

FIRST AMENDMENT

to

Comcast Enterprise Services Master Services Agreement No. FL-7489252-CMunr

This First Amendment (“Amendment”) is concurrently entered into on November 14, 2016 (“Effective Date”) in conjunction with the Comcast Enterprise Services Master Services Agreement No. FL-7489252-CMunr (“Agreement”) by and between Comcast Cable Communications Management, LLC (“Comcast”) and City of Pembroke Pines (“Customer”), individually referred to herein as “Party” and jointly referred to as “Parties”. In the event of an explicit conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question. Unless otherwise set forth herein, all capitalized terms set forth herein shall have the same meaning as set forth in the Agreement.

Whereas, the Parties desire to amend the Agreement by this writing to reflect the amended or additional terms and conditions to which the Parties have agreed to;

Now, therefore, in consideration of the mutual covenants, promises, and consideration set forth in this Amendment, the Parties agree as follows:

1. The Definitions section of the Enterprise Services General Terms and Conditions (“General Terms and Conditions”) is hereby modified to read as follows:

“Confidential Information: To the extent permitted by the Florida’s public record laws as set forth in Chapter 119 of the Florida Statutes, all information regarding either Party’s business which has been marked or is otherwise communicated as being “proprietary” or “confidential.” or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, and to the extent permitted by Florida’s public record laws, Confidential Information may include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the Parties’ communications regarding such items.”

2. Article 1 of the General Terms and Conditions, is hereby modified to read as follows:

“Comcast may change or modify the Agreement, and any related policies from time to time (“Revisions”) by posting such Revisions to the Comcast Website. The Revisions are effective upon posting to the Website. Customer will receive notice of the Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide Comcast with written notice that the Revisions adversely affect Customer’s use of the Service(s). If after notice Comcast is unable to reasonably mitigate the Revision’s impact on such Services, then Customer may terminate the impacted Service(s) without further obligation to Comcast beyond the termination date, including Termination Charges, if any. Any Revisions must be approved by the Customer before being deemed accepted by Customer. This shall be Customer’s sole and exclusive remedy. In the event Customer exercises its right to terminate the impacted Service(s) as set forth herein, Comcast agrees to work in good faith with the Customer to continue providing the Services under the Revisions, for a period of (but not limited to) one-hundred eighty days (180) with respect to Customer’s transition timeline to an alternate service provider.”

3. Article 2.1 of the General Terms and Conditions is hereby modified to read as follows:

“Orders. Customer shall submit to Comcast a properly completed Sales Order to initiate Service to a Service Location(s). A Sales Order shall become binding on the Parties when (i) it is specifically accepted by Comcast either electronically or in writing, (ii) Comcast begins providing the Service described in the Sales Order or (iii) Comcast begins Custom Installation (as defined in Article 2.7) for delivery of the Services described in the Sales Order, whichever is earlier. When a Sales Order becomes effective it shall be deemed part of, and

shall be subject to, the Agreement. Notwithstanding the foregoing, Sales Orders shall not be binding until approved by the Customer.”

4. Article 3.3 of the General Terms and Conditions is hereby modified to read as follows:

“Payment of Bills. Except as otherwise indicated herein or in a PSA, Comcast will invoice Customer in advance on a monthly basis for all monthly recurring charges and fees arising under the Agreement. All other charges will be billed monthly in arrears, including without limitation certain usage based charges and third party pass through fees. Payment is due upon presentation of an invoice. Payment will be considered timely made to Comcast if received within thirty (30) days after the invoice date, however, Customer’s account shall provide for a fifteen (15) day Grace Period (“Grace Period”) immediately subsequent to the thirty (30) day payment remittance period.. Any charges not paid to Comcast within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Customer’s first monthly invoice shall include any pro-rated charges for the Services, from the date of installation to the start of the next billing period. In certain cases, Comcast may agree to provide billing services on behalf of third parties, as the agent of the third party. Any such third-party charges shall be payable pursuant to any contract or other arrangement between the third party and Customer and/or Comcast. Comcast shall not be responsible for any dispute regarding these charges between Customer and such third party. Customer must address all such disputes directly with the third party.”

5. Article 4.3 of the General Terms and Conditions is hereby modified to read as follows:

“Sales Order Renewal. Upon the expiration of the Service Term each Sales Order shall automatically renew for successive periods of one (1) month each (“Renewal Term(s)”), unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after the end of the Service Term and from time to time thereafter, Comcast may, modify the charges for Ethernet, Internet and/or Video Services subject to thirty (30) days prior written notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing.”

6. Article 5.1 of the General Terms and Conditions is hereby modified to read as follows:

“Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right, in its sole discretion, to terminate any or all Sales Order(s) at any time during the Service Term(s), upon thirty (30) days prior written notice to Comcast and subject to payment to Comcast of all outstanding amounts due for the Services, any actual, reasonable, documented costs to Comcast, including but not limited to, any not yet recouped construction costs as specified on a Sales Order, and the return of all applicable Comcast Equipment. Comcast may terminate the Agreement if Customer does not take any Service under a Sales Order for twelve (12) consecutive months or longer.”

