

RESOLUTION NO. R-2019-189

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE FIRST AMENDMENT TO THE MASTER SERVICES AGREEMENT WITH COMCAST COMMERCIAL SERVICES, LLC. FOR THE CONTINUED OPERATION AND MAINTENANCE OF THE CITY'S INSTITUTIONAL NETWORK FOR A FIVE YEAR TERM AT AN ANNUAL ESTIMATED AMOUNT OF \$360,000.00, PLUS AN ADDED 15 PERCENT FOR FUTURE INSTALLATIONS, UPGRADES AND MISCELLANEOUS COSTS IN AN ESTIMATED AMOUNT OF \$2,000,000.00.

WHEREAS, the City entered into an agreement with Comcast Commercial Services, LLC. ("Comcast") on June 5, 2013 (R-2013-149) for the operation and maintenance of the City's Institutional Network (I-Net) for a term of five years with five one-year optional renewal periods; and

WHEREAS, the City is currently in the first optional renewal period, which will expire on June 10, 2019; and

WHEREAS, in order for the City to ensure current operations are uninterrupted the City must continue to maintain the City's I-Net; and

WHEREAS, under the new five year agreement, in addition to providing capacity for future capital projects, the City has negotiated more favorable rates; and

WHEREAS, City network services will not be interrupted whether there is a continuation of the existing contract, or the proposed agreement is authorized; and

WHEREAS, Comcast is the only vendor that can provide point to point fiber for City use without additional costs by utilizing an existing infrastructure that does not require further build out; and

WHEREAS, Purchasing Ordinance 38.40 (C) (8) provides that purchases of and contracts for supplies or contractual services, when the City Commission declares by a five-sevenths (5/7ths) affirmative vote that competitive bidding is not in the best interest of the City, are exempt from the competitive bidding process; and

WHEREAS, based on Section 15 (d) of the City's Non-Exclusive Cable Franchise Agreement with AT&T, which was subsequently transferred to Comcast, the City entered into an Agreement with AT&T to install, operate, and maintain an I-Net; and

WHEREAS, both the Franchise Agreement and the I-Net Agreement expired in July of 2007; and

WHEREAS, on May 18, 2007, Governor Crist signed legislation that would preclude counties and municipalities from renewing or entering into franchise agreements with providers of video services; and

WHEREAS, on June 20, 2007, the City Commission passed and adopted Resolution No. R-2007-196, which authorized the execution of a Network Services Agreement and First Rider solely for the operation and maintenance of the City's I-Net removing all references to the Cable television franchise agreement; and

WHEREAS, funding has been appropriated in the Department of Information Technology's Fiscal Year 2019 Operating Budget in account number 557.130102.51900.641020.000000.000.000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in the Resolution.

Section 2: That it approves and authorizes the issuance, by the appropriate City officials, of the attached First Amendment to Master Services Agreement with Comcast Commercial Services, LLC, together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.


PASSED AND ADOPTED this 19 day of June, 2019.

ATTEST:


PATRICIA A. CERNY, MMC, CITY CLERK


JOSH LEVY, MAYOR

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY for the use and reliance of
the City of Hollywood, Florida, only.


DOUGLAS R. GONZALES, CITY ATTORNEY *at*

FIRST AMENDMENT
to
Comcast Enterprise Services Master Services Agreement No. FL-263043-abrav

This First Amendment ("Amendment") is concurrently entered into on May 28, 2019 ("Effective Date") in conjunction with the Comcast Enterprise Services Master Services Agreement No. FL-263043-abrav ("Agreement") by and between Comcast Cable Communications Management, LLC ("Comcast") and City of Hollywood ("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 receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Article 2.4 of the Comcast Enterprise Services General Terms and Conditions ("General Terms and Conditions") is hereby modified to read as follows:

"A. Comcast Equipment. Comcast may, in its sole discretion, remove or change Comcast Equipment. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Comcast Equipment or permit others to do so, and shall not use the Comcast Equipment for any purpose other than as authorized by the Agreement. Customer shall (i) provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Comcast Equipment and (ii) be responsible for damage to, or loss of, Comcast Equipment caused by its acts or omissions, or by fire, theft or other casualty at the Service Location(s), unless caused by the negligence of Comcast. Comcast shall maintain, at its cost, Comcast Equipment during the term of this Agreement; provided, however, that such maintenance shall be at Customer's cost to the extent it is related to causes other than the ordinary and proper use of the Comcast Equipment. Upon termination or expiration of this Agreement and/or any Sales Order, Customer shall be responsible for the return of all applicable Comcast Equipment. Until such time as the Comcast Equipment is returned to Comcast, Comcast may continue to invoice Customer for the monthly fee applicable to such Comcast Equipment. If any returned Comcast Equipment has been damaged and/or destroyed other than by Comcast or its agents, normal wear and tear excepted, Comcast may, in its sole discretion, invoice Customer for the manufacturer's list price of such Comcast Equipment or the cost of repair.

