

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to execute an Access Agreement between the City of Lowell and Comcast Cable Communications Management, LLC, to install, construct, replace, maintain, repair, operate, inspect, augment and remove, at Comcast's sole option and expense, certain wires, cables, conduit, lock-boxes, and other appurtenant fixtures and equipment at 191 Mt. Pleasant Street, Lowell.

The City of Lowell owns property at 191 Mt. Pleasant Street, Lowell, also known as the Tenth Street Water Tank; and

The City grants use of this property for distributing communications services to the Greater Boston Police Council at the Property; and

The Agreement shall have an initial term of ten (10) years, commencing upon the effective date. If Comcast is not in breach, this Agreement shall automatically renew on a month to month basis for up to 120 months (the Renewal Terms) unless either party shall provide to the other a minimum of ninety (90) days' notice.

BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Council of the City of Lowell hereby authorizes the City Manager to execute an Access Agreement between the City of Lowell and Comcast Cable Communications Management, LLC, to install, construct, replace, maintain, repair, operate, inspect, augment and remove, at Comcast's sole option and expense, certain wires, cables, conduit, lock-boxes, and other appurtenant fixtures and equipment for distributing communications services to the Greater Boston Police Council at 191 Mt. Pleasant Street, Lowell. Said Access to Property Agreement shall be in the form or substantially the form attached hereto.

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the "Agreement") effective as of the later of the dates on which it is signed below (the "Effective Date"), is made by and between Comcast Cable Communications Management, LLC, a Delaware limited liability company, on behalf of its affiliates (together, "Comcast"), and the City of Lowell, a municipal corporation within the County of Middlesex and the Commonwealth of Massachusetts (the "Owner"), which owns the land and the improvements thereon (together, the "Property") having an address of 191 Mt Pleasant St, Lowell MA.

1. **Grant.** Owner hereby grants to Comcast a non-exclusive license to install, construct, replace, maintain, repair, operate, inspect, augment and remove, at Comcast's sole option and expense, certain wires, cables, conduit, lock-boxes, and other appurtenant fixtures and equipment installed by Comcast (the "Facilities"), over, under, across and along the Property, as may be necessary or useful for distributing communications services to the Greater Boston Police Council (the "User") at the Property. Owner shall allow Comcast access to the Property during normal business hours and at all times during emergencies for the foregoing purposes.

2. **Installation.** The work to be performed by Comcast is set forth in the Scope of Work attached hereto as Exhibit A. Construction of the Facilities as described in the Scope of Work shall be performed in a manner consistent with generally accepted construction standards. Upon the expiration of this Agreement, Comcast shall remove from the Property those components of the Facilities which Comcast installed, that Owner requests Comcast remove, within thirty (30) days after such request. Comcast shall not perform any "material work" (as defined below) without the prior approval of the Owner, which approval shall not be unreasonably withheld, conditioned or delayed. As used in this Agreement, "material work" includes but is not limited to construction, installation and repairs of the Facilities that would in any way damage the Property or disrupt the operations of Owner or any User, and installation of any new Facilities.

3. **Comcast Obligations.** Comcast shall comply with all applicable laws. Comcast shall keep the Facilities in good order and repair, and shall promptly repair any damage caused by Comcast, other than ordinary wear and tear. The Facilities shall belong to Comcast, shall be there at the sole risk of Comcast and Owner shall not be liable for damage thereto or loss thereof, except in the event of Owner's gross negligence or willful misconduct. Comcast shall be responsible for, and shall also indemnify, hold harmless and defend Owner against, the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Comcast. Prior to installation of the Facilities, and thereafter upon Owner's request at the renewal of required policies, Comcast shall provide a certificate of insurance to Owner, naming Owner as an additional insured.

4. **Term.** This Agreement shall have an initial term of ten (10) years, commencing on the Effective Date. If Comcast is not in breach, this Agreement shall automatically renew on a month to month basis for up to 120 months (the "Renewal Terms"), unless either party shall provide to the other party with a minimum of ninety (90) days' notice, but not more than 120 days' notice, of its intention not to renew at the end of the then current term (the "Initial Term" and the "Renewal Terms" are collectively referred to as the "Term").

5. **Default.** Should either party default in the performance of material provision of this Agreement and fail to correct same within thirty (30) days after having received notice specifying nature of such default, unless such default is of a nature that it cannot be completely cured within thirty (30) days, if a cure is not commenced within such time and thereafter diligently pursued to completion, then the non-defaulting party may terminate this Agreement and may pursue all other remedies available to it at law and/or equity.

6. **Indemnification.** Comcast shall indemnify, hold harmless and defend Owner from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees, arising from or out of the installation, operation, maintenance, or removal by Comcast of the Facilities, except to the extent that any such claims, actions, damages, liabilities, expenses are caused by the Owner, its employees, agents, contractors, invitees, officers, directors, affiliates or subsidiaries.

