



Meeting Date: August 24, 2016

From (Dept): Finance

Signature: [Signature]
Department Director

Approved for [Signature]
Agenda: [Signature]
City Manager

Official Use Only

Reviewed by
City Attorney: _____

Council Action: _____

Date: _____

SUBJECT:

Request For Approval: Settlement Agreement #AGR2016-44 between the City of Dunnellon and FL Fiber Networks, LLC

SUMMARY EXPLANATION & BACKGROUND: FL Fiber Networks LLC and the City have agreed to settle the amounts owed for FL Fiber's monthly rental of the building located at 20804 W. Pennsylvania Ave. and telecommunications services provided by FL Fiber Networks LLC to the City. In addition to executing a settlement agreement the City will execute a mutual release.

FISCAL INFORMATION: Amount owed to FL Fiber Networks for July 2016 and August 2016 services \$599.90

PROCUREMENT METHOD:

PURCHASE REQUISITION NUMBER:

RECOMMENDED ACTION: Authorize Mayor to execute the settlement agreement AGR#2016-44

Initiated by: DMB/js

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of September 2016, by and between the **CITY OF DUNNELLON, FLORIDA**, a Florida municipal corporation (the "City"), whose address is 20750 River Drive, Dunnellon, Florida 34431, and **FLORIDA FIBER NETWORKS, LLC** ("FFN"), 301 South Collins Street, Suite 105, Plant City, Florida 33563, collectively known as (the "Parties").

WHEREAS, in September of 2015, FFN came into possession of approximately 978 sq. ft of the City-owned property located at 20804 W. Pennsylvania Avenue, Dunnellon, Florida without a lease; and

WHEREAS, the parties agree that FFN owes the City rent for use of the property, building-related expenses and Duke Energy deposit charges; and

WHEREAS, the parties agree that the City owes FFN for communication services provided to the City prior to and up to June 30, 2016; and

WHEREAS, on July 12, 2016, under the direction of City Council, the City's finance officer sent a letter to Florida Fiber Networks, LLC to resolve all outstanding balances between the City and Florida Fiber Networks, LLC and set the amounts due to a zero balance. A copy of the letter is attached hereto as Exhibit "A;" and

WHEREAS, Florida Fiber wishes to accept the City's offer as set out in the July 12, 2016 letter and set the balance due to each Party in the amount of \$0.00 as of June 30, 2016; and

WHEREAS, the parties have come to an agreement regarding balances due to each other for July and August 2016 and wish to make payment for these debts in full.

NOW, THEREFORE, in consideration of the premises hereof, the recitals above and of the mutual covenants set forth herein, the parties hereby agree as follows:

1. **Recitals:** The recitals above are true and correct and incorporated herein.

2. The Parties hereby agree that all debts owed or alleged to be owed to each other incurred prior to June 30, 2016 are settled in full as of the date of June 30, 2016 and neither Party owes at this time, or shall owe any monetary balance to the other prior to this date.

3. Upon execution of this Agreement, City agrees to pay FFN \$599.90 for all communication services rendered in the months of July and August, 2016 in full.

4. Upon execution of this Agreement, FFN agrees to pay City \$1666.52 for use of the building in July and August, 2016 in full.

5. Upon execution of this Agreement and receipt of the sums specified herein, the Parties agree that ALL outstanding debts due to either Party from the other are fully satisfied as of August 31, 2016.

6. The Parties shall execute a mutual general release identical to the mutual general release form attached hereto as Exhibit "B" for any potential or future claims relating to any balances due which may be alleged to be due prior to August 31, 2016.

7. At all times that the City utilizes services from FFN in the future, FFN guarantees that it will offer the City communication services at prices consistent with service charges for other business customers.

7. **Entire Agreement:** This Agreement supersedes any other agreements, oral or written, and contains the entire agreement among the Parties as to the subject matter hereof.

8. **Third-Party Rights:** This Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third-party.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the date and year first above written.

[Signatures on following page]

CITY OF DUNNELLON, FLORIDA

NATHAN WHITT, MAYOR

Date signed: _____

ATTEST:

DAWN M. BOWNE, MMC, CITY CLERK

Approved as to form and legal sufficiency:

Andrew J. Hand, City Attorney

Witnesses:

Print name: _____

Print name: _____

Florida Fiber Networks, LLC

DAVID S. SUAREZ, CEO

Date signed: _____



CITY OF DUNNELLO

20750 River Drive
Dunnellon, FL 34431
(352) 465-8500
FAX (352) 465-8505

July 12, 2016

VIA E-MAIL: dorshan@flfibernet.com

Mr. David Orshan
Florida Fiber Networks, LLC
2295 South Hiawasse Road
Suite 407
Orlando, Florida 32835

Dear David:

The City is confident that it can reconcile its relationship with Florida Fiber and looks forward to a congenial, collaborative relationship with Florida Fiber in the years to come. At the workshop, Council reviewed and discussed FFN's reconciliation proposal. We offer the following counter proposal for your review as indicated on the attached spreadsheet.

