


COPY OF
COMMUNICATION SERVICES
INSTALLATION
AND
SERVICE AGREEMENT
BETWEEN
HOTWIRE COMMUNICATIONS, LTD.
AND THE
TOWN OF GOLDEN BEACH

COMMUNICATION SERVICES
INSTALLATION AND SERVICE AGREEMENT

 This is a Communication Services Installation and Service Agreement (this "Agreement") made this day of August, 2021 (the "Effective Date") between Hotwire Communications, Ltd. a Pennsylvania Limited Partnership, with a principal address of 3 Bala Plaza East, Suite 700, Bala Cynwyd, PA 19004 (hereinafter the "Operator"), and the Town of Golden Beach, Florida, a municipal corporation with a principal address of 1 Golden Beach Drive, Golden Beach, Florida 33160 (hereinafter the "Town") (collectively the "Parties").

RECITALS

1. The Operator is in the business of constructing, installing, maintaining and operating communication systems for the delivery of telecommunications and entertainment services to both commercial and residential users.
2. The Town provides municipal governance and services to the property owners and residents of 377 unique single family residential homesites most of which are improved with luxury homes (each a "Residence", collectively, the "Residences") located within the legal boundaries of the Town of Golden Beach, Florida as described within the Town Charter last approved by referendum on March 4, 1986.
3. The Town wishes to engage and hire the Operator to construct, install, maintain, service and operate a telecommunication system within the Town for the purpose of providing the Town property owners and residents (each an "Owner", collectively, the "Owners") with a quality high-speed fiber-optic internet service (as further defined herein and hereinafter referred to as the "Bulk Services").
4. The Operator wishes to provide the Owners with internet service as well as to offer the Owners a full array of other services, including multi-channel video, audio, telephone, alarm monitoring and other services (as further defined herein and hereinafter referred to as the "Retail Services") (the Bulk Services and Retail Services are hereinafter collectively referred to as the "Services").
5. In addition to the Bulk Services and the Retail Services, the Town and the Operator intend for the Town to receive certain services (including community broadband) to properties owned or control by the Town (hereinafter defined and referred to as the "Town Services").
6. The Operator and the Town wish to enter into this Agreement to accomplish the goals and purposes set out by the Parties within the foregoing Recitals.

TERMS

1. **Recitals.** The Recitals set forth above are true, correct and incorporated by reference into this Agreement.
2. **The System.**
 - a. **Improvements.** Subject to the terms of this Agreement, the Operator hereby agrees that it will design, construct, install, operate, service, maintain, and as necessary, rebuild, replace and improve a fiber-optic based telecommunication infrastructure system within that certain

property located in the Town as more particularly described in **Exhibit "A"** to this Agreement (the "Property"). This system may include, but not be limited to: (i) distribution wiring and cabling, originating at a point where the Operator's facilities enter the Property, connecting to the Headend Room (as defined herein) and interconnecting throughout the Property in underground vaults and splitter panels to the Demarcation Points defined below (the "Distribution Wiring"); (ii) antennas; (iii) a Distributed Antennae System (DAS); (iv) small cells; (v) wiring; (vi) transmitters; (vii) microwave equipment; (viii) computers; (ix) routers; (x) switches; (xi) battery backups; (xii) hubs; (xiii) concentrators; (xiv) dishes; (xv) commercial security hardware and infrastructures; (xvi) underground vaults; (xvii) pedestals; (xviii) a headend equipment room located within a building more fully described in Section 2(b) below; and (xix) any and all other equipment as required by the Operator. The system also includes the trenching and installation for a demarcation box on the outside of each Residence. From the demarcation box, a connection will be made to an Optical Network Terminal ("ONT") within each Residence. The location of the ONT may be referred to in this Agreement as the "Demarcation Point". The entirety of the system described herein is referred to in this Agreement as the "System" and the equipment making up the system may be referred to as the "Equipment".

