

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 16, 2011

Division: Growth Management

Bulk Item: Yes No

Department: _____

Staff Contact Person/Phone #: Susan Grimsley
305 289-2524

AGENDA ITEM WORDING: Approval of installation and services agreement between Comcast of California/Colorado/Florida/Oregon, Inc. and Monroe County, Florida and Habitat for Humanity of Key West and Lower Florida Keys, Inc. to provide cable transmission service and ancillary services to property owned by Monroe County and leased to Habitat for Humanity located at 5530 3rd Avenue, Key West, Florida and approving an access easement required by Comcast.

ITEM BACKGROUND: Monroe County entered into a 99 year lease with Habitat for Humanity of Key West and Lower Florida Keys, Inc. for property located at 5530 3rd Avenue Key West, Florida on August 19, 2009. This twelve unit property is rented to tenants by Habitat for Humanity. Comcast requires the ground lessor (Monroe County) to execute the service agreement and the access easement in order to provide service.

PREVIOUS RELEVANT BOCC ACTION:

August 19, 2009 - BOCC Approved 99 Year Lease

February 17, 2010 – BOCC Approved Amendment to Lease for 100 Years

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATIONS: Approval

TOTAL COST: n/a **INDIRECT COST:** _____ **BUDGETED:** Yes No

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: _____ **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty OMB/Purchasing _____ Risk Management _____

DOCUMENTATION: Included Not Required _____

DISPOSITION: _____

AGENDA ITEM # _____

INSTALLATION AND SERVICES AGREEMENT

This Installation and Services Agreement (the "Agreement") is dated _____ 2011, and is between Comcast of California/Colorado/Florida/Oregon, Inc., a Georgia Corporation (the "Company"), and Monroe County, Florida (the "Owner"), who owns certain real estate and improvements thereon located at 5530 3rd Ave., Key West, FL 33040 (the "Premises"), consisting of 12 residential units plus any units added or constructed in the future and Habitat for Humanity of Key West and Lower Florida Keys, Inc., a Florida Non Profit Corporation (the "Ground Lessee").

The Company has been granted a franchise by an authorized governmental agency (the "Franchise Authority") to construct and operate a cable communications system in Key West, Florida (the "City"). The Ground Lessee desires to provide broadband services to the Premises, including, but not limited to, multi-channel video, high speed data, information and voice services (collectively, the "Services") and the Company is willing to install, maintain and operate a broadband communications system for such purposes on the Premises in accordance with the terms and conditions below.

Ground Lessee is a party to an Occupancy Agreement and Ground Lease with the Owner dated August 19, 2009, as amended from time to time (the "Lease").

The parties, for good and valuable consideration, intending to be legally bound, agree as follows:

1. Owner. Owner joins this Agreement for the limited purposes set forth in this Agreement, including, but not limited to, granting the Company an easement as set forth in Section 3.

2. System Construction and Installation.

a) The Company shall install, maintain and repair all facilities necessary to transmit the Services to the Premises, including, but not limited to, distribution cables, amplifiers, pedestals, lock boxes, equipment and appurtenant devices (collectively, the "Company Wiring") excluding cable home wiring, cable home run wiring, connectors, splitters, and wall plates. The Company Wiring is and will remain the personal property of the Company. All work shall be done by the Company in a proper and workmanlike manner in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes, unless otherwise provided in this Agreement. The Company shall be responsible for all costs and expenses incurred by it in installing, maintaining and repairing the Company Wiring. The Company agrees to repair and/or replace any damage to the Premises resulting from the installation, operation, maintenance or removal of the Company Wiring, except as otherwise provided in this Agreement. The Company will be responsible for obtaining all necessary permits, licenses and approvals in connection with the construction, installation and operation of the Company Wiring.

b) The Ground Lessee has installed all cable home and cable home run wiring

necessary for the Company to distribute the Services to the Premises (the "Inside Wiring") in accordance with the Company's specifications. The ownership of all parts of the Ground Lessee Wiring is and will remain the personal property of the Ground Lessee.

c) The System will consist of the Inside Wiring and the Company Wiring.

d) Neither the Ground Lessee nor any third party shall tap into, use or otherwise interfere with the System or any portion thereof for any purpose. The Company shall have the right to interconnect with and use any telephony wiring owned or controlled by the Ground Lessee inside the individual units that may become necessary or useful for the provision of the Services to the residents, whether or not such facilities are owned, installed, controlled or maintained by the Company.

