

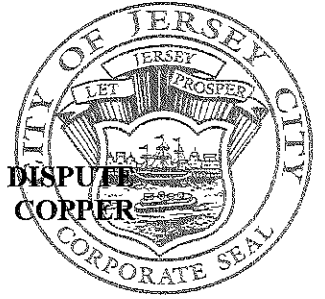
# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 16.279

Agenda No. 10.Y

Approved: APR 27 2016

TITLE: **RESOLUTION AUTHORIZING THE SETTLEMENT OF THE VERIZON DISPUTE CONCERNING THE CITY OF JERSEY CITY'S CONVERSION FROM COPPER CIRCUITS TO FIBER OPTIC CABLES**



COUNCIL OFFERED AND MOVED ADOPTION OF THE FOLLOWING RESOLUTION:

**WHEREAS**, the City of Jersey City ("City") has been a customer of Verizon Business Network Services Inc. ("Verizon") for the provision of high speed, high bandwidth data network services; and

**WHEREAS**, the City was advised by Verizon that the use of copper circuits would be discontinued and that unless the City migrated from using copper circuits to fiber optic cables, the City would be forced to find an alternate vendor; and

**WHEREAS**, many of the existing copper circuits were no longer capable of supporting the increasing volume and demand for data and video, which resulted in blackouts; and

**WHEREAS**, the City determined it would be in the best interest of public safety to convert to fiber optic cables, and Verizon did proceed to with such conversion; and

**WHEREAS**, in the process of such conversion, the City and Verizon became involved in a dispute concerning billing discrepancies and early termination charges (the "Dispute"); and

**WHEREAS**, the City and Verizon have come to an agreement regarding settlement of the Dispute, memorialized in the "Confidential Settlement and Release Agreement", which in summary, saves the City from \$658,316.47 in costs claimed by Verizon, and requires the City to pay only for certain services already performed by Verizon for calendar year 2015 amounting to \$226,540.72, and

**WHEREAS**, the aforementioned \$226,540.72 has already been encumbered through a prior resolution, titled RESOLUTION AUTHORIZING AN AGREEMENT WITH VERIZON TO PROVIDE TELECOMMUNICATION SERVICES PURSUANT TO N.J.S.A. 40A:11-5(1)(f), as part of the services contract with Verizon; and

**WHEREAS**, the necessary funds are already in Account Number 01-203-25-271-302, no additional funds for this settlement are required.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Jersey City, that:

1. The Corporation Counsel be authorized to settle this dispute and the Mayor and Business Administrator are authorized to execute the "Confidential Settlement and Release Agreement".
2. Funds in the amount of \$226,540.72 are authorized to be paid from Account Number 01-203-25-271-302 in settlement of this dispute.

I, N.C. VOUCHER CFO DOES NOT CERTIFY QD hereby certify that these funds are available for this expenditure in Account Number 01-203-25-271-302.

APPROVED: [Signature]

APPROVED AS TO LEGAL FORM

APPROVED: [Signature]

Business Administrator

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 9-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 4.27.16											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

[Signature]  
Rolando R. Lavarro, Jr., President of Council

[Signature]  
Robert Byrne, City Clerk

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**RESOLUTION FACT SHEET – CONTRACT AWARD**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

RESOLUTION AUTHORIZING THE SETTLEMENT OF THE VERIZON DISPUTE CONERING THE CITY OF JERSEY CITY’S CONVERSION FROM COPPER CIRCUITS TO FIBER OPTIC CABLES

**Initiator**

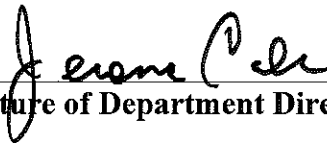
Department/Division	PUBLIC SAFETY	Communications & Technology
Name/Title	Robert Baker, Sr.	Director
Phone/email	201-547-5449	rbakersr@njcps.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

Settlement Agreement for conversion of copper lines to fiber optic lines in Budget Year 2015

I certify that all the facts presented herein are accurate.

