

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF CHATTANOOGA AND BELLSOUTH TELECOMMUNICATIONS, LLC TO GRANT PERMISSION FOR THE CITY TO PLACE PUBLIC ARTWORK BY MURALIST MEG SALIGMAN AS PART OF THE M.L. KING MURAL PROJECT ON THE BELLSOUTH TELECOMMUNICATIONS BUILDING LOCATED AT 300 M.L. KING BOULEVARD.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator for the Department of Economic and Community Development is hereby authorized to enter into an agreement between the City of Chattanooga and Bellsouth Telecommunications, LLC to grant permission for the City to place public artwork by muralist Meg Saligman as part of the M.L. King Mural Project on the Bellsouth Telecommunications building located at 300 M.L. King Boulevard.

ADOPTED: _____, 2015

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: June 18, 2015

Preparer: Dana Womble for Donna C. Williams

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # _____

Request for the Administrator of the Department of Economic and Community Development to enter into an agreement between the City of Chattanooga and BellSouth Telecommunications, LLC to grant permission for the City to place public artwork by muralist Meg Saligman as part of the M. L. King Mural Project on the BellSouth Telecommunications building located at 300 M. L. King Boulevard.

Name of Vendor/Contractor/Grant, etc. _____
Total project cost \$ _____
Total City of Chattanooga Portion \$ _____
City Amount Funded \$ _____
New City Funding Required \$ _____
City's Match Percentage % _____

New Contract/Project? (Yes or No) _____
Funds Budgeted? (YES or NO) _____
Provide Fund _____
Provide Cost Center _____
Proposed Funding Source if not budgeted _____
Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)
\$ _____
\$ _____
\$ _____

Grantor(s)

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

**AGREEMENT FOR AND PLACEMENT
OF ARTWORK ON PRIVATE PROPERTY AND GRANT OF LICENSE**

This Agreement for Placement of Artwork on Private Property and Grant of License (hereinafter "Agreement") is entered into as of this _____ day of _____, 2015, by and between the CITY OF CHATTANOOGA, a municipal corporation (hereafter "City"), and BellSouth Telecommunications, LLC (hereafter "Property Owner").

RECITALS:

WHEREAS, the City has established a Public Art Program through Public Art Chattanooga (hereafter "PAC") which authorizes the placement of works of art on appropriate public and private property which encourages public access and viewing of artwork in the City of Chattanooga; and,

WHEREAS, Property Owner is willing to grant City permission to prepare and paint, a mutually agreed upon exterior wall at 300 E. Martin Luther King Blvd, Chattanooga, Tennessee (hereafter "Site") of the Premises in execution of a mural art project by artist, Meg Saligman Studios (hereafter Artist).

NOW THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

1. City Representative. The City's Department of Economic and Community Development, or his designee (hereinafter "Administrator") shall be the City's designated representative with respect to this Agreement. The Administrator shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

2. Agreement Place Work of Art. City agrees to place a work of art as shown on Exhibit "A" (hereinafter "Artwork") to this Agreement on certain real estate of the Property Owner as more fully described herein. Prior to placement of the Artwork on the Property, City shall review the Artwork proposal with Property Owner for Property Owner's approval.

3. Duties of Property Owner. Property Owner agrees to allow City to place the Artwork on the portion of the Property Owner's property depicted and described on Exhibit "B" to this Agreement (hereinafter "Site"). The foregoing shall be deemed a license only and shall not confer on City or any other party any interest in the Site or any other portion of Property Owner's property. City shall provide for the installation of the Artwork on the Site at the City's sole cost and expense, including, construction of any necessary improvements for displaying the Artwork on the Site. No alteration to or replacement of the Artwork shall be made without the prior written approval of Property Owner. City shall give Property Owner at least five (5) business days' advance notice before installing the Artwork. The parties anticipate that the Artwork will remain on the Site for a period of at least eighteen (18) months, subject to Property

Owner's right to revoke this License for (i) good cause, including but not limited to interference with Property Owner's telecommunications business, or breach of this License; or (ii) upon motion or order of the Tennessee Public Utilities Commission.

