

RESOLUTION NO. 371

A RESOLUTION APPROVING TERMINATION OF WIRELESS NETWORK AGREEMENT
BETWEEN NETWORK1 COMMUNICATIONS LLC AND THE CITY.

WHEREAS, in 2008 the City entered into a Wireless Network Agreement with Network1 Communications, LLC, and;

WHEREAS, Network1 has requested termination of that Agreement, and;

WHEREAS, the City has determined that it is appropriate to terminate the Agreement as requested and otherwise resolve all matters between the parties pursuant to the terms and conditions of the Termination and Release Agreement attached hereto as Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:

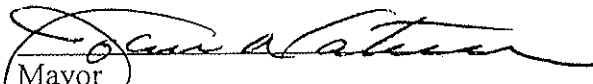
Section 1.

The Termination and Release Agreement between the City and Network1 Communications, LLC attached hereto as Exhibit A is hereby approved and the City Administrator is authorized to execute same on behalf of the City and the City Clerk is authorized and directed to attest thereto. The Agreement as executed shall be in substantially the form of Exhibit A, with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Resolution and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Resolution, the matters herein authorized, and the rights and duties of the City under the Agreement.

Section 2.

This Resolution shall take effect from and after its adoption.

Passed and approved this 3rd day of May, 2010


Mayor

ATTEST:

Vickie Hass
Deputy City Clerk

TERMINATION AND RELEASE AGREEMENT

THIS TERMINATION AND RELEASE AGREEMENT (this "Agreement") is made and entered into as of the 5 day of May, 2010, by and between **Network1 Communications LLC**, a Missouri limited liability company ("Network1"), and **Chesterfield** ("City").

WHEREAS, the parties have entered into a Wireless Network Agreement dated July 25, 2008 (the "Wireless Network Agreement");

WHEREAS, the parties wish to terminate the Wireless Network Agreement on the terms described in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and other terms and conditions contained herein, the parties hereto agree as follows:

1. Termination of Wireless Network Agreement. Network1 agrees to pay City a termination fee of \$2,500.00 within 30 days of execution of this Agreement by all parties. The parties agree that, upon Network1 paying the City such termination fee, the Wireless Network Agreement shall terminate and be of no further effect.

2. Full Settlement and Release of Claims. The parties agree that this Agreement shall operate as a full settlement of, and each party hereby releases, all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses that any party may assert against any other party that result from or arise out of the Wireless Network Agreement, whether now known or unknown, or suspected or unsuspected. To that end:

(a) Network1 hereby settles and releases City and its officials, employees, and agents (the "City Released Parties"), from any and all liabilities, actions, rights of action, contracts, indebtedness, obligations, claims, causes of action, suits, damages, demands, costs, expenses and attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, that Network1 has or may have against any of the City Released Parties regarding or arising from the Wireless Network Agreement, but excluding claims arising under this Agreement or the transactions contemplated hereunder.

(b) City hereby settles and releases Network1 and its owners, directors, officers, employees, and agents (the "Network1 Released Parties"), from any and all liabilities, actions, rights of action, contracts, indebtedness, obligations, claims, causes of action, suits, damages, demands, costs, expenses and attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, that City has or may have against any of the Network1 Released Parties regarding or arising from the Wireless Network Agreement, but excluding claims arising under this Agreement or the transactions contemplated hereunder.

3. Execution of Additional Documents. Each party agrees hereafter to execute and deliver such additional documents as may be necessary or desirable to effect the transactions contemplated hereby.

4. **Choice of Law; Dispute Resolution.** This Agreement shall be governed in all respects by the laws of the State of Missouri, excluding its choice of law principles. Any dispute arising between the parties under this Agreement that cannot be settled amicably by the parties shall be settled exclusively in state or federal court in the State of Missouri. Each party consents to personal jurisdiction in the state and federal courts of the State of Missouri for purposes of this paragraph 4, and agrees that personal jurisdiction in any such court shall be deemed proper. In the event of any litigation to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs, as assessed by the court.

5. **Miscellaneous.**

5.1 **Amendment.** This Agreement may not be amended, modified or waived except by a writing signed by an authorized representative of the party against whom such amendment, modification or waiver is asserted. No waiver of or any failure or omission to enforce any provision of this Agreement or any claim or right arising hereunder shall be deemed to be a waiver of any other provision of this Agreement or any other claim or right arising hereunder.

5.2 **Headings.** Paragraph headings herein are intended for convenience of reference only, and shall not in any way limit, define, amplify or otherwise affect the interpretation of any term of this Agreement. References herein to either party shall include such party's affiliates, successors, officers, directors, agents, employees and other representatives.

5.3 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement binding on each of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**NETWORK 1 COMMUNICATIONS,
LLC**

By: Marquette A. Forrest
Its: Secretary + Administration Officer

CITY OF CHESTERFIELD

By: Michael J. Fleming
Its: CITY ADMINISTRATOR