- b. Headend Room. The Town shall provide the Operator the use of an air-conditioned, climate controlled room within the Property of not less than 150 square feet in size for the installation, use and operation of certain of the Equipment that receives, transmits and distributes signals through the System (the "Headend Room"). The Headend Room shall temporarily be located within the Town entry gatehouse located at the entrance to the Town (the "Gatehouse Location") and shall then be permanently located in the new Town Civic Center being constructed within the Property (the "Permanent Location"). The Gatehouse Location shall be for the exclusive use of the Operator. The Operator shall have the free and uninterrupted use of the Headend Room and shall have the right to secure the Headend Room at the Gatehouse Location. The Permanent Location within the Town Civic Center shall be nonexclusive and shared by the Town and the Operator. The Permanent Location is shown on **Exhibit "B"** to this Agreement. Access to both the Gatehouse Location and the Permanent Location shall be governed by the Grant of Telecommunications License attached hereto as **Exhibit "C"** to this Agreement. After the expiration of the Term of this Agreement, the Operator shall remove its Equipment from the Headend Room and relocate it to a Town-designated location within the Property selected by the Town; *provided, however*, if the Town-designated location is not acceptable to Operator, then the Equipment shall be relocated to a location in the publicly dedicated right-of-way within the Town, and the Town will issue permits for said relocation upon application by Operator. The Town shall cooperate with the Operator in such a relocation and upon proper application promptly issue any permits required for such relocation.
- c. Installation. The Operator shall, at the Operator's expense, acquire and install all the Equipment, Distribution Wiring and other communication facilities required to build and operate the System. Installation shall be performed in a diligent, safe and professional manner and all materials used by the Operator shall be of good and durable quality. All work shall be performed by licensed contractors and shall be based upon full plans and specifications and a schedule both approved in advance by the Town. If during installation of the System, the Operator encounters asbestos containing materials ("ACMs") or presumed

asbestos containing materials ("PACMs"), the Operator will immediately stop work in the affected area, report the condition to the Town in writing and not resume work in the affected area unless the Operator receives written approval from the Town and the Operator is reasonably satisfied that such ACMs or PACMs are sufficiently removed or remedied. In such event, the Operator shall not be liable for any delays or failure to complete installation of the System or arrange for the provision of Services as required under this Agreement, and any such delays shall not be a default of the Operator under this Agreement.

- c. No Liens. The Operator shall keep the Property and every part thereof and all buildings and other improvements located within the Property free and clear of any and all construction and mechanics liens for or arising out of the Operator's installation of the System. The Operator shall indemnify and hold the Town harmless against all such liens and any proceedings pertaining thereto, including reasonable attorney's fees. The Operator shall bond over or discharge any liens within fifteen (15) days of notice of the existence thereof, failing which, the Town may satisfy such lien and deduct any and all costs associated therewith from any sums due or which become due to the Operator hereunder.
- d. Maintenance. The Operator shall at all times, at the Operator's own expense, operate, maintain and service the System and keep the same in good working order and repair in accordance with the highest industry standards and practices.
- f. Ownership and Use of System and Equipment. It is expressly understood by the Parties that the Operator shall have the exclusive ownership and use of the System and Equipment and each component of same, including the exclusive ownership of and use of each ONT and access points and the exclusive ownership of, and exclusive access and right to install, operate, inspect, alter, improve, upgrade, rebuild, add to, disconnect, replace, remove, repair and maintain the Distribution Wiring installed by the Operator as set forth in this Agreement.

3. **In-Residence Wireless Distribution System and In-Residence Wiring.**

- a. In-Residence Wireless Distribution System. The Operator, at its sole cost and expense, shall install into each Residence whose Owner elects to receive the Bulk Services and/or Retail Services and provides their approval for installation, a wireless distribution system that provides four (4) indoor wireless access points in the Residence that is capable of speeds of up to 1GB (the "Wireless Distribution System").
- b. In-Residence Wiring. While the Parties do not know the extent to which each Residence contains an in-house, hard wired network capable of facilitating the delivery of the Retail Services, it is assumed that most, if not all, Residences are wired with a copper coaxial or Ethernet system to various locations within each Residence (the "In-Residence Wiring"). Subject to the Owner's approval, Operator shall be granted the non-exclusive use of the existing In-Residence Wiring if necessary to provide the Bulk Services and/or Retail Services to the Owners. The Operator shall use this existing In-Residence Wiring in providing the Bulk Services and/or Retail Services. During the installation period, and at no additional cost to the Resident or the Town, the Operator will install Cat5e or Cat6 wiring to the one location at which the ONT will be located. All other installation costs shall be at the expense of the Owner, including the installation of the Cat5e or Cat6 wiring to additional



locations which will be \$150 each, and will be charged directly to the Resident. Notwithstanding this provision or other provision of this Agreement, the Owners shall maintain title and ownership of all In-Residence Wiring and outlets. It is expressly understood by the Parties that an Owner's refusal to allow Operator to utilize In-Residence Wiring to provide the Bulk Services and/or Retail Services shall not relieve the Town of the obligation to pay for the Bulk Services.

