

RECORD OF RESOLUTIONS

Trustprint Legal Blank, Inc. Form No. 30045

Resolution No. _____

Passed _____, 20____

CITY OF BELPRE
RESOLUTION NO. 15 (2018-2019)

**A RESOLUTION AUTHORIZING THE SAFETY-SERVICE DIRECTOR
TO EXECUTE A SETTLEMENT AND RELEASE WITH AT&T CORP.
TO SETTLE A CLAIM FOR SERVICES PROVIDED BY AT&T CORP.
TO THE CITY OF BELPRE**

WHEREAS, in previous years, AT&T CORP provided telephone service to the City of Belpre; and

WHEREAS, the City of Belpre and AT&T have agreed to settle any and all claims by AT&T Corp against the City of Belpre for the telephone services, a copy of said Settlement And Release Agreement is attached hereto as Exhibit A; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BELPRE, OHIO, THAT:

SECTION I

Ronald Cross, the Safety-Service Director of the City of Belpre, is hereby authorized to enter into any agreements as may be necessary and appropriate for obtaining the settlement and release of any and all claims by AT&T Corp.

SECTION II

This Resolution is hereby declared to be an emergency measure deemed necessary for the immediate preservation of the public health, safety and welfare of the City, and for the further reason that this authorization is necessary to settle all claims. Wherefore, this Resolution shall take effect and be in full force from and immediately after its passage by Council and signing by the Mayor.

PASSED: October 8, 2018

ATTEST: Judith Drake Protem

PRESENTED TO MAYOR: 10/8/18

APPROVED BY MAYOR: 10/8/18

[Signature]
PRESIDENT OF COUNCIL

[Signature]
MAYOR

RECORD OF RESOLUTIONS

Dayton-Cape Breton, Inc. Form No. 30045

Resolution No. _____ CLERK'S CERTIFICATION OF PUBLICATION _____, 20____

The undersigned Clerk of the Council of the City of Belpre, Ohio, does hereby certify that on October 8, 2018, this Resolution was published by posting a copy of the same at the five public places designated by the City Council in Ordinance No. 18 (2006-07).

October 8, 2018
Date

CLERK

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of September __, 2018 by and among AT&T Corp., its affiliates and subsidiaries (collectively, “AT&T”), and the City of Belpre (the “Company”), with respect to the facts set forth below. Hereinafter, AT&T and the Company are sometimes collectively referred to as the “Parties,” and individually referred to as a “Party.”

RECITALS

A. The Company requested, and AT&T agreed to provide, certain telecommunications services (“Services”). In exchange for the Services, the Company agreed to pay AT&T monthly. AT&T invoiced the Company for the Services under account numbers 740R010067740 and 740R010112740 (together, the “Accounts”).

B. Certain disputes have arisen between the Parties regarding the amount the Company should pay to AT&T for the Services provided under the Accounts up to the date of this Agreement. The Accounts are closed and no additional Services are being provided thereunder.

C. The Parties, without admitting any liability regarding the above recitals, now desire to resolve their claims and disputes in connection with the amounts to be paid under the Accounts, upon the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Recitals. The recitals set forth above are hereby incorporated herein as true and correct.

2. Payment to AT&T. To settle all amounts due under the Accounts, the Company shall pay to AT&T the amount of \$25,000.00. The \$25,000.00 shall be paid in one payment, via check, and made payable to AT&T Corp. The check shall be sent to the care of Assayag Mauss, LLP, the attorneys for AT&T, located at 2915 Red Hill Avenue, Suite A200, Costa Mesa, California 92626, Attention Shaun Duffy, no later than ten (10) days after the Effective Date of this Agreement (as defined below).

3. Events of Default. The occurrence of any of the following events of default shall be an event of default (“Event of Default”):

a. Failure to perform any of the obligations (including, but not limited to, payment obligations) set forth in this Agreement; and

b. Any representation or warranty of the Parties herein that is false or misleading.

