

FIRST AMENDMENT
to
Comcast Enterprise Services Master Services Agreement No. FL-17325985-JAmbr

This First Amendment (“Amendment”) is concurrently entered into on April 23, 2019 (“Effective Date”) in conjunction with the Comcast Enterprise Services Master Services Agreement No. FL-17325985-JAmbr (“Agreement”) by and between Comcast Cable Communications Management, LLC (“Comcast”) and CITY OF NORTH PORT, FLORIDA (“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. Article 3.2 (A) of the Comcast Enterprise Services General Terms and Conditions (“General Terms and Conditions”) is hereby modified to read as follows:

“A. 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 and will be considered timely made to Comcast if received within thirty (30) days after the invoice date, provided, however, that Comcast shall provide Customer with a fifteen (15) day grace period immediately subsequent to such thirty (30) day payment remittance period (the “Grace Period”) and payments received by Comcast prior to the expiration of the Grace Period shall be considered timely. 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 Service Commencement Date 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 based on Customer’s agreements with such third parties (“Third Party Fees”). Any such Third-Party Fees shall be payable pursuant to Customer’s contract or other arrangement with such third party and/or Comcast. Comcast shall not be responsible for any dispute regarding Third Party Fees. Partial payment of any bill will be applied to the Customer’s outstanding charges in amounts and proportions solely determined by Comcast. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution. Any payment not made when due will be subject to a late charge equal to the lower of (i) 1.5% per month and (ii) the highest rate allowed by law including, but not limited to, Local Government Prompt Payment Act, Florida Statutes Sections 218.70, et seq.; provided, however, that a payment will not be subject to the foregoing late charge if (A) Customer has submitted a claim disputing such payment in accordance with Article 3.2(B) and (ii) such dispute has not been resolved in accordance with Article 3.2(B).. If Comcast is required to use a collection agency or attorney to collect any amount owed by Customer or any unreturned Comcast Equipment, Customer agrees to pay all reasonable costs of collection or other action. No acceptance of partial payment(s) by Comcast shall constitute a waiver of any rights to collect the full balance owed under the Agreement.”

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

“Customer’s Indemnification Obligations. To the extent not prohibited by law, 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 gross negligence or willful misconduct of Customer. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of the Customer as set forth in Florida Statutes, Section 768.28. The terms of this Article survive the termination of this Agreement.”

3. Article 9.4 of the General Terms and Conditions is hereby modified to read as follows:

“Amendments; Changes to the Agreement. The Agreement may not be amended except by a written agreement executed by the parties; provided, that, notwithstanding the foregoing, Comcast may change or modify the Agreement (including these General Terms and Conditions and the PSAs), and any related policies (including the Use Policies and Privacy Policy) from time to time (“Revisions”) by posting such Revisions to the Website. The Revisions are effective upon posting to the Website. Customer will receive notice of any 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 such notice, Comcast is able to verify such adverse effect but 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. This shall be Customer’s sole and exclusive remedy for any Revisions. Terms or conditions contained in any Sales Order, or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect. The City Manager or designee may agree to amendments that do not increase compensation to Comcast. The City Commission shall approve all increases in compensation under this Agreement.”

4. Article 9.7 of the General Terms and Conditions is hereby modified to read as follows:

“Choice of Law; Compliance with Laws. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida., except to the extent superseded by federal law. Each of the parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.”

5. 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 3.3 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.”

6. Article 9.10 is hereby added to the General Terms and Conditions to read as follows:

“The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. Comcast shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual’s race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.”

7. Article 9.11 is hereby added to the General Terms and Conditions to read as follows:

“Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision contained herein, or any acts of the parties shall be deemed to create any relationship between them other than that as detailed herein.

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.

COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC.

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

CITY OF NORTH PORT, FLORIDA

Kathryn Wong
City Clerk

By: _____
Peter D. Lear, CPA, CGMA
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Amber L. Slayton
City Attorney