Regarding rent for the premises, once FFN came into possession in September, 2015, it did so without the City Council's approval of an assignment of the lease, pursuant to the lease's terms. Therefore, it has been in possession of the premises without a lease. The City wants the base rent to be commensurate with comparable leases in the surrounding area per square foot, which is \$.80/sq. ft. With the rental area of the premises being 978 square feet (which includes a bathroom), the base rent would therefore be \$782.40 for ten months, plus tax. This rental amount would be retroactive back to September 1 2015, when FFN came into possession. Therefore, FFN would owe back rent for ten (10) months, September 1, 2015 through June 30, 2016 in the amount of **\$7,824.00** plus tax. Going forward, beginning July 1, 2016, the City Council does not want to enter into a long-term lease agreement at this time but will agree to a month-to-month lease.

Regarding internet and phone service, as you are now aware, the City has not had phone service through Florida Cable or FFN since between March and May, 2015. In a spirit of cooperation, though, we will agree to reimburse FFN for both internet and phone service for the ten months (September 1, 2015 through June, 2016) that you have owned the System in Dunnellon. By our calculations, the amount for internet and phone service is \$1,759.57 per month for a total amount of **\$17,595.72**. EFFECTIVE JULY 1, 2016, PLEASE ADJUST ALL

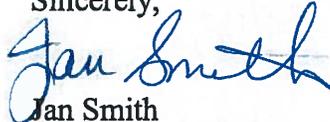
INVOICES TO REFLECT THAT THE CITY NO LONGER HAS PHONE SERVICE WITH FFN.

Given the above, it is the City's position that the City owes FFN for internet and phone service the amount of **\$17,595.72**. FFN owes the City for rent (\$7,824.00), building-related expenses (\$5,920.90), and Duke Energy deposit charges (\$3,953.64) in the amount of **\$17,698.54**. If you are in agreement with our proposal we will forgo the amount of \$102.82 (the difference between the amount FFN owes the City and the amount the City owes FFN). Until this matter is resolved the City cannot move forward with creating a new lease.

If you agree to the City's counterproposal as expressed in this letter, please have an officer of FFN sign below, and we will move forward with preparing mutual releases.

I look forward to hearing from no later than July 19, 2016. We also look forward to a new day with FFN.

Sincerely,



Jan Smith
Finance Officer

Florida Fiber Networks, LLC

Print name & title

MUTUAL RELEASE

This Mutual Release is made and effective the ___ day of _____, 2016, by and between the City of Dunnellon ("City"), whose address is 20750 River Drive, Dunnellon, Florida 34431, and Florida Fiber Networks, LLC, ("FFN"), whose principal address is 301 South Collins Street, Suite 105, Plant City, Florida 33563.

WHEREAS, the Parties have agreed to settle all debts owed to each other per the terms of and consideration received pursuant to the Settlement Agreement to which this Mutual Release is attached and mutually release each other from any and all obligations, debts, dues, demands, and/or liabilities of any kind, nature, and/or description with respect to monies due for rent, building related expenses, deposit charges and/or services received up to and until the date of August 31, 2016; and

WHEREAS, the parties to this Release desire to compromise and settle the various claims rather than incur the expense and uncertainty of litigation over said claims; and

NOW, THEREFORE, in consideration of the premises in the absence of any of which this Release would not be executed and delivered by the undersigned to one another nor accepted by each, and the benefits and advantages anticipated by the undersigned and from the compromise and settlement of said claims, and the forbearance of City of Dunnellon to press its claims against FFN, and the forbearance of FFN to press their claim(s) and/or defenses against City of Dunnellon, the undersigned do hereby acquit, release, exonerate and discharge each other and their shareholders, officers, directors, successors, legal representatives, and assigns, of and from any and all obligation, liability, or responsibility under the laws of the State of Florida, and any other state of the United States, and of the United States of America, for, from, under or on the account of or growing out of or arising out of any and all known and unknown, foreseen and unforeseen, developed and undeveloped damages, or losses and the consequence thereof, from the beginning of the world through August 31, 2016, including (but not by these specific references excluding any other elements of obligation, liability or responsibility in respect of said occurrence of occurrences) all damages, losses, costs, attorney's fees, charges and expenses of every kind, nature and character, now existing or hereinafter existing, known or unknown or hereinafter becoming known, accrued or hereinafter accruing, resulting directly or indirectly, proximately or remotely, from all and any of the matters and things raised in these matters, and City of Dunnellon and FFN do hereby acknowledge full and complete payment of the attorney's fees and costs to be due it from the other.

