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7-1-09

TO: MAYOR & CITY COUNCIL

FROM: BRYAN G. RAINES, Deputy City Manager

SUBJECT: APPROVING THE FIRST AMENDMENT TO THE NONEXCLUSIVE, 2003
CABLE TELEVISION RENEWAL LICENSE WITH COXCOM, INC. AND
AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT

DATE: JUNE 17, 2009

Purpose & Recommendation:

Cox, a major cable system operator in the City, has indicated that they are no longer able to support the local Emergency Alert System (EAS). In exchange for elimination of the local EAS, Cox has agreed to amend the 2003 renewal license to allow access to the countywide EAS and increase the license fee paid to the City from 4.5% to 5.0% which is the maximum allowable by law and coincides with the amount paid to surrounding communities. The amendment also adopts the State of Arizona's definition of Gross Revenues (ARS § 9-505(6)). All of these changes have been incorporated into what is now identified as the first license amendment to the original 2003 cable television renewal license.

Background:


Due to technological changes within Cox's system it was necessary for Cox to eliminate the local, one-of-a-kind emergency alert system as of April 1, 2009. In consideration for the City's willingness to switch to the countywide system, Cox has agreed to increase license fees and make related definitional changes.

Fiscal Impact:

The increase of the license fee from 4.5% to 5% will result in an estimated annual increase of \$317k based on the two most previous quarterly payments.

Concurrence:

The City Attorney's Office concurs with the form of the revised agreement.



Bryan G. Raines, Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO COMMUNITY ANTENNA TELEVISION SYSTEMS (CATV), AMENDING "CITY OF MESA, ARIZONA NONEXCLUSIVE, 2003 CABLE TELEVISION RENEWAL LICENSE WITH COXCOM, INC." AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE SAID AMENDMENT

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1. Amendment. The "CITY OF MESA, ARIZONA NONEXCLUSIVE, 2003 CABLE TELEVISION RENEWAL LICENSE WITH COXCOM, INC." is hereby amended as set forth in that certain document known as "FIRST AMENDMENT TO CITY OF MESA, ARIZONA NONEXCLUSIVE, 2003 CABLE TELEVISION RENEWAL LICENSE WITH COXCOM, INC." a true and correct copy of which is attached hereto as "EXHIBIT A" and which is herein incorporated by this reference.

Section 2. Signatory Authority. The Mesa City Manager or his designee is hereby authorized to execute the amendment referenced in Section 1 on behalf of the City of Mesa.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this ____ day of July, 2009.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

**FIRST AMENDMENT TO
CITY OF MESA, ARIZONA
NONEXCLUSIVE, 2003 CABLE TELEVISION RENEWAL LICENSE
WITH COXCOM, INC.**

WHEREAS, the City of Mesa (“City”) and CoxCom, Inc., (“Cox”), hereinafter “the Parties” entered into the “Nonexclusive, 2003 Cable Television Renewal License” (“License”) effective October 19, 2003; and

WHEREAS, Mesa City Code Sec. 9-7-8 provides that special renegotiation sessions may be held at any time during the term of any license; and

WHEREAS, Mesa City Code Sec. 9-7-10 provides that every licensee shall pay to the City a license fee of no less than five percent (5%) of the total gross revenue received from operation of a cable system within the City; and

WHEREAS, Mesa City Code Sec. 9-7-18 provides in part that every licensee shall provide the City, in times of emergency, the right and the capability to override, by remote control, the audio of all channels simultaneously and that said override system shall be placed under City control and shall be activated from a location or locations as reasonably determined by the City Manager; and

WHEREAS, the Parties now mutually desire to amend the License in conformity with the foregoing.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the adequacy of which is accepted by the Parties as binding, the Parties hereby amend the License as follows:

1. Section 1.37 titled “Total Gross Revenues” is amended by striking all language following the word “shall.”

Section 1.37 is further amended by inserting the following language after the word “shall”:

“mean all cash, credits, property of any kind or nature, or other consideration, less related bad debt not exceed one and one-half per cent annually, that is received directly or indirectly by the cable operator, its affiliates, subsidiaries or parent or any person, firm or corporation in which the cable operator has a financial interest or that has a financial interest in the cable operator that is derived from the cable operator’s operation of its

cable system to provide cable service in the area of jurisdiction. Total Gross Revenues shall include all revenue from charges for cable service to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive cable service, and any other receipts from subscribers derived from operating the cable system to provide cable service, including receipts from forfeited deposits, sale or rental of equipment to provide cable service, late charges, interest and sale of program guides. Total Gross Revenues shall also include all income the cable operator receives from the lease of its facilities located in the public streets, roads and alleys, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Total Gross Revenues shall not include revenues from commercial advertising on the cable system, the use or lease of studio facilities of the cable system, the use or lease of leased access channels or bandwidth, the production of video programming by the cable operator, the sale, exchange, use or cablecast of any programming by the cable operator in the area of jurisdiction, sales to the cable operator's subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, license fees, taxes or other fees or charges that the cable operator collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities."

2. Section 4.8 titled "Emergency Messaging:" is amended by striking all language following "4.8.2."

Section 4.8 shall be further amended by insertion of the following language after "4.8.2":

"Licensee will provide City, at no charge, with access to the "Countywide Emergency Alert System" which shall allow City to interrupt all channels on the Cable System in order to present emergency audio messages and video scroll messages at the direction of the City Manager, his authorized designees or authorized City public safety officials.

City retains the right and ability to broadcast its audio and video messages over the government channel (Channel 11) provided by Licensee in times of emergency, whenever deemed necessary by the City Manager, his authorized designees, or City public safety officials."

3. Section 16.1 is amended by striking the phrase "for Mesa's July 7, 2003 letter notice to Licensee if the certification described in Section 4.8.2 is not timely provided," from the last sentence. The word "(deleted)" shall be inserted in place of the stricken language.
4. Section 16.3(b) is amended by striking the phrase "and dependent upon the timely provisions of the certification described in Section 4.8.2" from the last sentence.
5. Exhibit F titled "Mesa Arizona Test Plan" is deleted in its entirety.

6. Section 8.1 is amended by striking “four and a half percent (4.5%)” and by replacing it with “five percent (5%).”

Section 8.1 is further amended by striking “except that Total Gross Revenues shall not include amounts collected from Subscribers for Renewal License Fees as is allowed by City of Dallas v. FCC, 118 F.3d 393 (5th Cir. 1997).”

In all other respects the License remains unchanged.

The above amendments shall have an effective date of April 1, 2009.

This amendment document shall be referred to as the “First Amendment to City of Mesa, Arizona Nonexclusive, 2003 Cable Television Renewal License With CoxCom, Inc.” or, the shorter form “First License Amendment.”

By our respective signatures below, we hereby acknowledge that we have read and understand the terms of this “First License Amendment” and sign this document as fully authorized representatives of our respective parties.

CITY OF MESA

COXCOM, INC.

By: _____

By: _____

Printed
name: _____

Printed
name: _____

Its: _____

Its: _____

Date: _____

Date: _____