4. Release. Upon the Effective Date (defined below) of this Agreement, and except for the obligations set forth herein, the Parties hereby, for themselves, their successors, heirs, executors, parents, subsidiaries, affiliates, administrators and assigns (each, a "Releasing Party" and collectively, the "Releasing Parties"), release, acquit, and forever discharge each other, their directors, officers, employees, agents, attorneys, parents, subsidiaries, affiliates, successors, administrators and assigns ("Released Parties") of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which any Releasing Party might have because of anything done, omitted to be done, or allowed to be done by any of the Released Parties and in any way connected with the Services and the Accounts, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, including, without limitation, any settlement negotiations and any damages and the consequences thereof resulting or to result from the events described, referred to or inferred hereinabove ("Released Matters"). Releasing Parties each further agree never to commence, aid or participate in (except to the extent required by order or legal process issued by a court or governmental agency of competent jurisdiction) any legal action or other proceeding based in whole or in part upon the foregoing. In furtherance of the general release above, Releasing Parties each acknowledge and waive the benefits of California Civil Code Section 1542 (and all similar ordinances and statutory, regulatory, or judicially created laws or rules of any other jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Releasing Parties each agree that this waiver and release is an essential and material term of this Agreement and that the agreements in this paragraph are intended to be in full satisfaction of any alleged injuries or damages in connection with the Released Matters. Releasing Parties each represent and warrant that they have not purported to convey, transfer or assign any right, title or interest in any Released Matters to any other person or entity and that the foregoing constitutes a full and complete release of the Released Matters. Releasing Parties each also understand that this release shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated. Releasing Parties each has consulted, or has had the opportunity to consult with legal counsel prior to signing this release, and executes such release voluntarily, with the intention of fully and finally extinguishing all Released Matters.

5. Effect of Agreement. The Company acknowledges that it has consulted, or has had the opportunity to consult, with counsel and such other experts and advisors as it deems necessary in connection with the negotiation, execution, and delivery of this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto, and their respective successors and assigns. No other person shall be entitled to claim any right or benefit hereunder, except the Parties.

6. Bankruptcy. The Company warrants and represents to AT&T that the Company has no present intent (a) to file any voluntary petition in bankruptcy under any Chapter of the United States Bankruptcy Code (the "Bankruptcy Code"), or directly or indirectly to cause the Company to file any voluntary petition in bankruptcy under any Chapter of the Bankruptcy Code or to have any involuntary petition in bankruptcy filed against the Company under any Chapter

of the Bankruptcy Code; or (b) in any manner, directly or indirectly, to cause the Company to seek relief, protection, reorganization, liquidation, dissolution, or similar relief for debtors under any federal, state, or local law, or in equity; or (c) in any manner, directly or indirectly, to cause any real or personal property ("Property") to be a part of any bankruptcy or insolvency proceedings or the property of any bankruptcy or insolvency estate. Notwithstanding the foregoing, in the event of a bankruptcy filing by or against the Company, (a) the Company shall not reject this Agreement, nor contest any claim or assertion by AT&T that this Agreement is binding on the Parties, and that valuable consideration has been received by the Company for this Agreement; (b) AT&T shall, at its option, receive immediate relief from the automatic stay provisions of the Bankruptcy Code following any bankruptcy petition which the Company may file or which may be filed against the Company; (c) in no event shall the Company contest a motion to lift the automatic stay filed by AT&T; and (d) any contrary action taken by the Company with respect to the matters set forth above shall be deemed to be in bad faith and are agreed to constitute violations of Federal Rules of Civil Procedure 11 and Bankruptcy Rule 9011.

7. Payments, Avoidance Events, and the Effective Date of a Release Claim. Any payment required pursuant to this Agreement made by check or money order will be deemed received only after the check or money order has been honored without return demand by the bank against which it was drawn. Each release provided for in this Agreement will be effective only if: (a) the Party receiving the release timely performs all of its obligations under this Agreement, and (b) no Avoidance event (defined below) occurs with respect to the Party receiving the release within 100 days following the date upon which the last of the payments required pursuant to Section 2 is received by the payee. An "Avoidance Event" means and includes: (1) the filing by the Party of any petition of bankruptcy or other similar legal proceeding seeking relief from creditors; (2) the making by the Party of any assignment for the benefit of creditors; (3) the filing against the party of any involuntary petition of bankruptcy unless dismissed within 30 days of the date of filing; (4) the filing of any legal proceeding seeking the appointment of a receiver, examiner, conservator, administrator, guardian or trustee with respect to the Party, unless dismissed within 30 days of the date of filing; or (5) the filing of any proceeding seeking the marshaling of any assets of the Party for the benefit of any creditor, or creditors generally, unless dismissed within 30 days of the date of filing.

8. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. Applicable Law; Jurisdiction. Except as otherwise provided herein, this Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Ohio without regard to principles concerning choice of law.

10. Attorneys' Fees. Each Party shall bear its own fees and costs incurred prior to the execution of this Agreement. The Company shall reimburse AT&T for any reasonable costs and reasonable attorneys' fees incurred by AT&T in the future in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement, and in connection with any amendment, waiver, "workout" or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding, the prevailing party is entitled to recover reasonable costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against the Company under the Bankruptcy Code

(Title 11, United States Code) or any similar or successor statute, AT&T is entitled to recover reasonable costs and reasonable attorneys' fees incurred by AT&T related to the preservation, protection, or enforcement of any rights of AT&T in such a case. As used in this paragraph, "attorneys' fees" includes the allocated costs of AT&T's in-house counsel.

11. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective employees, agents, attorneys, successors, devisees, executors, administrators, assigns, and insurance carriers. The Parties executing this Agreement represent and warrant that each is duly authorized to execute this Agreement. All Parties warrant that they are the true holders of all rights and remedies which they purport to release, and that they have not assigned or transferred any of those rights or remedies to any other individuals and/or entities.

12. No Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

13. Notices. Any notice which a party is required or may desire to give the other shall be in writing and may be sent by (i) personal delivery, (ii) by United States Registered or certified mail, return receipt requested, postage prepaid, or (iii) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

To the Company: City of Belpre
 Attention: Ron Cross
 715 Park Dr.
 Belpre, Ohio 45714
 Telephone: (740) 423-7592

With a copy to: McCauley, Webster & Emrick
 Attention: Thomas Webster, Esq.
 1710 Washington BLVD
 PO Box 196
 Belpre, Ohio 45714
 Telephone: (740) 423-9548

To AT&T: AT&T Corp.
 Attention: Andrew L. Stein
 One AT&T Way, Room 3A176
 Bedminster, New Jersey 07921
 Telephone: (908) 234-6150

With a copy to: ASSAYAG ❖ MAUSS
 Attention: Shaun Duffy, Esq.
 2915 Red Hill Avenue, Suite A200
 Costa Mesa, California 92626
 Telephone: (714) 427-6800

Such notice shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the date of posting by the United States post office, or (iii) if given by Federal Express or other overnight courier, twenty-four (24) hours after deposit thereof with such overnight courier. The Company shall notify AT&T of any address changes for notice purposes under this Agreement within five (5) days of the change of address.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original document, and all of which together shall constitute a single instrument. Facsimile or electronic versions of signatures will have the same force and effect as original signatures. In this Agreement, where the context may require, the singular shall include the plural, and the neuter, masculine and feminine genders shall be deemed to include both natural persons and any corporation, partnership, association, joint venture, trust, firm, governmental agency, body politic or any other entity.

15. Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement and therefore contains the entire agreement between the Parties and supersedes all prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended in a writing signed by the Company and AT&T.

16. Effect of Headings. The headings of the sections and subsections of this Agreement are included for convenience only, and are not to be construed as affecting the construction or interpretation of the individual provisions of this Agreement.

17. Construction and Performance. This Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties prepared this Agreement, and it is further understood and agreed that this Agreement is entered into and is to be performed and enforced in the State of Ohio.

18. Effective Date. This Agreement shall be effective upon the date the last Party executes this Agreement ("Effective Date").

IN WITNESS WHEREOF, AT&T and the Company have executed this Agreement as set forth below.

DATED: September __, 2018 The City of Belpre

By: _____
Ron Cross
Title

DATED: September __, 2018 AT&T Corp.

By: _____
Bill Froehlich
Director - Credit and Collections