B. Customer-Provided Equipment. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all Customer-Provided Equipment, inside telephone wiring and other Customer equipment and facilities on the Customer's side of the demarcation point (i.e., the point of interconnection between the Network and Customer-Provided Equipment located at a

Service Location). Neither Comcast nor its employees,

Affiliates, agents or contractors shall (i) have any obligation to install, operate, or maintain Customer-Provided Equipment or (ii) be liable for any damage, loss, or destruction to Customer Provided Equipment, unless caused by the negligence of Comcast. Customer-Provided Equipment shall at all times be compatible with the Network. Customer shall be responsible for the payment of service charges for visits by Comcast's employees or agents to a Service Location when the service difficulty or trouble report results from Customer Provided Equipment."

2. Article 4.1 of the General Terms and Conditions is hereby modified to read as follows:

“Sales Order Term. Upon the expiration of the Service Term applicable to a Sales Order, each Sales Order shall automatically renew for successive periods of one (1) month each (each, a “Renewal Term”), unless prior written 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. To the extent the initial Service Term or a Renewal Term applicable to a Sales Order extends beyond the expiration date of the MSA Term, such Sales Order shall continue to be governed by the terms and conditions of the Agreement.”

3. Article 5.1(A) of the General Terms and Conditions is hereby modified to read as follows:

“A. THE AGGREGATE LIABILITY OF COMCAST FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO COMCAST DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. THIS LIMITATION SHALL NOT APPLY TO COMCAST’S INDEMNIFICATION OBLIGATIONS AND CLAIMS FOR DAMAGE TO PROPERTY AND/OR PERSONAL INJURIES (INCLUDING DEATH) ARISING OUT OF THE NEGLIGENCE OF COMCAST WHILE ON THE CUSTOMER SERVICE LOCATION.”

4. Article 6.1 of the General Terms and Conditions is hereby modified to read as follows:

“Comcast’s Indemnification Obligations. Subject to Sections 5.1(B), 5.1(C) and 5.1(D) and any other limitations contained in the Agreement, Comcast shall indemnify defend, and hold harmless Customer, its Affiliates and their respective employees, directors, officers, and agents (the “Customer Indemnified Parties”) from and against all , actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys’ fees) arising out of (i) infringement of U.S. patent or copyright law based solely on Comcast Equipment or Licensed Software; provided, that, Comcast shall have no liability for any claim of infringement arising from: (a) Comcast’s compliance with any designs, specifications, or instructions of Customer; (b) modification or alteration of the Licensed Software or Comcast Equipment by Customer or a third party without the prior knowledge and written approval of an authorized officer of Comcast; (c) use of the Licensed Software or Comcast Equipment in a way not authorized in writing by an authorized officer of Comcast; and/or (d) Customer’s failure to use an updated version of the Licensed Software or Comcast Equipment which has been provided, or made available, to Customer and (ii) damage to tangible personal property or real property, and personal injuries (including death) arising out of the negligence of Comcast while working on the Service Locations.”

5. Article 6.2 of the General Terms and Conditions is hereby modified to read as follows:

“Customer’s Indemnification Obligations. Customer shall indemnify, defend, and hold harmless Comcast from any and all Claims arising on account of or in connection with Customer’s and its users’ use or sharing of the Service provided under the Agreement, including with respect to: (i) any content received or distributed by Customer or its users through the Service, (ii) libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; (iii) for patent infringement arising from Customer’s combining or connection of Customer-Provided Equipment to use the Service and (iv) for damage arising out of the negligence of Customer. “

6. Article 7.2 of the General Terms and Conditions is hereby modified to read as follows:

“Publicity. Neither party shall issue any publication or press release relating to, or except as required by law, otherwise disclose the existence of, the terms and conditions of any contractual relationship between Comcast and Customer without the prior written consent of the other party.”

7. Article 9.9 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 3.2 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 Hollywood

Comcast Cable Communications Management, LLC

Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	