

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS is hereby entered into this \_\_\_\_ day of October, 2016, by and between the City of Hapeville, Georgia (“City”), and AT&T Corp. (“ATT”) (Collectively "Parties") as follows:

WHEREAS, the City has, at all times relevant hereto owned, operated and maintained a sanitary sewer system as a part of its governmental functions on Custer Street in the City of Hapeville, Georgia. The portion of this sanitary sewer system on Custer Street is a part of an integrated system which serves the needs of improved properties on Custer Street and adjoining streets. Hereafter this sanitary sewer system will be referred to as the “sewer.”

WHEREAS, in June, 2015 the City discovered that a portion of the sewer had been penetrated by a steel pipe. It was later alleged and determined that this pipe was in fact a conduit which contained telecommunications cables owned and operated by ATT. Upon being notified of this penetration, ATT, at its expense, relocated its conduit and cables and repaired the portion of the sewer directly damaged by the installation of the conduit.

WHEREAS, subsequently, the City determined that a portion of the sewer upstream from the penetration of the conduit had collapsed, and other portions of the sewer upstream from the penetration were corroded. The City undertook to replace the sewer which it found to be collapsed and corroded. The City contends that the penetration of the sewer by ATT’s conduit caused the collapse and corrosion of the sewer by creating a backup of sewage and a resulting production of hydrogen sulfide gas and sulfuric acid. The City has made a demand upon ATT to reimburse the City for the cost it incurred in replacing the portion of the sewer in question.

WHEREAS, while acknowledging that its conduit did penetrate the sewer, ATT denies that the penetration caused the collapse and corrosion of the sewer, or the need for replacing the portion of the sewer in question.

WHEREAS, in an effort to avoid litigation, the parties met on October 3, 2016, and engaged in voluntary mediation. The parties reached negotiated compromise and settlement at this mediation, the terms of which are embodied in this Release.

NOW, THEREFORE, for the sum of \$50,000.00, paid from ATT to the City, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. The City and ATT hereby release and forever discharge each other, and their respective elected officials, affiliates, officers, directors, agents, employees, contractors, subcontractors, servants, representatives, insurers, consultants, sub-consultants, attorneys, administrators, and assigns from any and all claims, demands, rights of action, damages, losses, costs, expenses and attorney's fees of whatever nature, including but not limited to breach of contract, tort, trespass, equity, subrogation or otherwise, heretofore existing, in any manner arising out of, or in connection with the penetration of the sewer by the ATT conduit on Custer Street in Hapeville, Georgia, as described above. This Agreement covers and applies to all claims and alleged damages arising out of the penetration of the sewer by the ATT conduit, whether known, unknown, past present or future. The City acknowledges that, if its claims that the penetration caused a buildup of harmful gasses and/or acid, that those gasses and/or acid could have traveled into more of its sewer system than it replaced, and that those gasses and/or acid could have caused more harm to that sewer system

than is now known to the City. Nevertheless, this Agreement applies to the possibility that the alleged gasses and/or acid might have caused more harm than is known as of the date of this Agreement.

2. The Parties agree that the amount paid by ATT as described above in relation to this Settlement is full and adequate consideration for this Agreement.

4. It is understood and agreed among the Parties hereto that this agreement shall not become effective, nor binding upon the Parties until all sums recited herein are received by City's counsel, and those funds have cleared banking channels.

5. This Agreement shall be governed by the laws of Georgia.

6. Each party shall pay its own attorney fees and costs. ATT will pay those mediation fees incurred for the October 3, 2016 mediation.

7. This Agreement contains the entire agreement between the Parties hereto, and no representations, oral or otherwise, between the parties hereto shall be of any force and effect.

8. The Parties hereto have read this Agreement and understand all of its terms, and each executes it voluntarily and with full consideration of its significance, and each person signing this Agreement on behalf of the Parties is authorized to execute the Agreement, and the Parties are bound by such signatures. In particular, that person executing this Agreement on behalf of the City represents that he or she is authorized by the City, in accord with its ordinances and acts of its City Council, to execute this Agreement. Attached hereto and marked Exhibit A is a true and correct copy of the City of Hapeville Resolution authorizing the settlement embodied herein and the execution of this Agreement.

9. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective affiliates, heirs, executors, administrators, legal representatives, successors and assigns.

10. This Agreement shall be executed in several counterparts, each of which shall constitute an original.

11. All parts of this Agreement are material and are of the essence of this Agreement, and are not mere recitals.

12. The Parties hereto represent and warrant that as of the date of this Agreement, they have not assigned or transferred or purported to assign or transfer to any person, firm, corporation, association or entity, not previously identified in this Agreement, whatsoever any of the claims being released herein.

IN WITNESS WHEREOF, the parties, through their representatives execute, seal and deliver this agreement on the day and year first above written.

ATT Corp.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(AFFIX NOTARY SEAL)

City of Hapeville, Georgia.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(AFFIX NOTARY SEAL)