The hereinabove recited consideration is the full, complete and entire consideration for this Release, and there is no agreement, oral or written, express or implied, whereby the undersigned are to receive at any time or in any such event or upon the happening of any contingency or upon the development or discovery of any fact, circumstance or condition, any further consideration of any kind whatsoever from City of Dunnellon or FFN for or on account of any other matter, circumstance or thing whatsoever; and in consideration of the premises, the undersigned hereby agree that they will not, and that their heirs, legal representatives and assigns shall not, hereinafter file or institute in any court any suit against each other for or on account of or in respect of said claims or any matters and things whatsoever except as to those matters specifically reserved herein,

and that as to any other suit or action which nevertheless may be hereafter brought on account or in respect of any matters and things referenced above or otherwise, from the beginning of the world to August 31, 2016, this Release shall be complete and conclusive defense.

The undersigned have read this Release and understand the purpose, tenor and effect of this Release. It contains and sets forth the entire agreement between the parties hereto, and there is no part of the agreement between them in respect of the premises which is not fully, completely, accurately and truly set forth herein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals to this Release, and to duplicate originals hereof, as well.

CITY OF DUNNELLON, FLORIDA

NATHAN WHITT, MAYOR

Date signed: _____

ATTEST:

DAWN M. BOWNE, MMC, CITY CLERK

Approved as to form and legal sufficiency:

Andrew J. Hand, City Attorney

Witnesses:

Print name: _____

Print name: _____

Florida Fiber Networks, LLC

DAVID S. SUAREZ, CEO

Date signed: _____



Invoice

Invoice Date: July 1, 2016
 Invoice No: 8000-007
 Account No: 80-7000
 Delinquent After: July 10, 2016
 Current Due: **\$299.95**

City of Dunnellon
 Attn: Jan Smith
 20750 River Drive
 Dunnellon, FL 34431

Please remit payment to:
floridafiber Networks
 301 South Collins St., Suite 105
 Plant City, FL 33563

Quantity	Service	Unit Price	Amount
	Previous Balance	\$ -	\$ -
Non-Recurring Charges Total			\$ -
1	80-7595 City of Dunnellon Police Department	\$ 59.99	\$ 59.99
1	80-7596 City of Dunnellon City Hall	\$ 59.99	\$ 59.99
1	80-7597 City of Dunnellon Public Services	\$ 59.99	\$ 59.99
1	80-7738 City of Dunnellon Fire Department	\$ 59.99	\$ 59.99
1	80-7739 City of Dunnellon Waste Water	\$ 59.99	\$ 59.99
Monthly Recurring Charges Total			\$ 299.95
	State Tax	4.9200%	\$ -
	FL Portion Gross Receipts	0.1500%	\$ -
	Gross Receipts	2.3700%	\$ -
	Local Communications Services Tax	5.2200%	\$ -
Taxes and Surcharges Total			\$ -
Total Current Charges			\$ 299.95

Account Balance

Previous Bill	Previous Payments	Adjustments	Previous Balance	Current Charges	Amount Due
\$ -	\$ -			\$ 299.95	\$ 299.95

A late payment fee of 1.5% will be applied on balances considered delinquent.



Invoice

Invoice Date: August 1, 2016
 Invoice No: 8000-008
 Account No: 80-7000
 Delinquent After: August 10, 2016
 Current Due: **\$299.95**

City of Dunnellon
 Attn: Jan Smith
 20750 River Drive
 Dunnellon, FL 34431

Please remit payment to:
floridafiber Networks
 301 South Collins St., Suite 105
 Plant City, FL 33563

Quantity	Service	Unit Price	Amount
	Previous Balance	\$ -	\$ -
Non-Recurring Charges Total			\$ -
1	80-7595 City of Dunnellon Police Department	\$ 59.99	\$ 59.99
1	80-7596 City of Dunnellon City Hall	\$ 59.99	\$ 59.99
1	80-7597 City of Dunnellon Public Services	\$ 59.99	\$ 59.99
1	80-7738 City of Dunnellon Fire Department	\$ 59.99	\$ 59.99
1	80-7739 City of Dunnellon Waste Water	\$ 59.99	\$ 59.99
Monthly Recurring Charges Total			\$ 299.95
	State Tax	4.9200%	\$ -
	FL Portion Gross Receipts	0.1500%	\$ -
	Gross Receipts	2.3700%	\$ -
	Local Communications Services Tax	5.2200%	\$ -
Taxes and Surcharges Total			\$ -
Total Current Charges			\$ 299.95

Account Balance

Previous Bill	Previous Payments	Adjustments	Previous Balance	Current Charges	Amount Due
\$ -	\$ -			\$ 299.95	\$ 299.95

A late payment fee of 1.5% will be applied on balances considered delinquent.