4. **The Services.**

The Operator shall provide the following services, hereinafter collectively defined as the "Services".

- a. **The Bulk Services.** The Operator shall provide, during the entire Term, at each Owner's option, certain services on a bulk basis ("the Bulk Services") for each and every Residence within the legal boundaries of the Town. These Bulk Services consist of high speed fiber optic internet services as more fully described in the Bulk Services Addendum, which is attached hereto as **Exhibit "D"** to this Agreement.
- b. **The Retail Services.** In addition to the Bulk Services, the Operator shall have the right and obligation through the entire Term to market and sell certain retail services directly to each Owner ("the Retail Services"). The Operator shall bill each Owner individually for any Retail Services purchased. A list of the Retail Services and the prices for each shall be posted from time to time at www.gethotwired.com. A more detailed description of the Retail Services and the current rates for the Retail Services being offered to the Owners, which are subject to change, is attached hereto as **Exhibit "E"**. Each Owner who purchases Retail Services may be required to enter into a separate agreement with the Operator.
- c. **Town Services.** The Operator shall offer the Town with various services, including, but not limited to, telephone, internet, security, television, and outdoor broadband/Wi-Fi "hotspots" (the "Town Services"). The Town Services are described in the Town Services Addendum to be attached as **Exhibit "F"** to this Agreement within thirty (30) days of the execution of this Agreement. If the Parties are unable to reach an agreement on such addendum, either party may terminate this Agreement by providing written notice to the other on or before the expiration of the thirty (30) days.
- d. **Performance Specifications.** The Bulk Services shall be subject to the Performance Specifications described in **Exhibit "G"** to this Agreement. The Town Services are subject to performance standards set forth in the Town Services Addendum.

5. **Rights of Access and Title to System.**

- a. To the extent permitted by law, the Town hereby grants to the Operator the exclusive right to install, operate, market and maintain the System as provided herein and, in furtherance thereof, hereby grants to the Operator the right of access, including reasonable rights of ingress and egress, to, over, on, under, and through the portions of the Property, to construct, install, lay, operate, provide, connect, maintain, inspect, repair, replace, upgrade, relocate, remove and disconnect the System and the Equipment.

- b. The Town shall use its best efforts to ensure that any subsequent municipality or any other third party to whom the Property may be conveyed approve, adopt and ratify this Agreement, Agreement and all exhibits and addenda attached hereto.
- c. Title. The Town acknowledges and agrees that title in and to the System and all the Equipment and communication facilities installed by the Operator during and after the Term shall at all times remain exclusively with the Operator or the Operator's permitted successors or assignees, and no portion of the System or the Equipment will be deemed a fixture of the Property, notwithstanding any method of affixation to the Property or the buildings or Residences thereon or any applicable law or doctrine relating to fixtures. The Town hereby expressly waives, as against the Operator and any lender of the Operator, any landlord's lien, right of distraint or levy, claim, security interests or any other interests which the Town may now or hereafter have in or relating to any of the System and Equipment now or hereafter located at the Property, including any of the foregoing which might otherwise arise or exist in the Town's favor pursuant to agreement, common law, statute (including the federal Bankruptcy Code) or otherwise. The Town shall not interfere with, remove, make alterations or modifications to, attempt to repair, maintain or service the System or any of the Equipment, or allow persons not authorized by the Operator to do so. The Town shall not create any security interest in the System, or any portion thereof, including without limitation, subjecting the System to any mortgage, deed of trust or lien that encumbers the Property where the System is located. The Town hereby grants to the Operator exclusive access to, ownership of, and right to use the Distribution Wiring and any and all Equipment and communication facilities installed by the Operator during and after the expiration of the Term. However, notwithstanding this provision or other provision of this Agreement, Owners and/or the Town shall maintain title and ownership of all existing wiring outlets and installed equipment.
- d. Covenants. The rights and obligations under this Agreement shall be binding upon and inuring to the benefit of all future owners of the Property or any interest in the Property.
- e. Liens and Recordation. To evidence the fact that the Operator has been granted a License, has obtained Owner Approvals, and has retained exclusive ownership of the System and Equipment installed by the Operator to the Demarcation Point, the Town hereby agrees that the Operator may cause this Agreement (or other documentation evidencing the foregoing as executed by the Town and the Operator), or any statement or other instrument relating to this Agreement showing the Operator's ownership of the System and Equipment, including UCC-1 financing statements, to be filed or recorded and re-filed and re-recorded, among the public records in all necessary places in order that any and all third parties shall be on notice of the Easement and the ownership of the System and Equipment. The Operator's lenders may file a UCC-1 or any other instrument necessary to perfect a security interest in this Agreement and the Operator may assign any of its rights under this Agreement to any of its lenders, provided, however, that no such assignment shall relieve an assigning Party of its obligations under this Agreement. The Town agrees to execute and deliver any statement or instrument requested by the Operator for such purpose. All costs associated with filing and recording of this Agreement or other forms and documentation shall be paid by the Operator.

