

## **CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 21<sup>st</sup> day of May, 2003, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and Doug Essman, whose business address is \_\_\_\_\_ (hereinafter referred to as the "CONSULTANT").

### **W I T N E S S E T H:**

WHEREAS, the OWNER desires to obtain the professional consulting services of the CONSULTANT to determine the compliance with the terms of Comcast's franchise with the City of Naples, as outlined in Section 9 of the franchise adopted the 21<sup>st</sup> day of June, 1995. In addition, Consultant will review all records required to be on file by Comcast by the Federal Communications Commission. The City of Naples and Consultant may require changes in the Services to be provided. Such changes that are mutually agreed upon by and between the City of Naples and Consultant shall be incorporated by written amendment to the Agreement and signed by the Parties. See Attachment A for details on the Scope of Work (hereinafter referred to as the "Project"); and

WHEREAS, the CONSULTANT has submitted a proposal for provision of those services; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

### **ARTICLE ONE CONSULTANT'S RESPONSIBILITY**

1.1. CONSULTANT shall provide to OWNER professional consulting services in all phases of the Project to which this Agreement applies.

1.2. The Services to be performed by CONSULTANT and the estimate of potential fees and charges are \$1,500.00.

1.3. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4. The CONSULTANT agrees that, when the Services to be provided relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of

legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.5. The CONSULTANT has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of the conflict.

1.6. CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONSULTANT's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, sub-consultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONSULTANT agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement.

- (a) For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council.
- (b) For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director.
- (c) In the event CONSULTANT violates the provisions of this paragraph, CONSULTANT shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.8. CONSULTANT agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.9. Except as otherwise provided herein, CONSULTANT agrees not to disclose or use any information not available to members of the general public and gained by reason of CONSULTANT'S contractual relationship with OWNER for the special gain or benefit of CONSULTANT or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO TIME**

2.1. Services to be rendered by CONSULTANT shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNERS City Attorney .

2.2. Should the CONSULTANT fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONSULTANT's performance is or will shortly be back on schedule.

## **ARTICLE THREE COMPENSATION**

3.1. Compensation and the manner of payment of such compensation by the OWNER for services rendered hereunder by CONSULTANT shall be an amount of \$1,500.00 as prescribed in Exhibit A.

## **ARTICLE FOUR OWNERSHIP OF DOCUMENTS**

4.1. Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks and other technical data, other than working papers, prepared or developed by CONSULTANT under this Agreement shall be delivered to and become the property of OWNER. CONSULTANT, at its own expense, may retain copies for its files and internal use.

## **ARTICLE FIVE MAINTENANCE OF RECORDS**

5.1. CONSULTANT will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX**  
**SERVICES BY CONSULTANT'S OWN STAFF**

6.1. The services to be performed hereunder shall be performed by CONSULTANT's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as independent consultant or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE SEVEN**  
**TERMINATION OR SUSPENSION**

7.1. CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONSULTANT seven (7) calendar days written notice.

7.2. If, after notice of termination of this Agreement as provided for in paragraph 7.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 7.1, then the notice of termination given pursuant to paragraph 7.1 shall be deemed to be the notice of termination provided for in paragraph 7.3 below and CONSULTANT's remedies against OWNER shall be the same as and limited to those afforded CONSULTANT under paragraph 7.3 below.

7.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

7.4. Upon termination, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

**ARTICLE EIGHT  
CONFLICT OF INTEREST**

8.1. CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE NINE  
APPLICABLE LAW**

9.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement for the day and year first written above.

ATTEST:

OWNER:  
CITY OF NAPLES, FLORIDA,  
CORPORATION

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

By: \_\_\_\_\_  
Bonnie R. MacKenzie, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Robert D. Pritt, City Attorney

CONSULTANT:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Doug Essman