7. Article 5.3 B of the General Terms and Conditions is hereby modified to read as follows:

“B. Subject to Florida’s public record laws as set forth in Chapter 119 of the Florida Statutes, Comcast may delete all applicable data, files, electronic messages, or other information stored on Comcast’s servers or systems;

8. Article 7 of the Enterprise Services General Terms and Conditions (“General Terms and Conditions”) is hereby deleted in its entirety.

9. Article 11.1 of the General Terms and Conditions is hereby modified to read as follows:

“Force Majeure. Neither Party (and in the case of Comcast, Comcast affiliates and subsidiaries) shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way or materials, or other causes beyond the Party’s reasonable control, except that Customer’s obligation to pay for Services rendered and received under the Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.”

10. Article 11.3 of the General Terms and Conditions is hereby modified to read as follows:

Notices. Any notice sent pursuant to the Agreement shall be deemed given and effective when sent by facsimile (confirmed by first-class mail), or when delivered by overnight express or other express delivery service, in each case as follows: (i) with respect to Customer, to the address set forth on any Sales Order, with a copy to: City Attorney, City of Pembroke Pines, 10100 Pines Blvd., Pembroke Pines, FL 33026; or (ii) with respect to Comcast, to: Vice President/Enterprise Sales, One Comcast Center, 1701 JFK Blvd., Philadelphia, PA 19103, with a copy to Cable Law Department, One Comcast Center, 50th Floor, 1701 JFK Blvd., Philadelphia, PA 19103. Each Party shall notify the other Party in writing of any changes in its address listed on any Sales Order.

11. Article 11.8 of the General Terms and Conditions is hereby modified to read as follows:

“The laws of the State of Florida shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. The Parties agree to the exclusive jurisdiction of the Circuit Courts in Broward County, Florida for any action or proceeding arising out of or in relation to this Agreement.”

12. Article 11.15 is hereby added to the General Terms and Conditions to read as follows:

Non-Discrimination & Equal Opportunity Employment: During the performance of the Agreement, neither Comcast nor its subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified.

Comcast will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Comcast further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

13. Article 11.16 is hereby added to the General Terms and Conditions to read as follows:

“Non-Appropriation of Funds. Customer warrants and represents that it is a government entity for purposes of procurement under the applicable state procurement laws. In the event Customer is unable to secure funds or if funds are not appropriated by the applicable local, state or federal agency for performance during any fiscal period of the term of a Sales Order, such Sales Order may be terminated (“Termination”) by the Customer upon written notification to Comcast, to include a copy of the non-appropriation of funds notification, as of the beginning of the fiscal year for which funds are not appropriated or otherwise secured. In the event Customer terminates a Sales Order under this “Non-Appropriation of Funds” provision, neither

Party shall have any further obligation to the other Party, excepting Customer shall be responsible for the payment of any and all unpaid charges for Services rendered and for Comcast equipment, and, any and all unpaid capital expenses incurred by Comcast on behalf of the applicable Sales Order, all of which are to be paid by Customer to Comcast in accordance with Article 3.3 herein. The capital expenses amount set forth hereunder shall be reduced by the total amount of NRC and MRC already paid to Company by Customer under the Agreement at the time of Termination. Customer hereby agrees to notify Comcast in writing as soon as it has knowledge that funds are not available for the continuation of the performance as set forth in the Sales Order, for any fiscal period under the applicable Sales Order Term.”

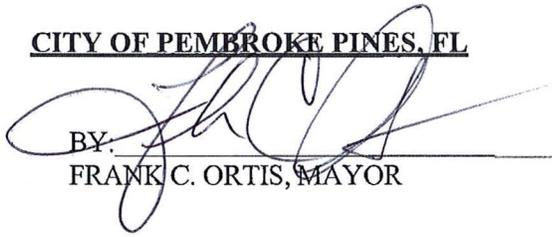
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year written below and the persons signing covenant and warrant that they are duly authorized to sign for and on behalf of the respective Parties. Except as otherwise modified by this Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect.

CITY OF PEMBROKE PINES, FL

ATTEST:



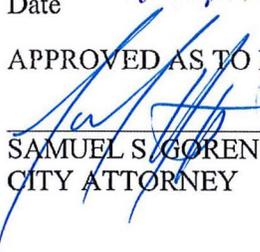
MARLENE D. GRAHAM, CITY CLERK


BY: _____
FRANK C. ORTIS, MAYOR

Date 11/21/16

Date 11-21-16

APPROVED AS TO FORM.

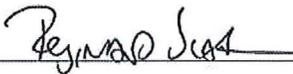


SAMUEL S. GOREN
CITY ATTORNEY

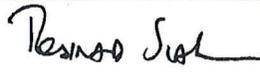


WITNESSES:

CONTRACTOR
**COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC**

BY: 

Print Name

Name 

Print Name

Title RVP

Date 11-14-16

STATE OF FLORIDA)
)SS
COUNTY OF BROWARD)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of _____, and

acknowledged that he/she has executed the foregoing instrument as the proper official of **COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC**, for the use and purposes mentioned in it and that the instrument is the act and deed of **COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC**, who is personally known to me or has produced _____ as identification.

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 2016.

NOTARY PUBLIC

My Commission Expires