

Glassboro Public Schools



MEMO

To: Mark Silverstein

From: Lisa Ridgway

Date: February 18, 2022

Re: February Agenda Item

Recommend approval of the agreement and general release between the district and Windstream. As discussed by our board solicitor, an agreement has been reached for the termination of a contract and open invoicing.

AGREEMENT AND GENERAL RELEASE

THIS AGREEMENT AND GENERAL RELEASE (this "Agreement") is made by and between Glassboro Board of Education (the "District") and Windstream Enterprise ("Windstream"). The District and Windstream are collectively referred to as "Parties." For purposes of this Agreement, the Parties shall include all divisions, parents, subsidiaries, affiliates or related entities, past and present board members, officers, directors, trustees, members, shareholders, partners, insurers, employees and agents.

WHEREAS, from on or about January 2017 through September 2021, Windstream provided Internet Service and Voice Services (via GigE Internet circuit, SIP Trunks and POTS lines for alarms) ("Services") for the District; and

WHEREAS, the District deemed it advisable and in its best interest to terminate Windstream's services on or about September 2021; and

WHEREAS, Windstream made claim to the District that the District owed Windstream \$69,896.11, for those Services rendered up to the termination date and unilaterally imposing early termination fees; and

WHEREAS, the District denied that it owed \$69,896.11 to Windstream, and made claim of being overcharged, and that the alleged early termination penalty is moot since the automatic renewal provision of the Agreement was legally inoperative and, therefore, not enforceable; and

WHEREAS, the District and Windstream deem it to be in their mutual interest to amicably resolve any disputes which may exist between them concerning actual services rendered and performed by Windstream; and

NOW, THEREFORE, in consideration of their mutual promises as set forth herein and intending to be legally bound hereby, the Parties agree as follows:

1. The foregoing recitals are incorporated herein as if set forth at length.
2. In settlement of all Released Claims (as defined below) the District had, has or may have against Windstream, and in settlement of all Released Claims Windstream had, has or may have against the District, as well as in exchange for the representations, warranties and covenants made by the Parties in this Agreement, the District shall, within ten (10) days of the Board approval by resolution, make payment to Windstream in the amount of Fifteen-Thousand Five-Hundred Ninety-Five Dollars and Fifteen Cents (\$15,595.15).
3. In consideration of the promises and undertakings of the District under this Agreement, Windstream makes the following representations, warranties and covenants:
 - (a) that for purposes of this Agreement, any reference to monies paid to Windstream shall be deemed to be the entire gross amount of the monies sought by Windstream; and

- (b) that Windstream, its shareholders, officers, directors, employees, representatives, and subcontractors unconditionally release and forever discharge the District, its representatives, and members, from any and all causes of action, suits, damages, grievances, demands, liabilities, defenses, debts, dues, sums of monies, accounts, covenants, controversies, promises, variances, claims, judgments, interest, attorneys' fees, liquidated damages, costs and expenses whatsoever relating to, or in connection with, services performed by Windstream and for the District from January 2017 through September 2021, with the billing stop date of November 2021, either directly or indirectly, whether known or unknown, contingent or fixed, liquidated or un-liquidated, matured or un-matured, in law, equity or otherwise in the broadest sense possible from the beginning of the world up to the end of the world.

4. In consideration of the promises and undertakings of Windstream under this Agreement, the District makes the following representations, warranties and covenants:

- (a) that the District unconditionally releases and forever discharges Windstream its shareholders, officers, directors, employees, representatives, and subcontractors from any and all causes of action, suits, damages, grievances, demands, liabilities, defenses, debts, dues, sums of monies, accounts, covenants, controversies, promises, variances, claims, judgments, interest, attorneys' fees, liquidated damages, costs and expenses whatsoever relating to, or in connection with, services performed by Windstream for the District from January 2017 through September 2021, with the billing stop date of November 2021, either directly or indirectly, whether known or unknown, contingent or fixed, liquidated or un-liquidated, matured or un-matured, in law, equity or otherwise in the broadest sense possible from the beginning of the world up to the end of the world.

5. The Parties represent and warrant that, in giving the general release as set forth in this Agreement, the Parties acknowledge that they understand the significance and consequence of such release and waiver. Furthermore, the Parties specifically acknowledge that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this Agreement. Nevertheless, the Parties hereby waive any right, claim or cause of action that might arise as a result of such different or additional claims or facts. The Parties acknowledge that they understand the significance and consequence of such release and waiver.

6. The Parties represent and warrant that neither they nor anyone on their behalf have filed any suits, claims or the like regarding any aspect of the subject matter of this Agreement.

7. No Party shall, without the prior written consent of all Parties, disclose the terms of this Agreement, including, but not by way of limitation, the amount or fact of any payment to be made under this Agreement or any of the facts or events surrounding or leading to this

Agreement (including any characterization thereof) to any person or entity other than attorneys, tax or financial advisors, or lenders for the purpose of confidential legal or financial counseling, or as otherwise required by law, or for purposes of enforcement of this Agreement.

8. This Agreement shall not in any manner be deemed or construed as an admission by any Party that it has acted wrongfully and/or illegally in any manner with respect to the facts underlying this Agreement but is made solely to avoid additional costs and risks associated with litigation. No Party shall be considered a prevailing party or a successful party.

9. This Agreement shall be governed by, construed and enforced under the laws of the State of New Jersey (without regard to conflict of laws principles) and any dispute pertaining to this Agreement shall be brought only in, and the Parties agree to subject themselves to the personal jurisdiction of, the Superior Court of New Jersey, Gloucester County, Law Division. This Agreement shall be interpreted without the aid of any canon, custom or rule of law requiring construction against the draftsman.

10. Except as otherwise herein expressly provided, this Agreement shall inure to the benefit of and be binding upon the Parties, and successor. The Parties represent and warrant that they have not assigned or in any other manner conveyed any right or claim that they have or may have to any third party, and no Party shall assign or convey to any assignee for any reason any right or claim covered by this Agreement, this Agreement, or the consideration, monetary or other, to be received by them.

11. In signing this Agreement, the Parties hereto represent and warrant that they are not relying on any statements, representations or promises made by the other party or their agent(s) except as specifically set forth herein.

PLEASE READ CAREFULLY BEFORE SIGNING. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN, FORESEEN AND UNFORESEEN, AND SUSPECTED AND UNSUSPECTED CLAIMS.

IN WITNESS WHEREOF, the parties hereto have made and signed this Agreement as follows:

BY: _____
on behalf of
Windstream Enterprises

DATED:

BY: _____
Print name:
on behalf of Glassboro Board of Education

DATED: _____