- f. Town's Support; Access to the System. The Town shall facilitate and assist the Operator in obtaining the necessary authorization and approvals from the individual Owners who elect to receive the Services in order to provide Services to the Owners (the "Owner Approvals"). The Town shall use best efforts to assist the Operator in getting access to all Residences and areas of the Property as necessary to install, operate, maintain, audit, connect, and/or disconnect the System, to provide the Services, and to make service and repair calls. Without limiting the generality of the above, the Town acknowledges and agrees that the Operator shall have free and unrestricted right of access to the Property and the System, including all of the Operator's Equipment and communication facilities, for the purpose of exercising the rights granted to the Operator in this Agreement, and Owner Approvals. The Town, without assuming any liability, shall provide the same security for the System as it provides for the Property in general. The Operator shall be given any keys necessary to access its Equipment and communication facilities to provide repairs and service to the Equipment and facilities on a 24x7x365 basis. The Operator shall also be given reasonable parking for the vehicles of the Operator's employees and contractors while they are on the Property performing work on the System or making service and repair calls.
- g. Upgrades to System. From time to time, the Operator may propose, or the Town may request, upgrades to the System for the purpose of providing improved, faster and enhanced Services as technological developments permit. The Operator shall have the right, in its sole discretion, to make such upgrades at its own cost and expense and to offer any improved Services made possible by such upgrades to the Owners on an individual subscription basis.

6. System Completion and Dates of Service.

- a. System Completion. The Operator shall complete all work necessary to activate the Bulk Services and Retail Services for each Owner who has requested such services no later than February 15, 2022, subject only to delays beyond the control of the Operator as set forth in Section 18 of this Agreement and/or any delays caused by the Town and/or any third parties not affiliated with the Operator (the "System Completion Date"). The Operator shall promptly provide written notice to the Town of the System Completion Date.
- b. System Activation Date. The Operator shall activate the System within thirty (30) days of the System Completion Date so that all Owners who have elected the Bulk Services and/or Retail Services have full use and access to said Services on date certain (the "System Activation Date"). The Operator shall notify the Town in writing of the System Completion Date and certify therein that the System will be activated within thirty (30) days thereof.
- c. The Operator shall make three attempts to schedule installation with a Residence using the contact information provided by the Town under paragraph 11(e), the final attempt being a letter sent by certified mail. If, after the final attempt, the Owner does not set up a schedule, the Operator shall bill, and Town shall pay for Bulk Services for that Residence as if it is receiving services, and the Residence shall be deemed to be installed for purposes of the System Activation.
- d. Initial and Yearly Anniversary Dates. The "Initial Anniversary Date" for the Property is twelve (12) months from the first date that the Operator receives from the Town payment in

full of the Operator's invoice for Bulk Services for all Residences within the Property. Each subsequent 12-month period from the "Initial Anniversary Date" shall be considered the "Yearly Anniversary Date" of this Agreement.

7. **Term.**

The Initial Term of this Agreement will commence on the Effective Date and will continue for ten (10) years from the System Activation Date. Upon expiration of the Initial Term, the Agreement shall automatically renew for additional terms of one (1) year each, with the same terms and conditions. (The Initial Term and the renewal terms are collectively referred to as "the Term"). Either party may opt out of the renewal term by providing at least ninety (90) days' written notice to the other party prior to the expiration of the then-current term. If no notice is received or if notice is received less than ninety (90) days prior to the date this Agreement is set to expire, then the renewal term shall be deemed to have been approved. Notwithstanding any termination notice or other termination of this Agreement as provided herein, the Operator will continue to have the exclusive right to operate its System and the non-exclusive right to provide Retail Services to the Owners.

