



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE: 02/16/10

SUBJECT: FIBER OPTIC AGREEMENT WITH PALMER COLLEGE FOUNDATION, INC.

DEPARTMENT: CITY MANAGER

RECOMMENDED MOTION:

To approve a fiber optic agreement between the City of Port Orange and Palmer College Foundation, Inc., and authorize the Mayor and City Manager to execute the required documents.

SUMMARY:

The City has been providing excess fiber optic services to Palmer College Foundation since the College first developed. The attached agreement continues to provide excess fiber optic services, but clarifies access to the facility and now requires Palmer to work directly with Time Warner for services such as internet access and IP addressing. Palmer will pay the City \$70.00 per month for use of the City's fiber and will pay Time Warner for all other services.

The agreement is cancellable by the City with a 60-day notice provision in the event services or access can no longer be made available by the City. Staff recommends approval of the fiber optic agreement.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD Shannon M. Lewis *Shannon M. Lewis* Date 02/03/2010

FINANCE DEPARTMENT *[Signature]* Approved as to Budget Requirements Date

CITY ATTORNEY *[Signature]* Approved as to Form and Legality Date

CITY MANAGER *[Signature]* Approved Agenda Item For:

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

**FIBER OPTIC AGREEMENT
BETWEEN CITY OF PORT ORANGE AND
PALMER COLLEGE FOUNDATION, INC.**

THIS AGREEMENT, made and entered into by and between **THE CITY OF PORT ORANGE**, a chartered municipal corporation of the State of Florida, (the "City") and **PALMER COLLEGE FOUNDATION, INC.**, f/k/a Palmer Chiropractic University Foundation, Inc., a not-for-profit corporation duly organized under the laws of the State of Iowa, in good standing and authorized to do business in the State of Florida and d/b/a Palmer College of Chiropractic, Florida, having its principal business office located at: 4777 City Center Parkway, Port Orange, Florida 32129 ("Palmer"), collectively referred to hereafter as the "Parties",

WHEREAS, the City and Time Warner Telecom of Florida, L.P. ("Time Warner") have entered into an Agreement ("Time Warner Agreement") for, among other things, the provision to the City of fiber optic line service and access to provide and enable high speed internet access and data transfer, and

WHEREAS, the City has purchased such fiber optic access and service in an amount over and above that presently required by the City, and

WHEREAS, Palmer wishes to purchase and the City wishes to sell a portion of the City's excess fiber optic access and service, on the terms more particularly set forth herein, and

WHEREAS, the Parties are authorized by law to enter into this Agreement;

WITNESSETH:

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises contained herein, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall commence on the date of execution by the City, and shall terminate on October 1, 2012 (the "Term"). Provided Palmer is not in default, the term of this Agreement is subject to renewal for one additional year beyond the termination date and subject to mutual agreement by the Parties (the "Extension Term"). To extend such Term, Palmer shall give the City written notice of its intent to exercise any such option at least 90 days prior to the expiration of the Term, whereupon, the Parties may mutually agree to an extension.

2. **Provision of Fiber Optic Access and Service.** Conditioned upon and subject to the City's continuing ability to provide excess fiber optic access, the City shall commence and Palmer shall accept fiber optic access and service to the Palmer

Campus adjoining the existing Port Orange YMCA facility, as follows (the "Service"): (a) the City shall make available 2ru rack space for Palmer's routers; (b) the City shall make available one pair of multimode fiber between the City's former Police Department building located at 1395 Dunlawton Avenue, Port Orange, Florida, and Palmer; (c) Palmer shall be responsible for providing all transceivers and termination equipment, and the City shall supply dark fiber only; (d) configuration of all Palmer equipment shall be between Palmer and Time Warner; (e) Palmer shall provide its own pass codes for remote access and physical access; (f) Palmer shall contract directly with Time Warner for Internet access and IP addresses; and (g) Palmer shall be responsible, at its sole cost and expense, for implementing, installing and maintaining any firewall and/or security technology as it deems necessary or appropriate.

As part of this Agreement, Palmer shall make no changes or modifications to the City's fiber. Palmer shall provide immediate notice to the City of any damage to the City's fiber or conduit by Palmer or its representatives. The damage shall be repaired by the City using the City's approved contractors, and Palmer shall be responsible for the City's repair costs.

