for the City beyond the waiver provided in section 768.28, Florida Statutes.

5. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth herein, and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance.

6. **Modification of Agreement.** This Agreement may not be amended or modified except by written instrument signed by all of the Parties hereto, and the Parties agree that this provision may not be waived except in writing.

7. **Waiver.** The rights of the Parties under this Agreement are to be considered cumulative, and the failure on the part of any party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

8. **Cooperation.** The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto.

9. **No Admission of Liability.** By this settlement, no party admits any liability, but rather the Parties have agreed to this settlement as a compromise of disputed claims in the interests of avoiding the costs and uncertainty of litigation.

10. **Time is of the Essence.** Time is of the essence for all obligations under this Agreement.

11. **Headings.** The headings used in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision in it.

12. **Severability**. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect.

13. **Benefit and Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties, their heirs, successors and assigns. This Agreement may be executed in counterparts, which, taken together, shall constitute one and the same instrument. The individuals signing below on behalf of entities represent and warrant that they have the full authority to bind their respective entities to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as an executed original.

14. **Governing Law and Venue**. This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law. Venue for any action relating to or arising out of this Agreement shall be in Palm Beach County, Florida.

15. **Attorneys' Fees**. Each Party shall bear its own attorneys' fees and costs in connection with this settlement of the above-referenced matter and the negotiation and preparation of this Agreement. Furthermore, in any legal action or other proceeding arising out of or relating to this Agreement including, without limitation, enforcement of the terms of this Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with such dispute.

16. **Independent Legal Advice**. The Parties have had the opportunity to obtain independent advice of legal counsel of their own selection. Each of the Parties acknowledges that they have entered into this Agreement freely and voluntarily, believing it to be in their best interest. The Parties have entered into this Agreement with a full and complete understanding of their legal rights and neither Party is under any current impediment that would prevent their full and complete understanding of this Agreement and their free and voluntary acceptance of the terms and conditions of this Agreement. The Parties to this Agreement further acknowledge and agree that none of the signatories for any Party is/are suffering from any physical, mental, or other condition that would impair their ability to contract and their ability to understand fully the terms and conditions of this Agreement. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

17. Notices

Any notices required under this Settlement Agreement shall be served upon the Parties via overnight priority mail or certified mail, return receipt requested as follows:

To AT&T:

Phillip R. Simmons

Senior Sourcing Manager
AT&T National Joint Utility Team
120 N. K Street
3rd Floor
Lake Worth, FL, 33460

With a copy to:

Thomas (Tre) M. Payne III
AVP-Senior Legal Counsel
AT&T Technology & Operations
1025 Lenox Park Blvd. NE
5th Floor, Room D583
Atlanta, GA 30319-5309

To City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

With Copy to:

City of Lake Worth Beach
Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33461

And:

City of Lake Worth Beach
Attn: City Attorney
7 N. Dixie Highway
Lake Worth Beach, FL 33460

Either Party may change the Notice contact information as set forth above by providing the other Party with written notice of such change.

18. **Effective Date.** The Effective Date of this Agreement is the later of the date the City Commission for the City of Lake Worth Beach approves this Agreement and executes Exhibit A.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the parties hereto have made and executed this Settlement Agreement and Release as of the day and year set forth below by the City.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

By: _____
Pam Triolo, Mayor

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was physically acknowledged before me this _____ day of _____, 2020, by Pam Triolo, as the Mayor of the City of Lake Worth Beach, Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

BELLSOUTH TELECOMMUNICATIONS, LLC,
D/B/A AT&T FLORIDA

By: _____

Print Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was physically acknowledged before me this _____ day of _____, 2020, by _____, as _____ of BELLSOUTH TELECOMMUNICATIONS, LLC, D/B/A AT&T FLORIDA, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

EXHIBIT A
POLE ATTACHMENT
(TO BE ATTACHED AFTER EXECUTION)