

# MEMORANDUM

Council Agenda Item 8c

**To:** Honorable Harley Strickland, Mayor and City Council Members  
**From:** William E. Reischmann, Jr., Esquire, City Attorney  
**Subject:** **City of Orange City – Tel-Connect Settlement Agreement**  
**Date:** December 1, 2008

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## **PURPOSE**

To have the City Council approve the Settlement Agreement with Tel-Connect.

## **BACKGROUND**

This Settlement Agreement is for the purpose of staying the circuit case filed by Tel-Connect after the Code Enforcement Special Magistrate found Tel-Connect in violation of the zoning ordinance. The terms of the Settlement Agreement provide that:

1. Tel-Connect will submit a conditional use application (to allow sweepstakes redemption at the present location) to the City within 60 days from the date of execution of the Agreement;
2. The City will process the conditional use application;
3. The City will request that the Special Magistrate stay the fine presently accruing in the code enforcement action from the date the conditional use application is submitted to the City until the date when the City either approves or denies the application or for 90 days, whichever is less.
4. If Tel-Connect's conditional use application is approved by the City, Tel-Connect will file a voluntary dismissal of the circuit court case.

## **RECOMMENDATION**

Staff recommends, following Council's review and consideration of the Settlement Agreement, the City Council direct the Mayor to execute the Settlement Agreement on behalf of the City of Orange City.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on the effective date noted hereafter by and between the Petitioner / Plaintiff, Tel-Connect, LLC, ("Tel-Connect"), a Florida limited liability company doing business in Volusia County, Florida, and Orange City, a municipality located in Volusia County, Florida.

WITNESSETH

WHEREAS, Tel-Connect is operating a business within the city limits of Orange City and a dispute has arisen between the parties as to the permitting of said business operations by Tel-Connect; and

WHEREAS, Tel-Connect filed a Writ of Certiorari and Complaint for relief in the Circuit Court for the Seventh Judicial Circuit in and for Volusia County, Florida, styled *Tel-Connect, LLC v. City of Orange City*, case number 2008-12037 CIDL; and

WHEREAS, Tel-Connect and Orange City have agreed to amicably enter into a settlement and compromise related to the pending litigation as set forth more particularly herein.

NOW, THEREFORE, in consideration of all the mutual promises contained herein, the sufficiency of which is hereby acknowledged, it is agreed by Tel-Connect and Orange City, as follows:

- 1. The parties agree:
  - a. TEL-CONNECT shall prepare and file, subject to ORANGE CITY's review and approval, a stipulated Motion for a Voluntary Stay of the above-styled case; and
  - b. TEL-CONNECT shall submit a Conditional Use permit application within sixty (60) days from the date when the last of the parties have executed this Settlement Agreement to ORANGE CITY, requesting a conditional use for the purpose of operating its business at 2405 East Graves Avenue, Suite 100, Orange City, Volusia County, Florida; and
  - c. ORANGE CITY shall process the Conditional Use permit application through the appropriate process, including public hearings, as required by ORANGE CITY's Land Development Code; and
  - d. ORANGE CITY shall request a Compliance Hearing before the Special Magistrate on the code enforcement matter. At said Compliance Hearing, ORANGE CITY shall request that the Special Magistrate stay the fine assessed for the time period from the date TEL-CONNECT submits a Conditional Use permit application, through the date that said application is either approved or denied, or for a time period of 90 days, whichever is less. In the event of an unexpected delay in the processing of the application due to no fault of TEL-CONNECT, ORANGE CITY agrees that it will grant an extension of the 90-day time period to allow the permitting process to be completed. TEL-CONNECT recognizes that fines have been accruing since July 7, 2008, and that this Agreement contemplates only a stay of the running of any fine from the date it properly submits a Conditional Use permit application, until a final determination is made on the same; and
  - e. If TEL-CONNECT's Conditional Use permit application is approved by ORANGE CITY,

\_\_\_\_\_ TEL-CONNECT

\_\_\_\_\_ ORANGE CITY

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TEL-CONNECT shall file a voluntary dismissal with prejudice on the above-styled case, and release ORANGE CITY from any liability regarding the code enforcement action. Each party shall bear their own costs, if the matter is so dismissed. If TEL-CONNECT's Conditional Use permit application is denied by ORANGE CITY, TEL-CONNECT shall file a motion to set aside the stay in the above-styled case and proceed with the action.

- 2. Both parties recognize that this Agreement makes no statement as to the lawfulness of the actual activities conducted at TEL-CONNECT's business location, referenced in paragraph two (2) above. This Agreement relates solely to whether TEL-CONNECT's business activities, as represented by TEL-CONNECT, is a use allowed in the particular zoning category. ORANGE CITY makes no guarantees, promises or comments relating to the legality of TEL-CONNECT's business operations. Further, this Agreement in no way makes any statement by ORANGE CITY that TEL-CONNECT is operating a lawful business. TEL-CONNECT recognizes that nothing prevents ORANGE CITY or law enforcement from fully enforcing codes and statutes against TEL-CONNECT.
- 3. The parties agree that the considerations and promises made herein constitute adequate and ample consideration for the rights and claims being waived under this Agreement, and for the obligations imposed upon each party by virtue of this Agreement.
- 4. This Agreement shall be binding on and inure to the benefit of the respective parties and their respective successors, and assigns.
- 5. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and such counterparts shall together constitute one and the same instrument. Any signed copy transmitted by facsimile machine or telecopier shall be treated in all respects as an original document. The signature of any party thereon shall be considered for these purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, any facsimile or telecopy document shall be re-executed by all parties in original form. No party to this Agreement may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement
- 6. This Agreement shall not be construed or interpreted in a manner adverse to any party on the grounds that such party was responsible for drafting any portion of the Agreement.
- 7. This Agreement shall be governed by and construed according to the laws of Florida, excluding laws related to conflicts of law. Venue shall be solely in the state courts of Florida located in Volusia County, Florida.
- 8. The parties acknowledge that they have carefully read and understand this Agreement, and agree that none of the parties have made any representations other than those contained herein. The parties also acknowledge that they enter into this Agreement voluntarily, with full knowledge of its significance, and without any pressure or coercion. The parties further acknowledge that they have had the opportunity to negotiate regarding the terms of this Agreement and they have received full and adequate legal counsel regarding its terms.
- 9. The parties agree that this Agreement constitutes their entire and final understanding and agreement

\_\_\_\_\_ TEL-CONNECT

\_\_\_\_\_ ORANGE CITY

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with respect to the subject matter hereof.

- 10. No provision of this Agreement may be changed, altered, modified or waived except in writing signed by all parties, which writing shall specifically reference this Agreement and the specific provision which the parties intend to waive or modify.
- 11. Should any provision of this Agreement, as set forth herein be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.
- 12. Common nouns and pronouns refer to the singular and plural, identity of the person or persons, firm or corporation as the context requires. Any reference to the Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.
- 13. The date of this Agreement shall be the latest date on which all parties shall have accepted and executed this Agreement.
- 14. The paragraphs outlined in the Recitals above are true and correct and made a part of this Agreement.
- 15. Each party of this Agreement acknowledges, warrants and verifies that they have the authority and competency to execute this Agreement freely and voluntarily and bind the party for which they are executing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

TEL-CONNECT, LLC

CITY OF ORANGE CITY

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BY: \_\_\_\_\_

BY: \_\_\_\_\_

AS: \_\_\_\_\_

AS: \_\_\_\_\_

Dated \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_ TEL-CONNECT

\_\_\_\_\_ ORANGE CITY