8. **Termination.** This Agreement shall terminate upon the first to occur of the following:

- a. Upon the mutual written consent of the Parties hereto;
- b. At the option of either party, if the other party materially breaches any of its obligations under this Agreement, and fails to cure such breach within thirty (30) days after receipt of written notice from the non-breaching party (or, if such default cannot be cured within such time period, should the breaching party fail to commence to cure such default within said default period and pursue the same to completion with due diligence), and which notice shall describe the material breach(es) in reasonable detail and specify the non-breaching party's intention to terminate this Agreement if such breach(es) are not cured.
- c. At the option of the Operator, upon providing the Town with at least ninety (90) days advance written notice, in the event that there is a change in law or regulation governing the provision of the Services or a portion thereof that, in the reasonable opinion of the Operator, materially impacts the ability of Operator to provide the Services in a commercially reasonable manner, based upon but not limited to the Operator's technical and financial requirements.

9. **Insurance.** The Operator shall maintain, with an insurance company or companies lawfully authorized to do business in the State of Florida, such insurance as will protect the Operator and the Town from claims which may arise out of or result from Operator's operations under the Agreement and for which the Operator or the Town may become legally liable, whether such operation be by the Town, the Operator or a subcontractor or anyone directly or indirectly employed by any of them. Prior to the commencement of the System installation, on request, the Operator shall furnish the Town with a Certificate of Insurance and all exclusion, limitation or exception endorsements or riders which limit any insurance policy coverage, for the following:

- a. Worker's Compensation Insurance according to State statutory limits covering all employees or subcontractors of Operator.

- b. Comprehensive General Liability Insurance, including Product and Completed Operations coverage, in the minimum limit amount of not less than \$1,000,000 per occurrence for each coverage form with the Town listed as an additional insured.
- c. Comprehensive / Commercial Automobile Liability coverage in the minimum limit amount of not less than \$1,000,000 per occurrence with the Town listed as an additional insured.
- d. Contractual Liability Insurance fully covering the Operator's obligations arising out of this Agreement, including the "Indemnification" provisions, with the Town listed as an additional insured.
- e. Excess or Umbrella liability policy in the minimum limit amount of not less than \$3,000,000 per occurrence with the Town listed as an additional insured.

The policies issued in "b", "c", "d" and "e" above shall be issued using the most current Insurance Services Office insuring agreements, terms and conditions including the most current additional insured endorsement or broader. The certificates shall be issued in the name of the Town and all insurance shall be on a primary insurance policy of the Operator and apply on a direct basis for all insured parties.

10. **Indemnification.** Subject to the provisions of Section 13, and Chapter 768, Fla. Stat., each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party ("Indemnified Party") and Indemnified Party's Affiliates, as well as the owners, partners, directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all disputes, actions, damages, lawsuits, expenses and claims arising out of or in connection with this Agreement, which result in bodily injury to or death of any person, or damage to or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the owners, partners, directors, officers, employees, agents or contractors (excluding the Indemnified Party) of the Indemnifying Party or the Indemnifying Party's Affiliates, in connection with this Agreement.

11. **Marketing Rights.** The Operator shall have the right to market Retail Services to the Owners.

- a. The Operator shall have the right to advertise and promote the Services to the Owners by distributing promotional materials over the System, and/or by mail. The Operator shall have the right to place any marketing materials within the legal boundaries of the Town, including on the Town's website, to be pre-approved by Town in its sole discretion, not to be unreasonably withheld, conditioned or delayed, concerning any Services provided by the Operator, including without limitation, placing promotional materials in the Town's publications, and marketing the Operator's Services on the Town's website.
- b. With the Town's permission, the Operator shall have the right to refer to the Town (and Town's successors-in-interest and assigns) as representative clients or projects in advertising and promotional materials related to the provision of services similar to the Services provided to the Owners in the Town. The Town shall have the right to review and approve

all advertising and promotional materials relating to the Services provided to the Town prior to any distribution of such materials.

- c. Unless expressly stated in this Agreement, nothing in this Agreement shall be interpreted as granting one Party any right or license in the trademarks, service marks, logos, or any other intellectual property owned by the other party, or in any goodwill associated therewith.
- d. Upon the signing of this Agreement, the Town shall supply the Operator with the available contact information for the Owners to the extent it is not confidential.

12. Removal of System.

- a. Upon expiration or termination of this Agreement for any reason, Operator shall have a period of six (6) months during which it shall be entitled, but not required, to remove the System. This shall not apply to the Equipment within the Headend Room which shall be removed and relocated as provided for in Section 2b. The Operator shall promptly repair any damage caused by the removal of the System.
- b. Notwithstanding anything to the contrary contained in this Agreement, the removal period referenced in Section 12 (a) shall be tolled (except for the Headend Room) for as long as Operator is offering Services and/or has the right under applicable law to continue to provide any or all of the Services on a Retail basis to any or all of Residences within the Town after the termination or expiration of this Agreement, in which case Operator shall have the exclusive right to continue to own and use the System and Equipment to provide the Services on a non-exclusive basis and shall have non-exclusive access to all In-Residence Wiring and the Property. This Section shall survive the termination of this Agreement.