3. Easement. The Owner has the authority to grant and does hereby grant an easement in favor of the Company to place its lines across the Premises and to operate the System, and shall cause such easement to run with the Premises. The Owner hereby agrees to execute the form of easement attached hereto as Exhibit A.

4. Access. The Owner and Ground Lessee shall allow Company personnel to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, and installing, maintaining, repairing, replacing or removing equipment and apparatus connected with the provision of the Services, and shall use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. The Ground Lessee shall supply the unit numbers of residents at reasonable intervals. The Ground Lessee shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.

5. Delivery of Services. The Ground Lessee has the authority to grant and does hereby grant to the Company during the term hereof the right to construct, install, operate, maintain, repair and replace, as necessary, the Company Wiring, to interconnect with, use and maintain the Inside Wiring and the right to deliver the Services to the Premises, unless otherwise required by applicable law. Neither the Owner nor the Ground Lessee shall enter into a bulk services agreement with another service provider to provide services similar to the Services during the term of this Agreement regardless of the method used to deliver such services to the Premises.

6. Fees and Charges for Services. The terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in contracts between the Company and individual residents. The Ground Lessee assumes no liability or responsibility for service charges contracted for by residents. All billing and collections from residents will be accomplished by the Company.

7. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers twenty-four (24) hours a day, seven

(7) days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

8. Private Reception Devices. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his own private reception device.

9. Interference. If any device or facility belonging to a resident, the Owner or the Ground Lessee does not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue the Service to the Premises or, at the Company's discretion, to the individual unit until such non-conformance is cured by the Owner, Ground Lessee, or resident, as the case may be.

10. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner, Ground Lessee and the Company and their respective successors and assigns for a term of ten (10) years. This Agreement shall automatically renew for successive periods of two (2) years unless a party provides the other parties with a minimum sixty (60) days notice of its intention not to renew at the end of the then current term. For the purposes of terminating this Agreement on behalf of either the Owner or Ground Lessee, both the Owner and Ground Lessee must join in the notice set forth herein to the Company.

11. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Ground Lessee with a certificate evidencing such insurance.

12. Indemnification. The Company shall indemnify, defend and hold the Owner and the Ground Lessee, their personnel, directors, agents and representatives harmless from or against any and all claims, damage or expense arising out of the actions or omissions of the Company, its personnel, directors, agents and representatives in the installation, operation, maintenance or removal of the Company Wiring, the interconnection with, use and maintenance of the Inside Wiring, the Services provided to residents at the Premises pursuant to this Agreement or a breach of this Agreement. The Owner to the extent allowed by Florida Statutes Sec. 768.28 and the Ground Lessee shall indemnify, defend and hold harmless the Company, its personnel, directors, agents and representatives from and against any and all claims, damage or expense arising out of the actions or omissions of the Owner or the Ground Lessee, their personnel, directors, agents and representatives in the installation of the Inside Wiring, the operation or maintenance of the Premises or a breach of this Agreement.

13. LIMITATION OF LIABILITY. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE,

EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. A termination of the Lease prior to the expiration or termination of this Agreement shall be deemed a default of a material term of this Agreement by Ground Lessee. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred and provide reasonable proof thereof, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Permanent Loss of Authority. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company lacks authority to continue to provide the Services to the Premises due to loss of governmental authorization. This clause, however, shall not apply to periods of transition, such as franchises subject to review, transfer or reapplication, or where termination is the subject of dispute.

