

To: The Honorable Vice Mayor as Acting Mayor and City Council

From: Ricardo Castillo, IT Manager *R.C.*

Date: June 10th, 2014

RE: YouTube (Google) Non-exclusive License Agreement

RECOMMENDATION

It is recommended that the City approves authorizing the Interim Manager to execute the Non-Exclusive License Agreement to create an Official YouTube Government Channel for City of North Miami.

BACKGROUND

City of North Miami established a YouTube Page on April 15, 2012 for the purpose of posting videos of council meetings and other events for residents and businesses that do not have access to Public Access Channel 77 on Comcast. The current YouTube page is classified as a YouTube customer page, which has limitations, unlike a Government Category YouTube Channel. With over 7,543 views, 21 subscribers and over 205 video uploads on March 27th, 2014 we communicated to Google the desire to make our "Official YouTube" Channel "Official".

Attachments

Resolution

Google Non-exclusive License Agreement (Printed Copy)

RESOLUTION NO. _____

A RESOLUTION OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A NON-EXCLUSIVE CONTENT LICENSE AGREEMENT WITH GOOGLE, IN SUBSTANTIALLY THE ATTACHED FORM, ALLOWING GOOGLE TO CONTINUE TO HOST CITY OF NORTH MIAMI PUBLIC INFORMATION CONTENT ON YOUTUBE AND OTHER GOOGLE AFFILIATES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on April 15, 2012, the City of North Miami (“City”) established a YouTube webpage account for the purpose of posting videos of City Council meetings and other public interest events for residents and businesses that do not have access to public cable Channel 77; and

WHEREAS, the City’s current YouTube webpage account is established as a regular YouTube customer page, which is deemed more limited than the typical Government Category YouTube Channel access account; and

WHEREAS, City administration desires to establish an official City Government Category YouTube Channel account with Google for greater public access, with broader dissemination of public information; and

WHEREAS, the Vice Mayor as Acting Mayor and City Council have determined that the execution of a non-exclusive Content License Agreement with Google, in substantially the attached form, increases public awareness and access to public information with the potential of reaching people anywhere in the world.

NOW THEREFORE, BE IT DULY RESOLVED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority of City Manager. The Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, hereby, authorize the City Manager to execute a non-exclusive Content License Agreement with Google, in substantially the attached form, allowing Google to continue to host City of North Miami public information content on YouTube and other Google affiliates.

Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, this ___ day of June, 2014.

PHILIPPE BIEN-AIME
VICE MAYOR AS ACTING MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Vice Mayor as Acting Mayor Philippe Bien-Aime
Councilperson Scott Galvin
Councilperson Carol Keys, Esq.
Councilperson Marie Erlande Steril

_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)

Google Online Agreements

Background Information

Google is licensing and/or hosting content for use in YouTube and other Google products and services. If your organization is interested in participating in this program, please verify that the Contact Information below is correct and that the person listed is a qualified representative from your organization.

Agreement

CONTENT LICENSE AGREEMENT

This Content License Agreement ("the Agreement") is entered into by and between Google Inc., a Delaware corporation, and its affiliates ("Google") and the entity agreeing to the terms below ("Provider"). This Agreement will be effective as of the date Provider clicks the "Accepted and Agreed" button below (the "Effective Date").

1. DEFINITIONS

"Google Services" means Google websites, applications, products and services, including but not limited to the YouTube Website, applications, APIs, embeds, and any of the foregoing that are made available for syndication.

"Playback Pages" means pages on the YouTube Website that stream at no cost to the user the selected Provider Content.

"Provider Content" means the audio and audiovisual content received by or made available to Google from or by Provider, and all related metadata and materials made available to Google via specified delivery means.

"YouTube Video Player" means one or more digital media players made available to users which is used or useful in the transmission, performance and/or playback of multimedia content, including but not limited to Provider Content, so that the digital data that embodies the audio or audiovisual recording concerned can be perceived by and communicated to a user of such digital media player when used in conjunction with the aid of a machine or device.

"YouTube Website" means the Google Service known as YouTube located at <http://www.youtube.com>, including all mirror and/or derivative sites and all replacement, successor and/or international versions thereof.

2. LICENSES

2.1 Provider Content. Provider grants to Google a non-exclusive, limited right and license to host, cache, route, transmit, store, copy, distribute, perform, display, reformat, excerpt, analyze, and otherwise use Provider Content on the Google Services to: (a) host the Provider Content on servers owned or controlled by Google; (b) index Provider Content; (c) display, perform, and distribute Provider Content on Google Services; and (d) make continuing improvements to Google Services. The foregoing includes all necessary licenses to use the compositions and sound recordings of any music included in the Provider Content in order to host, index, display, perform, synchronize, and distribute Provider Content, and the right to modify Provider Content to the extent technically necessary to index and display Provider Content. Provider understands and agrees that Google Services incorporating Provider Content may be syndicated to Google's affiliates and syndication partners.

2.2 Brand Features License. Provider grants to Google a non-exclusive, limited, worldwide, royalty-free license to use any names, logos, trademarks, designs and trade names (collectively, "Brand Features") furnished by Provider in connection with Provider Content to fulfill Google's obligations under this Agreement and to include in partner lists and presentations.