7. **Relocation.** Nothing in this Agreement shall be construed to require Owner to maintain the Property in its current condition, to maintain the current use of the Property, or to enter into or maintain any leases with any of Comcast's Customers at the Property. If the relocation or removal of the Facilities is necessary due to any redevelopment of the Property by Owner, Owner shall have the right to require Comcast (at Comcast's expenses) to relocate or remove the Facilities to the extent necessary for such redevelopment, upon at least 60 days advance notice to Comcast, provided that upon the completion of such redevelopment, Comcast shall continue have all of its rights under this Agreement, and this Agreement shall remain in effect for the remainder of the Term. In the event of a relocation request, Comcast reserves the right to terminate.

8. **Termination.** Either party may, at its option, terminate this agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party, sent by certified mail, to the usual place of business of the other party.

9. **Damages.** Neither party shall be liable to the other party for any lost profits, special, incidental, punitive, exemplary or consequential damages.

10. **Notices.** All notices under this Agreement shall be written and given by certified mail, return receipt requested, or nationally recognized overnight courier service (except for communications with Owner's local contact, which may be by telephone and/or email), to the respective address set forth below (or as may subsequently be provided):

If to Comcast: Comcast Cable Communications Management, LLC
181 Ballardvale St, Suite 203
Wilmington, MA 0188
Attn.: Business Services

If to Owner: Lowell Regional Water Utility
815 Pawtucket Boulevard
Lowell, MA 01852
Attn: Mark Young, Executive Director

With a copy to: Comcast Cable Communications, LLC
One Comcast Center
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103
Attn.: General Counsel

With a copy to: City of Lowell—Law Department
Lowell City Hall
375 Merrimack Street, 3rd Floor
Lowell MA, 01852
Attn: City Solicitor

11. **Miscellaneous.** This Agreement shall bind and benefit the parties and their respective successors and assigns.

APPROVED:

Eileen Donoghue
City Manager

Date: _____

Barry Bader, VP Business Services
Comcast Communications Management, LLC

Date: _____

APPROVED AS TO FORM:

CITY OF LOWELL

Christine P. O'Connor
City Solicitor

Date: _____

Mark Young, Executive Director
Lowell Regional Water Utility

Date: _____

EXHIBIT "A"

Scope of Work

Comcast proposes to extend a new 1/2" OSP rated fiber (the cable) to the Mt. Pleasant Street water tower (the "Property"). From existing utility pole located on Mt. Pleasant Street we will riser down and rod, rope and pull the cable into the existing conduit leading to the water tower. Once inside we will install a section of plywood on the existing communications posts and install a wall box transition splice. From here we will secure a 1 1/4" plenum rated innerduct in the existing ladder tray to the customer rack where we will install a 1U FDP, splice, terminate and test our fiber.

City of Lowell - Law Department

375 Merrimack Street, 3rd Floor • Lowell MA 01852-5909

Tel: 978.674.4050 • Fax: 978.453.1510 • www.lowellma.gov

November 21, 2019

Mayor William Samaras
and
Members of the City Council

Christine P. O'Connor
City Solicitor

Rachel M. Brown
1st Assistant City Solicitor

Gary D. Gordon
John Richard Hucksam, Jr.
Adam LaGrassa
Stacie M. Moeser
Elliott J. Veloso
Assistant City Solicitors

REFERENCE: Access Agreement for 191 Mt. Pleasant Street

Dear Mayor Samaras and Members of the City Council:

Comcast Cable Communications Management, LLC, has requested access to the City owned property located at 191 Mt. Pleasant Street, also known as the Tenth Street Water Tank.

The property would be accessed for distributing communications services to the Greater Boston Police Council (GBPC) for an initial term of ten years and if Comcast is not in breach of this Agreement shall automatically renew on a month to month basis for up to 120 months thereafter.

Law Enforcement has been at this site for many years, it started with a receiver site for the NEMLEC radio system (LPD being a member). Ten or twelve years ago the NEMLEC system was absorbed by the GBPC as the northwest district of the Boston Area Police Emergency Radio Network (BAPERN). Said network now services some 177 agencies from New Hampshire to the Cape Cod Canal providing a fifteen frequency simul-cast interoperable radio system. This system allows for uninterrupted communications in and among these agencies when requesting or providing mutual aid to other agencies.

The Lowell site had for many years relied on Verizon to carry radio signals from the field back to the base of control point. The GBPC is in the process of switching carriers from Verizon to Comcast for improved communications reliability.

If you have any questions or need any assistance in this matter, please contact Adam LaGrassa, Assistant City Solicitor at (978) 674-4050 or me.

Sincerely,



Christine P. O'Connor
City Solicitor