3. **Facility Access.** The Parties recognize that the Fiber Optic Access and Services listed in Paragraph 2 are housed in the City's former Police Department building located at 1395 Dunlawton Avenue, Port Orange, Florida, a restricted, high-security area, and in close proximity to essential emergency dispatching equipment. Therefore, Palmer shall be permitted access to its routers during normal working hours (8:00 a.m. to 5:00 p.m.) by providing at least 24-hours notice to the City's Information Technology Director. The City of Port Orange Information Technology Director or his designated staff member shall accompany Palmer's representative for access. In the event of an emergency, the 24-hour notification may be waived, but in no event shall it require the City's employees to be available after normal working hours.

4. **Quality of Service Provided and Indemnity.** The nature and scope of the Service to be provided by the City to Palmer has been fully reviewed and determined by Palmer to be adequate to support the communication objectives of Palmer. Palmer acknowledges that the City will be providing the use of one pair dark multimode fiber for transport between the City's former Police Department building located at 1395 Dunlawton Avenue, Port Orange, Florida, and the Palmer campus. Palmer will enter into a separate agreement with Time Warner for Internet access. Palmer accordingly hereby agrees to release, save, indemnify, defend and hold the City harmless for any and all claims for interruption or insufficiency of the Service, or for claims of fitness, warranty or suitability of the Service for a specific purpose. In the event any interruption of Service to Palmer results solely from the negligence of the City, Palmer shall be entitled to recover and be credited by the City with an appropriate pro-ration of the fee amount set forth in Paragraph 6, as Palmer's sole and exclusive remedy for any such Service interruption.

5. **No Software.** Except as provided herein, the City shall have no obligation to provide software of any kind to Palmer in connection with provision of the Service.

Palmer hereby represents to the City that Palmer has made separate and adequate provision for Palmer's software requirements, independently, and at Palmer's sole cost and expense.

6. **Fees.** Palmer shall pay the City the amount of Seventy Dollars (\$70.00) per month, beginning on the first day of the month after commencement of this Agreement, and on the first day of each and every month thereafter for the full Term of the Agreement as set forth hereinabove. Palmer shall pay all fees for Internet access and IP addresses directly to Time Warner.

7. **Force Majeure.** The temporary cessation of the Service at any time by an act of God, fires, strikes, casualties, accidents, necessary maintenance work, breakdowns of or injuries to machinery, pumps or pipelines, civil or military authority, insurrection, war, terrorism, riot, or any cause beyond the control of the City, shall not constitute a breach of this Agreement by the City.

8. **Termination.** This Agreement shall terminate on October 1, 2012 ("Expiration Date"). If Palmer is dissatisfied with the Service for any reason, it shall have the right to terminate this Agreement upon 60-days prior written notice to the City specifying the reason for the termination, provided that the City, in its sole discretion, shall have a 30-day period after receipt of such written notice to attempt to cure any problem with the Service which is the reason for any such termination. The City shall have the right to terminate this Agreement upon 60-days prior written notice to Palmer.

9. **Governing Law.** The laws of the State of Florida shall govern the enforcement and interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed and delivered this Fiber Optic Agreement, executed in duplicate by their proper officials duly authorized so to do, and have affixed their corporate seals on the dates set forth below.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

CITY OF PORT ORANGE
a chartered municipal corporation of
the State of Florida

Witness:

By: _____
Mayor Allen Green

Attest: _____
Kenneth W. Parker, City Manager

Date Signed: _____

Corporate Seal

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing Fiber Optic Agreement on behalf of the **City of Port Orange, Florida**, a chartered municipal corporation, and who [] are personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

(Seal)

PALMER COLLEGE FOUNDATION, INC.
an Iowa not-for-profit corporation d/b/a
Palmer College of Chiropractic, Florida

Witnesses:

Claudia Fleming

Mary Goldsberry

By:

Thomas L. Tiemeier

Thomas L. Tiemeier, Treasurer and Vice
Chancellor for Administration

Date Signed:

2/3/2010

Corporate Seal

STATE OF IOWA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me this 3rd day of February, 2010, by Thomas L. Tiemeier, Treasurer and Vice Chancellor of Administration, duly authorized to execute the foregoing Fiber Optic Agreement on behalf of Palmer College Foundation, Inc., an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida, and who is personally known to me, or has produced _____ as identification.

Frank Lindstrom

Notary Public, State of Iowa, at Large
Printed name, commission and expiration:

(Seal)