3. OBLIGATIONS

3.1 Delivery, Hosting, Serving, Storage, Territorial Limitations. Provider will deliver the Provider Content and associated metadata pursuant to specifications provided by Google. Subject to Google's hosting policies and terms, Google will host, store, and serve Provider Content on the YouTube

Website, through the YouTube Video Player, and via other Google Services. Google may create or enable Provider to create a Provider channel on the YouTube Website that prominently displays the Provider trademarks, contains a collection of Provider Content, and may be customized by Provider using functionality provided in the YouTube Website templates. Provider will specify in a metadata feed or other Google interface the territorial limitations for streaming Provider Content, and may set other limitations on distribution and display via Google Services that Google may make available. Provider will not include any promotions, sponsorships, or other advertisements (except for those promoting its own products or services) as part of Provider Content. If any such ads are included as part of Provider Content, Google may remove the Provider Content. Provider will not deliver to Google any Provider Content comprised substantially of third party materials unless Provider is the exclusive licensee of online distribution rights for the underlying material. If a third party provides Google with a claim of ownership of any material contained within Provider Content, then: (a) the Provider Content may be blocked from the YouTube Website and the YouTube Video Player, and (b) if Provider disputes the third party claim, Provider will participate in a procedure to resolve the dispute.

3.2 Removal. If Provider notifies Google or Google determines that its use of Provider Content may create liability for Google or harm the integrity of Google's servers or the Google Services, Google may stop displaying Provider Content. Provider may remove Provider Content through methods made available by Google. If Provider Content continues appearing on Google Services more than 48 hours after Provider has correctly initiated removal, Provider will notify Google of the URL by sending an email to partner-takedownrequest@youtube.com or other addresses Google may designate, and Google will use commercially reasonable efforts to remove the material from the Google Services within 20 days of confirmed receipt of such notice.

4. NO ADVERTISING. The parties acknowledge that Provider does not intend to have third party advertising served in connection with the Provider Content, and will not be entitled to any advertising revenues pursuant to this Agreement. In the event that Provider subsequently elects to have third party advertising served with the Provider Content, the parties will enter into a separate agreement setting forth the terms and conditions of such advertising delivery, inclusive of the revenue shares due to each of the parties in connection therewith.

5. CONFIDENTIALITY. "Confidential Information" means information that one party (or an affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was lawfully given to the recipient by a third party. The recipient will not disclose the Confidential Information, except to affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the discloser.

6. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION. Each party represents and warrants that it has authority to enter into the Agreement. Provider represents and warrants that it has all necessary rights to grant the licenses set forth in Section 2. Each party will indemnify, defend and hold harmless the other and their directors, officers, employees, and agents from third party claims arising from or related to a breach of such party's representations and warranties. Provider will indemnify, defend and hold harmless Google and its directors, officers, employees, and agents from third party claims arising from or related to Google's authorized use of any Provider Content, Provider Brand Features, or any other materials provided by Provider to Google under this Agreement.

7. DISCLAIMERS, LIMITATIONS OF LIABILITY. EXCEPT FOR THE EXPRESS WARRANTIES MADE BY THE PARTIES IN SECTION 6, THE PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. EXCEPT FOR THE INDEMNITIES IN SECTION 6: (I) NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR PENALTIES ARISING FROM OR RELATED TO THIS AGREEMENT; AND (II) NEITHER PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING FROM OR RELATED TO THIS AGREEMENT WILL EXCEED \$50,000.

8. TERMINATION. (a) Either party may end this Agreement on 30 days' written notice. All licenses granted in this Agreement will expire upon termination. (b) Sections 1, 5, 6, 7, 8(b), and 9 survive termination. Upon termination of this Agreement, Provider will immediately remove the Provider Content by means of Provider's YouTube user account or such other means as provided by Google. In the event

that Provider fails to remove the Provider Content (regardless of whether such failure is inadvertent or intentional), the provisions of Section 2 will also survive. Notwithstanding the foregoing, upon termination of this Agreement, Google itself will have the right, in its sole discretion, to remove any or all of the Provider Content.

9. MISCELLANEOUS. The parties are independent contractors, and this Agreement does not create any agency, partnership or joint venture between the parties. Neither party may assign any part of this Agreement without the written consent of the other, except to an affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assignor has notified the other party of the assignment. Any other attempt to assign is void. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. Any amendment must be in writing and expressly state that it is amending this Agreement. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement. Neither party may make any public statement regarding this Agreement without the other's written approval except when required by law after giving reasonable notice to the other. All notices of termination or breach must be in writing and addressed to the other party's legal department. The email address for notices sent to Google's Legal Department is legal-notices@google.com. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable). All other notices must be in writing, and addressed to the other party's primary contact. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. If any term (or part of a term) of this Agreement is invalid, illegal or unenforceable, the rest of the Agreement will continue in force unaffected. This Agreement does not confer any benefits on any third party unless it expressly states that it does. This Agreement is governed by California law, excluding California's choice of law rules. All claims arising out of or relating to the subject matter of this Agreement will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and the parties consent to personal jurisdiction in those courts. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

Signatory Information

Note: Please review your company details and amend accordingly. If the legal name of your company is incorrect, please advise your Google contact who will arrange for this to be amended. PLEASE DO NOT ACCEPT THIS ONLINE CONTRACT AGREEMENT IF YOUR DETAILS ARE INCORRECT.

Contracting Entity: City of North Miami

Url:

Name:*

You will be the signatory to the following agreement

Title:*

Email:*

Address:*

Country:*

Phone:

Fax:

Accept Agreement

Note: If you are accepting on behalf of your employer or another entity, you represent and warrant that you have full legal authority to bind your employer or such entity to these terms and conditions. If you don't have the legal authority to bind, please do not click the "Accepted and Agreed" button below.

By checking this box, I am accepting this Agreement on behalf of the entity **City of North Miami**. I represent and warrant that (a) I have full legal authority to bind the entity to this Agreement, (b) I have read and understand this Agreement, and (c) I agree to all terms and conditions of this Agreement on behalf of the entity that I represent.