  
Signature of Department Director

Date 4/5/16

\_\_\_\_\_  
Signature of Purchasing Director

Date

## DETERMINATION OF VALUE CERTIFICATION

James Shea, of full age, hereby certifies as follows:

1. I am Public Safety Director for the City of Jersey City.
2. Attached to this Certification is a resolution awarding a settlement to Verizon to provide the City with Fiber Optic cable.
3. The amount of the contract is \$226,540.72 which exceeds \$17,500.
4. This certification is made pursuant to N.J.S.A. 19:44A-20.5.
5. I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 4/5/16

  
James Shea, Director of Public Safety

**CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT**

This Confidential Settlement and Release Agreement ("Agreement") is made by and between Verizon Business Network Services Inc. ("Verizon") and City of Jersey City ("Customer"). All parties to this Agreement are collectively referred to as "Parties" and individually as a "Party." This Agreement is made as a compromise between the Parties for the complete and final settlement of their claims, differences, and causes of action with respect to the dispute described below.

**RECITALS**

**WHEREAS**, Customer and Verizon have entered into a State of New Jersey T1776 Data Services Participation Agreement, signed by the Customer on November 19, 2014 as amended ("the Contract"); and

**WHEREAS**, the parties have a dispute under the Contract concerning billing discrepancies and early termination charges hereinafter referred to as "the Dispute"; and

**WHEREAS**, the Parties desire to avoid the necessity, expense, inconvenience and uncertainty of litigation and to resolve and settle all claims and disputes between them, known or unknown, arising out of, or in any way related directly or indirectly to, the Dispute;

**NOW THEREFORE**, in consideration of the mutual promises, releases, agreements, and covenants contained herein, the sufficiency of which is acknowledged by the Parties to the Agreement, the Parties agree as follows:

**1. SETTLEMENT**

- 1.1 Without admitting liability, within ninety (90) days of signing of this Agreement, Verizon agrees to issue a credit to Customer's Account Numbers Y2754916, Y2754917 and Y2617770 in the total amount of Six Hundred Fifty Eight Thousand, Three Hundred Sixteen Dollars and Forty-Seven Cents (\$658,316.47) as full and final settlement of the Dispute.
- 1.2 Without admitting liability, Customer shall be responsible for the remaining balance of Two Hundred Twenty Six Thousand, Five Hundred Forty Dollars and Seventy-Two Cents (\$226,540.72)
- 1.3 The settlement shall finally settle and resolve, all claims, known or unknown, which were asserted or which could have been asserted by Verizon and/or Customer arising out of or related directly or indirectly to the Dispute as of the date of this Agreement, including, but not limited to, legal expenses, attorneys' fees, and litigation costs.

## **2. RELEASE**

- 2.1 In consideration hereof, each Party, its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs, agents, and attorneys hereby remise, release and forever discharge the other Party, and all its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, and their assigns, agents, directors, officers, employees, heirs, personal representatives, and shareholders from and against all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency, commission or arbitration administrator, and whether now known or unknown, liquidated or unliquidated, that each Party now has or may have had, or thereafter claims to have, regarding the issues arising out of or directly or indirectly related to the Dispute, on behalf of itself, or any other person or entity, at any time prior to and including the date of this Agreement (the "Claims").
- 2.2 Each Party warrants and agrees that (1) it has not assigned, pledged, hypothecated, or otherwise divested itself or encumbered any part of its Claims, being released hereby; (2) that no other person or entity has any interest in or ownership of its Claims and (3) it will indemnify, defend, and hold the other Party harmless from and against all or any part of the its Claims so assigned, pledged, hypothecated, divested or encumbered.

## **3.0 NO ADMISSION OF LIABILITY**

It is understood and agreed between the Parties that this Agreement is a compromise and shall never be construed as an admission of liability, wrongdoing or responsibility on the part of any Party, or on the part of any Party's predecessors, successors, assigns, agents, parents, subsidiaries, affiliates, officers, directors, employees, heirs, personal representatives, or shareholders. Rather, the Parties expressly deny such liability, wrongdoing or responsibility. Moreover, neither the settlement set forth herein nor any Party's execution and performance of this Agreement shall be construed by any person or in any court, agency or tribunal whatsoever as a present or past admission of liability, wrongdoing or responsibility.