15. Removal of Company Wiring.

a) Upon expiration or termination of this Agreement for any reason, the Company shall have a period of six (6) months during which it shall be entitled, but not required, to remove the Company Wiring. The Company shall promptly repair any damage to the Premises caused by such removal.

b) Notwithstanding anything to the contrary contained in this Agreement, the periods referenced in section (a) shall be tolled for as long as the Company has the right under applicable law to continue to provide any or all of the Services to any or all of the units on the Premises after the termination or expiration of this Agreement, in which case the Company shall have the right to continue to own and use the Company Wiring and the non-exclusive right to interconnect with and use the Inside Wiring to provide the Services. This Section shall survive the termination of this Agreement.

16. Dispute Resolution. All disputes under this Agreement shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with broadband communications systems and services. In the event the parties are unable to agree to a single arbitrator, the

dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with broadband systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party all costs of the arbitration, including reasonable attorneys' fees.

17. Marketing Support. The Ground Lessee shall provide exclusive Marketing Support for the Company for the Services. The term "Marketing Support" shall include, but not be limited to, the Ground Lessee's presentation of the Company's marketing materials for the Services, including, but not limited to multi-channel video, high speed Internet and voice services to existing and prospective residents. Marketing materials may include, at the Company's discretion, brochures, channel lineups, door hangers, service descriptions, and information regarding prices and special offers. All marketing materials shall be provided by the Company.

18. Miscellaneous.

a) Force Majeure. The Company shall not be liable for failure to construct the Company Wiring or to continue to operate the System or to provide the Services during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) Assignability; Binding Effect. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give Company prior written notice of such change of ownership or control. The Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. In the event Ground Lessee assigns or transfers its interest in the Premises, Ground Lessee shall give the Company prior written notice of such assignment or transfer. The Ground Lessees shall cause any new owner or controlling party acquiring its interest in the Premises to expressly assume this Agreement and agree to be bound by its terms. The Company may assign this Agreement without the consent of the Owner or the Ground Lessee to any entity controlled by or under common control with the Company, to any entity acquiring all or substantially all of the Company's assets in the City or any surviving entity following a merger, acquisition or consolidation. The assignee shall agree in writing to be bound by all the terms and conditions hereof.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

f) Notices. All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, United States Postal Service, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to the Ground Lessee:

Habitat for Humanity of Key West and Lower Florida Keys, Inc.
30320 Overseas Hwy.
Big Pine Key, FL 33043
Attn.: Officer/Director

If to the Owner:

Monroe County, Florida
1100 Simonton Street
Key West, FL 33041
Attn: County Administrator

If to the Company:

Comcast of California/Colorado/Florida/Oregon, Inc.
1010 Kennedy Dr., Suite 200
Key West, FL 33040
Attn.: Director/GM

With a copy to:

Comcast Cable Communications, LLC
One Comcast Center
Philadelphia, PA 19103
Attn.: General Counsel

g) Confidentiality Each party agrees to keep the terms and conditions of this Agreement in strict confidence and shall not divulge any specifics of the same to any third party except current and prospective lenders, purchasers, attorneys, accountants, financial advisors,

partners and/or others with a need to know for the Owner or the Ground Lessee or the Company to reasonably conduct its business.

h) Entire Agreement; Amendments. All recitals set forth above are hereby incorporated into the body of this Agreement. This Agreement, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

i) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

j) Third Party Agreements. The Ground Lessee represents and warrants to the Company with the knowledge that the Company is acting in reliance on such representation and warranty that this Agreement and the Ground Lessee's performance of the obligations set forth herein does not violate any third party agreement to which Ground Lessee is a party to, including, but not limited to the Lease.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

GROUND LESSEE

WITNESS/ATTEST:

Habitat for Humanity of Key West and Lower Florida Keys, Inc.

Brad Miller
Name: BRAD MILLER

By: Mark Moss
Name: Mark Moss
Title: Executive Director



OWNER

ATTEST:
Danny L. Kolhage, Clerk

Board of County Commissioners of Monroe County, Florida

Name: _____

By: _____
Name: _____
Title: Mayor

COMPANY

ATTEST:

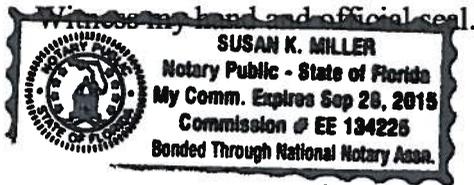
Comcast of California/Colorado/Florida/Oregon, Inc.