13. Limitation of Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST OPPORTUNITIES, LOSS OF GOODWILL, OR FOR PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, AND, EXCEPT FOR OPERATOR'S INSTALLATION COSTS AND RIGHT TO RECEIVE PAYMENT FOR THE TERM OF THIS AGREEMENT, EACH PARTY EXPRESSLY WAIVES AS AGAINST THE OTHER, TO THE FULLEST EXTENT OF THE LAW, THE RIGHT TO PURSUE ALL SUCH DAMAGES.

14. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (i) personally delivered; (ii) sent by a nationally recognized overnight delivery service providing a signed receipt; or (iii) sent by certified or registered mail, return receipt requested. All notices personally delivered or sent by a nationally recognized overnight delivery service shall be deemed effective when actually delivered as documented in a delivery receipt. All notices sent by certified or registered mail, return receipt requested, shall be deemed effective five (5) days after having been deposited in the United States mail. All notices shall be sent to the addressee at its address set forth following its name below:

To Operator:

Hotwire Communications, Ltd.
3 Bala Plaza East, Suite 700



Bala Cynwyd, PA 19004
Attention: Kristin Johnson, Chief Executive Officer

With a copy to:
Hotwire Communications, Ltd.
2100 West Cypress Creek Road
Fort Lauderdale, FL 33309
Attention: General Counsel

To Town:
Town of Golden Beach
1 Golden Beach Drive
Golden Beach, Florida 33160
Attention: Town Manager

With a Copy to:
Weiss Serota Helfman Cole + Bierman
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134
Attention: Stephen Helfman, Esq.

15. Representations and Warranties of Town. Town represents and warrants that:

- a. Town has all necessary permissions, authorizations and other legal authority to enter into and perform its obligations under this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against the Town in accordance with its terms, except as such obligation may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, and/or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law; and
- b. The Town is a Florida municipal corporation, duly organized and in good standing, and authorized to conduct business in the State where the Property is located; and
- c. No agreement, easement, instrument, mortgage, encumbrance, or other document or grant of rights to which the Town is currently a party conflicts with the Town's obligations or the Operator's rights under this Agreement, and the Town's entry into and performance of this Agreement will not cause any default under any of the foregoing; and
- d. As of the Effective Date, the Town has not entered into any other agreement with any other third person or entity for the installation of a system, or the installation of any type of device or devices which is or are the equivalent of, to, or as Systems, or which perform or performs the same or similar functions as the System to be installed hereunder. Furthermore, during the term of this Agreement, except in anticipation of termination or non-renewal, as provided for in this Agreement, the Town shall not negotiate or have any discussion with any other

third party or entity for the purposes of executing any agreement with said third party or entity for the installation of a system, or the installation of any type of device or devices which is or are the equivalent of, to or as Systems, or which perform or performs the same functions as the System to be installed hereunder by the Operator.

16. Representations and Warranties of Operator. Operator represents and warrants that:

- a. The Operator has all necessary permissions, permits, authorizations and other legal authority to enter into and perform its obligations under this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against Operator in accordance with its terms, except as such obligation may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, and/or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law; and
- b. The Operator is a Pennsylvania limited partnership, duly organized and in good standing, and is, or will be as of the System Activation Date, authorized to conduct business in the State where the Property is located; and
- c. The Operator has been granted, or will be granted as of the System Activation Date, by all applicable federal, state and local authorities all applicable governmental approvals for Operator perform and deliver the Services to the Property as contemplated hereby and Operator is in full compliance with and has incurred no default or other violation of any of the provisions of any such approvals or any applicable telecommunications laws, rules, regulations, ordinances and/or agreements with any telecommunications authorities; and
- d. Operator is the sole owner or has a valid lease or license to all of the Equipment; and
- e. No agreement, easement, instrument, mortgage, encumbrance, or other document or grant of rights to which the Operator is currently a party conflicts with the Operator's obligations or the Town's rights under this Agreement, and the Operator's entry into and performance of this Agreement will not cause any default under any of the foregoing.