4. Termination. For good cause, Either party to this Agreement may terminate this Agreement upon thirty (30) days written notice to the other party. Upon termination of this Agreement by either party, City shall have thirty (30) days thereafter to remove the Artwork from the Site.

5. Removal. The Artwork shall not be removed from the Site by the Property Owner for any reason prior to the termination of this Agreement without the prior written consent of the City.

6. Ownership of Artwork. . The City will take all steps legally required to obtain ownership of the Artwork, including, but not limited to, the right to reproduce, disseminate and publish images or photographs of the Artwork for promotional or other non-profit uses. Following donation of the Artwork, the Artwork shall become the sole property of the City. The City shall not be required to display the Artwork at the Site permanently and the City's removal of the Artwork from the Site shall not affect the ownership of the Artwork by the City. City shall obtain all necessary permits, licenses and other required approvals to perform the work contemplated by this License.

7. Grant of Public Access. Access for public viewing of the Artwork shall be by way of public sidewalks running in front of the Property Owner's building, but such access shall be subject to Property Owner's reasonable rules and regulations (hereinafter "License"). Access shall not be permitted in Property Owner's building nor inside the fenced area on Property Owner's property. This Easement shall include the grant to the City the right to enter the Site for purposes of reasonable maintenance and repair of the Artwork. The License shall exist for a fixed term commencing with the placement of the Artwork on the Site and ending with the termination of this Agreement or removal of the Artwork.

8. Maintenance. City shall provide all maintenance, repair, replacement and restoration reasonably necessary to keep the Artwork in a good and safe state of condition and repair, and City shall inspect the Site regularly and shall maintain it in a clean and orderly condition, free of rubbish and debris. All such maintenance, repair, replacement, restoration and inspection shall be at the sole expense of the City. City may in its discretion, and based on budgetary concerns, remove the Artwork from the Site rather than provide any maintenance or make any repairs, replacement or restoration to the Artwork.

9. Compliance with Law. City hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of the Artwork on the Site or to the use or manner of use of the Site. City agrees to comply with the Visual Artists Rights Act of 1990 (17 U.S.C. Section 106A) (hereinafter "VARA"), but in no event shall VARA be construed as permitting the

Artwork to remain at the Site for more than thirty (30) days beyond the termination of this Agreement.

10. **Indemnification.** City hereby agrees to indemnify, defend and hold harmless the Property Owner, its affiliates and their respective members, managers, directors, officers, agents and employees to the extent of the limits of the Tennessee Governmental Tort Liability Act, as amended, from and against any and all actions, suits, claims, damages, losses or costs arising out of this Agreement and the rights granted herein, the Artwork, public access to the Site. The indemnification obligations of City will be independent of and will not be limited by any policies of insurance maintained by Property Owner. City's indemnification obligations will survive the termination of this Agreement.

11. **Insurance.** During the term of this Agreement, Property Owner shall procure and maintain, at its sole cost and expense, in a form and content consistent with industry standards, with an insurer qualified to do business in Tennessee, the following policy of insurance:

Commercial General Liability: A policy of comprehensive general liability insurance, with a combined single limit liability of One Million Dollars (\$1,000,000.00). This policy shall specifically insure Property Owner's indemnity obligation under this Agreement and shall name the City as an additional insured.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Property Owner during the duration of this Agreement. Renewal certificates shall be sent to the City's Manager of Real Property at least thirty (30) days prior to any expiration date. There shall be a thirty (30) day notification to City in the event of cancellation or modification of any required insurance coverage.

Notwithstanding the forgoing, Property Owner may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement. In the event Property Owner elects to self-insure its obligation under this Agreement to include City as an additional insured, the following conditions apply:

(i) City shall promptly and no later than thirty (30) days after notice thereof provide Seller with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Property Owner with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Property Owner; and

(iii) City shall fully cooperate with Property owner in the defense of the claim, demand, lawsuit, or the like.

The parties agree and understand that the City of Chattanooga is a self-insured governmental entity and that the City is not required to carry, but may at its discretion obtain, a fine arts insurance policy for the Artwork located at the Site.

