

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into as of this _____ day of _____, 2014, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),

a body corporate and political subdivision of the State of Florida,

whose principal place of business is

600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CIRPASS, LLC

(hereinafter referred to as "Cirpass"),

whose principal place of business is

820 Great Cumberland Road, McLean, Virginia 22102

WHEREAS, SBBC previously entered into an Agreement with Cirpass, LLC on March 16, 2010 to negotiate with Clearwire on behalf of SBBC (hereafter referred to as "2010 Agreement"); and

WHEREAS, SBBC is considering the approval of a contract with Select Spectrum LLC provided that all obligations and duties between the parties to the Agreement are extinguished; and

WHEREAS, the parties mutually wish to conclude their respective obligations and duties under the Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

1.02 **Conclusion of Agreement.** The parties hereby agree that the Agreement is terminated effective upon the execution of this First Amendment to Agreement by both parties and the approval by SBBC of a fully-executed and effective contract with Select Spectrum LLC and the parties further agree that, upon such termination, neither party shall owe the other party any further obligations, duties or payments under the Agreement.

1.03 **Order of Precedence Among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

- a) this First Amendment to Agreement; and
- b) the Agreement.

1.04 **Authority.** Each person signing this First Amendment to Agreement on behalf of either party individually warrants that he or she has full legal power to execute this First

Amendment to Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this First Amendment to Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment to Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 05/07/14
Office of the General Counsel

FOR CIRPASS

(Corporate Seal)

ATTEST:

CIRPASS, LLC

By Robert Finch
Robert Finch, President

_____, Secretary

-or-

Car Finch
Witness

Robert Finch
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Virginia

COUNTY OF Fairfax

The foregoing instrument was acknowledged before me this 30th day of April, ²⁰¹⁴2013 by Robert Finch of _____
Name of Person

Cirpass, LLC on behalf of the corporation/agency. He/She is personally known to me or

produced VA DL as identification and did/did not first take an oath.
Type of Identification

My Commission Expires: 7-31-2015



William Christopher Bruce Yoran
Signature – Notary Public

William Christopher Bruce Yoran
Printed Name of Notary

276651
Notary's Commission No.

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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE GENERAL COUNSEL


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Facsimile: (754) 321-2705

J. PAUL CARLAND, II
GENERAL COUNSEL

MEMORANDUM

TO: Tracy Clark, Public Information Officer

FROM: Robert Paul Vignola, Deputy General Counsel 

VIA: J. Paul Carland, II, General Counsel 

DATE: April 16, 2014

SUBJECT: *Comparison of Contracts with Cirpass, LLC and Select Spectrum LLC*

Pursuant to your verbal request, this memorandum has been prepared to identify the payment mechanisms under the school district's current contract with Cirpass, LLC, the termination of those contractual obligations through the proposed amendment of that contract, and the new payment mechanisms under the proposed new contract with Select Spectrum, LLC.

A. The Current Cirpass, LLC Contract

Contract Duration: The current Cirpass contract has a term that remains in effect until (A) a spectrum lease is fully executed or (B) the contract is terminated by SBBC with or without cause upon thirty days written notice to Cirpass. As of this time, the Cirpass contract remains in effect and The School Board has not exercised its authority to send notice of termination of the Cirpass contract.

Payment: Under the current Cirpass contract, Cirpass gets paid if SBBC signs a lease for its EBS channels either (A) during the term of the Cirpass contract or (B) within one (1) year after the termination of the Cirpass contract. As SBBC has not taken action to terminate the Cirpass contract, the contract remains in effect. If SBBC were to send notice of termination of the Cirpass contract, SBBC would still be obliged to pay Cirpass if SBBC leased its EBS channels within one (1) year of the effective date of termination of the Cirpass contract. The amount payable to Cirpass in the event of such a lease of EBS channels will vary depending upon the circumstances of the lease or sale as detailed in the Cirpass contract.

B. First Amendment to Cirpass Contract

The proposed Select Spectrum, LLC Agreement would be submitted to The School Board along with a companion item -- a First Amendment to a contract with Cirpass, LLC.

The proposed First Amendment to the Cirpass contract is contingent upon SBBC's execution of a contract with Select Spectrum, LLC and would terminate Cirpass's current contract with SBBC. The proposed First Amendment provides that, upon such termination, SBBC would not have any obligations, duties or payments to Cirpass which would extinguish any obligation of SBBC to pay Cirpass if SBBC's EBS channels are subsequently leased.

C. The Proposed Contract with Select Spectrum LLC

Contract Duration: The proposed Select Spectrum contract has a fixed term of duration that would conclude on March 18, 2015. The proposed contract term may only be extended upon mutual agreement of the parties and then only for two (2) additional one (1) year terms.

Payment: If prospective lessees have submitted bids as described in the contractor's proposal, Subparagraph E of Exhibit "B" to the proposed contract will require SBBC to pay a Contingent Incremental Success Fee ("CISF Fee") to Select Spectrum if SBBC approves any EBS excess capacity lease within 12 months of contract expiration or termination. The proposed contract would entitle Select Spectrum to be paid a CISF Fee if SBBC decides to proceed with an FCC approved EBS excess capacity lease agreement provided that the lease value is more than 25% above Select Spectrum's estimate of the current market value for SBBC's EBS spectrum licenses.

Alternative Payment: In lieu of a CISF Fee, SBBC would be required by Page 2 of Exhibit "B" to pay Select Spectrum a minimum hourly fee ("MHF Fee") for services rendered by Select Spectrum if SBBC were to (A) terminate the agreement without cause or for convenience or (B) accept a lease offer and complete a lease where the CISF Fee to Select Spectrum would be \$0.00 or less than the MHF Fee calculation.

Payment of Travel Expenses: Exhibit "B" would require SBBC to reimburse Select Spectrum for pre-approved travel expenses in accordance with SBBC policies.

If any additional information would be helpful regarding this matter, please contact this Office at your convenience.

RPV:mi

C: Dr. Phyllis Schiffer-Simon, Director - BECON

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