17. Assignment.

- a. Binding Effect and Assignment. This Agreement and all exhibits and addenda attached hereto shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns. Upon assignment, other than to a parent, affiliate or subsidiary, the Town may require the Operator to supply documentation showing that the Assignee has sufficient and adequate resources to undertake the obligations, responsibilities and liabilities of the Operator under this agreement.
- b. Assignment Town. If the Town sells or otherwise conveys its ownership in the Property to any third party, then the Town shall cause the purchaser and/or transferee acquiring the Property to accept an assignment of all of the Town's interest hereunder and assume all of

the Town's respective obligations and responsibilities under this Agreement, and all attachments and exhibits hereto, as part of such sale or other conveyance. The Operator's easement rights and the rights afforded by virtue of the Owner Approvals pursuant to this Agreement, and all exhibits and addenda attached hereto, shall be incorporated in their entirety and made a part of any sale or conveyance documents.

18. **Force Majeure.** Neither party shall be liable for failure to perform all or part of this Agreement: by reason of Act of God, infectious disease (including pandemics), war, labor dispute, act of terrorism, civil riot(s) or disturbance(s), actions by third party service providers, non-delivery or inadequate performance by program or equipment suppliers (including but not limited to operation of the equipment within the manufacturer's specifications, inter-manufacturer operability problems and/or issues arising through the use or upgrade of manufacturer-provided software), installation contractors, local exchange carrier(s) or underlying network provider(s), or equipment suppliers, breakdown of networks, facilities, microwave or other electrical or physical signal interference, fire, flood, legal enactment, federal, state or local governmental order, rule or regulation prohibiting, interfering with, or making prohibitively costly the Operator's ability to provide the Services, or any other cause beyond their respective reasonable control.
19. **Confidentiality and Public Records.** This Agreement will remain confidential and shall not be disclosed to third parties, except as required by law. In the event that the Town documents or state law requires disclosure of the Agreement upon request, the Town shall have the right to make such disclosure, provided that the Operator shall be given reasonable prior notice of such disclosure.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records:	Lissette Perez
Mailing address:	1 Golden Beach Drive Golden Beach, FL 33160
Telephone number:	305-932-0744
Email:	lperez@goldenbeach.us

20. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If an arbitrator or court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together will be deemed to be one

and the same instrument. The individual signing on behalf of the named party personally warrants and represents that he or she is the duly authorized agent of that party with the authority to execute this Agreement on behalf of the party.

22. **Proprietary Information; Nondisclosure.** During the term of this Agreement and for a period of two (2) years thereafter, each Party will retain in confidence, and shall use its best efforts to require its managers, directors, officers, employees, consultants, representatives and agents to retain in confidence, any and all documents and information prominently labeled as "Confidential", "Proprietary Information" or similarly labeled (the "Proprietary Information"), except in the event that the Town documents or state law requires disclosure of the Agreement upon request, the Town shall have the right to make such disclosure.
23. **Subcontractors.** A Party may use a contractor of the Party, including, but not limited to an affiliate of the Party, to perform the Party's obligations under this Agreement, provided that a Party's use of a contractor shall not release a Party from any duty or obligation to fulfill the Party's obligations under this Agreement.
24. **Intellectual Property.**
- a. Except as expressly stated in this Agreement, this Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as expressly stated in this Agreement, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right, of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.
 - b. Except as stated in Section 10 above, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Affiliates or Customers based on or arising from any Third Party Claim alleging or asserting that the provision or use of any service, facility, arrangement, or software by either Party under this Agreement, or the performance of any service or method, either alone or in combination with the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third person. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.
 - c. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.
25. **Headings.** The headings used in this Agreement are inserted for convenience of reference only and

are not intended to limit, expand, be a part of or otherwise affect the construction or meaning of the principal document.