12. Mortgage Protection. No violation of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust given in good faith or for value. All of the covenants and conditions contained herein shall be binding and effective against any party whose interest is derived through foreclosure, trustee sale, deed in lieu of foreclosure or otherwise provided, however, that any mortgagee or beneficiary who takes title to the Site pursuant to foreclosure or deed in lieu of foreclosure or any purchaser at a foreclosure or trustee sale shall take title free of any claims against Property Owner arising under this Agreement which became due and payable prior to the date such mortgagee, beneficiary or purchaser takes title hereto.

13. Successors and Assigns. Until this Agreement is terminated, the obligations of Property Owner under this Agreement shall be binding on Property Owner and the Property Owners' successors and assigns and shall burden the Site and shall run with the land and be binding upon all successors and assigns acquiring any right, title and interest in and to the Site.

14. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto. No waiver by Property Owner of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Property Owner. No delay or omission in the exercise of any right or remedy accruing to Property Owner upon any breach under this License shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Property Owner of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to Property Owner hereunder or by law shall be cumulative and not alternative, and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

15. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

16. Notices. Any and all notices, requests, demands, consents, approvals or other communications required or permitted under this Agreement by either party hereto shall be in writing and shall be made by hand delivery, by sending via Federal Express or another nationally-recognized overnight delivery service, or by sending via certified U.S. Mail with unrestricted delivery, return receipt requested, postage prepaid, and such communications shall be hand-delivered or so sent to the party being notified at the following address:

If to Property Owner:

BellSouth Telecommunications, LLC
1210 S Main St
Hopkinsville, KY 42240
Attention: Randy Fort
Email: rf9070@att.com

With a copy to:
BellSouth Telecommunications, LLC
Attention: Legal, Real Estate
208 S. Akard St.
Dallas, TX 75202

If to City:

City of Chattanooga
Administrator of the Department of Economic
And Community Development
100 East 11th Street – 2nd Floor
Chattanooga, TN 37402

with a copy to:

Chattanooga City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Notice shall be considered delivered at the earliest of the following to occur: (i) when actually received, (ii) three (3) Business Days (as hereinafter defined) after being so sent by U. S. Mail, or (iii) one (1) Business Day after being so sent by Federal Express or another nationally-recognized overnight courier service (and as to the foregoing clauses (ii) and (iii), delivery shall be deemed to have occurred independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish the fact that notice was sent or tendered as provided herein).

If notice is tendered pursuant to the provisions of this Section and is refused by the intended addressee thereof, the notice, nevertheless, shall be considered to have been given and shall be effective as of the date herein provided. As used in this Agreement, "Business Day" means a day other than a Saturday, a Sunday or a day designated as a holiday by the United States Congress at 5 U.S.C.A. § 6103. Either party may designate a different address for receiving communications pursuant to this Agreement by giving written notice to the other party of same at the address set forth above.

17. **Audit.** This agreement shall be subject to audit by the City Auditor's Office. Such audit shall be limited to only matters related to this agreement.

18. **Non-Discrimination.** There shall be no discrimination as to race, gender, religion, color, creed or national origin against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation of the Site.

19. **Tennessee Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

20. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

21. No Recording. Neither this Agreement nor any memorandum hereof shall be filed in the Register's Office of Hamilton County, Tennessee.

22. Use of AT&T logos. Nothing in this Agreement shall be deemed to permit the City or any other party from using or photographing any AT&T logo or trademark or signage, and any such use or photography will be strictly prohibited. 22. Nothing contained in this License is intended or shall be construed as creating or conferring any property interest or possessory interest or rights in Property Owner's property, any rights, benefits or remedies upon any other person or entity not a party to this License, or creating any obligations of any party hereto toward any person or entity not a party to this License, unless otherwise expressly set forth herein.

24. Entire Agreement. This Agreement contains the sole and entire agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have legal effect. No provision of this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of such party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

BellSouth Telecommunications, LLC

By: Maup Stewart Lewis

Title: Regional Director External Affairs

Date: June 12, 2015

CITY OF CHATTANOOGA
DEPARTMENT OF ECONOMIC AND
COMMUNITY DEVELOPMENT

By: _____
DONNA C. WILLIAMS

Title: Administrator of Chattanooga Department of
Economic and Community Development

Date: _____