## **4.0 CONFIDENTIALITY**

The Parties agree that this Agreement and its terms are and shall be kept confidential by the Parties, to the extent permitted by law. Except to the extent necessary to enforce this Agreement or to the extent that either of the Parties reasonably believes it is required by law to disclose certain of the terms of this Agreement to its stockholders, or Jersey City authorities, officials and governing body, or in the filings with the Securities and Exchange Commission, Jersey City local governing body, authorities and officials, or a state or federal regulatory body; or to the extent that either of the Parties is required to disclose the terms of its individual settlement to the taxing authorities, preparers, or others with respect to tax matters; or to the extent required by subpoena or other order of a court or government body of competent jurisdiction or at the request of the FCC; the terms and conditions of this Agreement, including the amounts of any payment shall remain confidential and shall not be disclosed. The Parties acknowledge, however, that the payment and credit amounts must be disclosed and presented to the Jersey City, City Council for approval. To the extent required by subpoena or other written order, rule, or regulation of a court or government body of competent jurisdiction, the Party being compelled to provide the

information will notify the other Party within five (5) business days of receipt of the subpoena or written order. Subject to the same exceptions set forth above, the Parties and their counsel agree that they will not comment on the substance or terms of this Agreement to any person or entity unless written consent is given by the other, except to the effect that the Dispute was resolved amicably, that the Parties and their counsel are bound by the limitations of this Agreement, and as set forth in this paragraph. Notwithstanding the foregoing, this Agreement and its terms may be disclosed to any person who releases claims or against whom claims are released under this Agreement.

## **5.0 MISCELLANEOUS TERMS AND CONDITIONS**

- 5.1 Each Party agrees to bear its own attorneys' fees and costs.
- 5.2 The Parties represent and warrant that each (i) is duly incorporated and/or organized and is in good standing under the laws of the jurisdiction where it is incorporated and/or organized, (ii) has the right and authority to enter into, execute and deliver this Agreement as the binding agreement of such Party, to agree to the terms and conditions set forth herein, and to disburse or receive payments or credits in settlement of the Claims; and (iii) that neither of the Parties has disposed of any of its Claims.
- 5.3 The Parties agree that any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be rendered ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- 5.4 The Agreement including all matters of construction, validity and performance shall be governed by, and construed in accordance with, the laws of the state of New Jersey without giving effect to the choice of law or conflicts of law provisions thereof.
- 5.5 The Parties agree to cooperate fully, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 5.6 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 5.7 Each Party represents that it has not and will not file any complaints or other claims against the other Party, or any of its predecessors, successors, parents, subsidiaries, affiliates, assignees, agents, directors, officers, and employees with any federal, state or local court, administrative agency or commission, or arbitrator relating directly or indirectly to or arising out of the Dispute.
- 5.8 Each Party acknowledges, represents and warrants that the execution, delivery and performance of this Agreement will not result in any violation or be in conflict with its certificate of incorporation or by-laws or any agreement, order, judgment, decree, statute, rule or regulation applicable to it.
- 5.9 The Parties acknowledge, represent and warrant that each has been fully advised by its attorney(s) concerning the execution of this Agreement, that each has fully read and understands the terms of this Agreement, and that each has freely and voluntarily executed this Agreement. Each Party has participated in the creation of this Agreement. No legal principle interpreting the Agreement against the drafter will apply.

- 5.10 This Agreement reflects the entire agreement and understanding between the Parties with respect to the settlement contemplated herein, supersedes all prior or contemporaneous agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the Dispute. This Agreement may be modified or waived, in whole or in part, only by a written document signed by both Parties, and only after the Customer has obtained the requisite approvals, which may include approval by Jersey City, City Council.
- 5.11 No failure or delay by any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
- 5.12 Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party. Upon execution, this Agreement shall be binding on the Parties and their respective successors and permitted assigns.
- 5.13 All notices required hereunder must be in writing and transmitted via overnight courier, electronic mail, hand delivery, or certified or registered mail, postage prepaid and return receipt requested to the Customer and to Verizon at the addresses below. Notices shall be deemed effective upon receipt.

Notices to Verizon:

Verizon  
6415-6455 Business Center Drive  
Highland Ranch, CO 80130  
Attn: Settlements

Verizon Business Network Services Inc.  
500 Summit Lake Drive  
Office 4-04  
Valhalla, NY 10595  
Attn: Vice President, Legal

Notices to Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS THEREOF, the Parties have fully executed this Agreement as of the date of the last signature below.

City of Jersey City

Verizon

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

Date

Hallbach/City of Jersey City/ K.Pickens/S.House/2-24-16