26. **Non-exclusive Remedies.** Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law or in equity, but no party shall be entitled to more than one recovery for the same damages.
27. **No Waivers.** A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.
28. **Dispute Resolution.** The Parties desire to resolve certain disputes, controversies, and claims arising out of this Agreement without litigation. Accordingly, except in the case of (i) a dispute, controversy or claim relating to a breach or alleged breach of the provisions governing confidentiality; or (ii) a suit, action or proceeding to compel either Party to comply with the dispute resolution procedures set forth in this Section, or otherwise seeking injunctive relief, the Parties agree to use the following alternative dispute procedure as their sole recourse with respect to any dispute, controversy or claim arising out of or relating to this Agreement or its breach. The term "Dispute" means any dispute, controversy, or claim to be resolved in accordance with this dispute resolution procedure. At the written request of a Party, each Party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute. These negotiations shall be conducted by non-lawyer, business representatives. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any proceeding or lawsuit without the concurrence of both Parties. If the negotiations do not resolve the Dispute within thirty (30) days of their commencement or such negotiations do not commence within ten (10) days of request by the other Party in writing, then either Party shall be free to pursue all rights and remedies available at under this Agreement.
29. **Choice of Law and Jurisdiction.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Florida. The proper jurisdiction and venue for any litigation arising out of this Agreement shall be a court of competent jurisdiction in the County where the Property is located, and all parties hereunder waive any and all jurisdictional defenses.
30. **Survival.** Sections 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 15, 17, 19, 22, 24, 26, 27, 28, 29, 30, 31, and 34 of this Agreement shall survive the termination of this Agreement.
31. **No Jury Trial.** THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH HAS OR MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BROUGHT BY ANY PARTY BASED ON ANY RIGHT, OBLIGATION, TERM OR COVENANT UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS. THIS

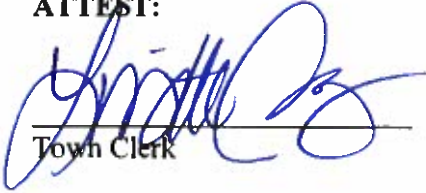
PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

32. **Exclusivity.** The Parties understand, acknowledge and agree that if, during the Term of this Agreement and any renewals hereof, laws or regulations are enacted or promulgated which prohibit the Town from granting or the Operator from obtaining the exclusive rights under this Agreement, then such rights automatically shall become non-exclusive, but only to the extent and only for so long as is required by such law(s) and regulation(s).
33. **Entire Agreement and Modifications.** This Agreement contains the entire understanding of the parties, who each affirm and represent that the person executing this Agreement has the authority to do so. This Agreement shall supersede all previous conversations, negotiations, and representations, written and oral and may not be modified except in writing, signed by each party, which shall be binding on any successors or assignees. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both Parties.
34. **Exhibits and Addenda.** The Parties recognize, acknowledge and agree that the exhibits and addenda to this Agreement ("Exhibits") are an integral part of this Agreement and the understanding of the Parties, and said Exhibits shall be binding upon and enforceable against each Party to the fullest extent of the law.
35. **Enforcement Costs.** In any legal proceeding to interpret or enforce the terms of this Agreement, the prevailing Party may recover from the other Party, in addition to other relief, all costs and expenses, including without limitation reasonable legal fees, and court costs, incurred by the prevailing Party.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have hereto caused this Communication Services Installation and Service Agreement to be executed as of the Effective Date.

ATTEST:



Town Clerk

TOWN:

Town of Golden Beach, Florida

By: _____



Glenn Singer, Mayor

Date: _____

8/24/2021

WITNESS/ATTEST:

Signature of Witness:




Maria Tyler, esq.
Print Witness Name

OPERATOR:

Hotwire Communications, Ltd.

By: Hotwire Communications, LLC, its
General Partner

By: _____


Kristin Johnson, Chief Executive Officer

Date: _____

08/19/2021



EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

ALL OF THE PUBLICLY AND PRIVATELY DEDICATED TRACTS AND PARCELS OF LAND WITHIN THE CONTROL OF THE TOWN OF GOLDEN BEACH AS ACCORDING TO THE PLATS THEREOF AS RECORDED AND/OR IDENTIFIED IN PLAT BOOK 8, PAGE 122, PLAT BOOK 9, PAGE 52, PLAT BOOK 10, PAGE 10, AND PLAT BOOK 10, PAGE 11 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

11/1/83

COUNCIL/ CONF. ROOM

COPY/MAIL

MANAGER

COUNTER FILE DRAWERS

OFFICE 2/ STORAGE

11' - 9 3/8"

9' - 7"

12' - 6 3/4"

8' - 5"

I.T./A.V. 194 SF

8' - 11 1/4"

4' - 0"

3' - 4"

8' - 5"

UP

ROLLING FILE CLO.

FINANCE DIRECTOR

SUPPORT STAFF

GOVERNMENT 3,664 GSF

TOILETS 709 GSF

MECH.

EXHIBIT "C"
GRANT OF TELECOMMUNICATIONS LICENSE

(ON FOLLOWING PAGE)

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Handwritten initials in blue ink, possibly "A" and "J" or "P", located in the bottom right corner of the page.