Name: _____

By: _____
Name: Ronald Hummel
Title: Regional VP of Commercial Development

STATE OF Florida)
) ss.
COUNTY OF Monroe)

The foregoing instrument was acknowledged before me this 27th day of October, 2011 by Mark Moss, the Executive Director of Habitat for Humanity of Key West and Lower Florida Keys, Inc., on behalf of said entity. He is personally known to me or has presented _____ (type of identification) as identification and did/did not take an oath.



Susan K. Miller
Susan K. Miller Notary Public
(Print Name)

My commission expires: 9-28-15

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by _____, the Mayor of Monroe County, Florida, on behalf of said entity. He/she is personally known to me or has presented _____ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My commission expires: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Ronald Hummel, of Comcast of California/Colorado/Florida/Oregon, Inc., on behalf of said entity. He is personally known to me and did/did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My Commission expires: _____

EXHIBIT A

(see attached)

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GRANT OF EASEMENT

This Grant of Easement (the "Easement") dated this ___ day of ___, 2011 by and between Comcast of California/Colorado/Florida/Oregon, Inc., its successors and assigns, hereinafter referred to as "Grantee" and Monroe County, Florida, hereinafter referred to as "Grantor".

Grantor, Grantee and Habitat for Humanity of Key West and Lower Keys, Inc. are parties to an Installation and Services Agreement dated _____, 2011, pursuant to which Grantee provides certain broadband communications services to the Premises described below.

In consideration of One Dollar (\$1.00), Grantor(s), owner(s) of the Premises described below, hereby grant(s) to Grantee, its successors and assigns, an easement in gross and right-of-way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time a broadband communications system (hereinafter referred to as the "Company Wiring") consisting of wires, underground conduits, cables, pedestals, vaults, and including but not limited to above ground enclosures, markers and concrete pads or other appurtenant fixtures and equipment necessary or useful for distributing broadband services and other like communications, in, on, over, under, across and along that certain real property (the "Premises") located in County of Monroe, State of Florida described as follows:

LEGAL DESCRIPTION:

Section-
Township- 35-67-25
Range:

Property 5530 3RD AVE SOUTH STOCK
Location: ISLAND

Legal BLK 54 LTS 16 AND 17 STOCK ISLAND MALONEY SUB PB1-55 OR22-389/392 OR625-847 OR625-848
Description: OR1444-1966D/C OR2244-143 OR2406-526 OR2433-81 OR2433-85/87 OR2433-88/125LEASE OR2456-2380/2382AMD/LEASE

Grantor(s) agree(s) for itself and its heirs and assigns that the Company Wiring on the Premises shall be and remain the personal property of the Grantee and may not be altered, obstructed or removed without the express written consent of the Grantee. The Grantee, and its contractors, agents and employees, shall have the right to trim or cut trees and/or roots which may endanger or interfere with said Company Wiring and shall have free access to said Company Wiring and every part thereof, at all times for the purpose of exercising the rights herein granted; provided, however, that in making any excavation on said Premises of the Grantor, the Grantee shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the area to as near the same condition as it was prior to such excavation as is practical. This Easement shall run with the land for so long as Grantee, its successors or assigns provides broadband service to the Premises.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed by their duly authorized representatives as of the date first written above.

GRANTOR

ATTEST:
Danny L. Kolhage, Clerk

Board of County Commissioners of
Monroe County, Florida

Name: _____

By: _____
Name:
Title: Mayor

GRANTEE

ATTEST:

Comcast of California/Colorado/Florida/Oregon, Inc.

Name: _____

By: _____
Name: Ronald Hummel
Title: Regional VP of Commercial Development

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
[Signature]
Date: 11-1-11

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by _____, the Mayor of Monroe County, Florida, on behalf of said entity. He/she is personally known to me or has presented _____ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Ronald Hummel, of Comcast of California/Colorado/Florida/Oregon, Inc., on behalf of said entity. He is personally known to me and did/did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My Commission expires: _____