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AUG 13 2015

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MEMORANDUM Transportation & Development Department - Memo No. TDA16-005

DATE: AUGUST 13, 2015

TO: MAYOR AND CITY COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER MR
NACHIE MARQUEZ, ASSISTANT CITY MANAGER NM
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR RJZ

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER MC

SUBJECT: INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4652 AMENDING THE COX COMMUNICATIONS ARIZONA, LLC, CABLE TELEVISION LICENSE AGREEMENT TO ALLOW OVERLASHING OF EXISTING AERIAL PLANT DURING ITS GIGABIT UPGRADE PROJECT

RECOMMENDATIONS: Staff recommends City Council introduce and tentatively adopt Ordinance No. 4652 amending the Cox Communications Arizona, LLC, Cable Television License Agreement to allow overlashing of existing aerial plant during its Gigabit upgrade project.

BACKGROUND: The Planning, Municipal Utilities, and Transportation & Development Council Subcommittee held a meeting on June 22, 2015, to discuss possible amendments to the Cox Communications Arizona, LLC, (Cox) Cable License Agreement to allow overlashing of aerial fiber. Staff was asked to bring back for Council consideration an amendment to the Cable License Agreement to allow overlashing on existing facilities within certain aesthetic parameters and with an expiration date.

On February 23, 2012, the City approved Ordinance No. 4345 (effective May 15, 2010) which renewed a non-exclusive 15-year Cable Television License Agreement (License Agreement) between the City of Chandler and Cox, for the continuation of the construction and operation of a cable and fiber system to provide cable television-related services. This License Agreement satisfied the license requirements of a Class 6 Cable Television and Related Services License according to Chapter 46 of the Chandler City Code, and met the construction standards reflected in the City Code and Utility Development Manual, which includes the prohibition of "overlashing" of aerial plant. Overlashing is installing new cables/fiber by attaching to existing cables/fiber, which increases the diameter of the plant. Instead of overlashing, any new cables/fiber would be required to be installed underground.

At this time Cox is planning a major upgrade to some of the services provided by its cable television system. This Gigabit upgrade will provide substantially faster Internet access services to Cox's residential and business customers. The construction of important segments of the Gigabit upgrade could be achieved faster and significantly more economically if Cox is granted authority to overlash on their existing aerial plant.

Cox is seeking a waiver of the undergrounding requirements for the new aerial and for permission to instead overlash on their existing aerial. Cox has stated that if the company cannot overlash certain existing Cox strand-mounted overhead plant with the necessary microduct and cabling to carry out the upgrade, Cox would reevaluate its deployment of the Gigabit product in Chandler.

While this Amendment provides for the overlashing of Cox's aerial plant, it also addresses the City's concern about overhead storage aesthetics issues and sets a Sunset date of June 30, 2017, for the expiration of this Amendment.

FINANCIAL IMPLICATIONS: None

PROPOSED MOTION: Move City Council introduce and tentatively adopt Ordinance No. 4652 amending the Cox Communications Arizona, LLC, Cable Television License Agreement to allow overlashing of existing aerial plant during its Gigabit upgrade project.

Attachments:
Ordinance No. 4652
Exhibit A: First Amendment to Cable Television License Agreement

ORDINANCE NO. 4652

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA AUTHORIZING AND APPROVING A FIRST AMENDMENT TO THE CABLE TELEVISION LICENSE AGREEMENT MADE AND ENTERED INTO BETWEEN THE CITY OF CHANDLER AND COX COMMUNICATIONS ARIZONA, LLC, EFFECTIVE AS OF MAY 15, 2010

WHEREAS, the Chandler City Council approved Ordinance No. 4345 granting a license to Cox Communications Arizona, LLC, pursuant to a non-exclusive Cable Television License Agreement with an effective date of May 15, 2010; and

WHEREAS, the License Agreement does not allow overlashing of aerial Facilities when services are upgraded; and

WHEREAS, Licensee (Cox) is planning a major upgrade to some of the services provided by its cable television system in order to substantially expedite faster Internet access service for its users and subscribers, but which it will likely not do if certain portions of its existing facilities cannot be overlashed; and

WHEREAS, Licensee has requested a modification of the License Agreement to accommodate the use of overlashing under limited circumstances; and

WHEREAS, the City Council has concluded that the proposed modification to the License Agreement would be in the best interests of the City of Chandler and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The First Amendment to the Cable Television License Agreement between the City of Chandler and Cox Communications Arizona, having an effective date of May 15, 2010, is hereby authorized and approved in substantially the form attached as Exhibit A hereto.

Section 2. The Mayor is authorized to execute the First Amendment to the Cable Television License Agreement between the City of Chandler and Cox Communications Arizona, LLC.

Section 3. The various City offices and employees are authorized and directed to perform all acts necessary to give effect to this Ordinance.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2015.

ATTEST:

_____ _____

City Clerk Mayor

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this _____ day of _____, 2015.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4652 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2015 and that a quorum was present thereat.

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY GAB

PUBLISHED:

Exhibit A

FIRST AMENDMENT TO CABLE TELEVISION LICENSE AGREEMENT
(Cox Communications Arizona, LLC)

THIS FIRST AMENDMENT TO CABLE TELEVISION LICENSE AGREEMENT (the or this "First Amendment") is made and entered as of this _____ day of _____, 2015, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("City"), and COX COMMUNICATIONS ARIZONA, LLC, a Delaware limited liability company ("Licensee"), solely for the purpose of allowing Licensee to engage in overlashing of its existing aerial plant within the Chandler city limits for a fixed period of time in accordance with the terms and conditions stated herein.

RECITALS

A. On February 23, 2012, the Chandler City Council passed and adopted Ordinance No. 4345, authorizing and approving a Cable Television License Agreement between City and Licensee (the "License Agreement"). The License Agreement was fully-executed by the parties and is on file with the Chandler City Clerk, but has not been recorded. It is a 15-year, non-exclusive license agreement with an agreed upon effective date of May 15, 2010.

B. The License Agreement grants Licensee the right and authority to operate a Cable System within the City, subject to the provisions of Chapter 46 and other applicable provisions of the Chandler City Code. Overlashing (defined below) is not expressly addressed in the License Agreement or in the City Code, in part because the City Code provides that Cable System facilities are to be located underground (*See* Chapter 46, Division V, Section 46-8.12). However, Section 7 of the License Agreement anticipates that the parties to the License Agreement may modify the License Agreement by mutual agreement in order to accommodate changes in technology arising during the period that the License Agreement is in effect.

C. Because of recent technological changes, Licensee desires to undertake a major upgrade to some of the services provided by its Cable System in order to provide substantially faster Internet access service to Licensee's residential and business customers (the "Gigabit Upgrade"). Licensee believes that existing aerial plant portions of its Cable System can be upgraded faster and more economically if Licensee is granted authority to overlash and has requested an amendment or modification of the License Agreement for such purpose.

D. City believes that such action will be of benefit to the City and its citizens. Accordingly, City and Licensee desire that the License Agreement be amended in accordance with the terms and conditions stated in this First Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, representations and the mutual promises contained in this First Amendment, the Parties agree to amend the License Agreement as follows:

AGREEMENTS

1. **Amendment Limitations.** This First Amendment shall be in effect until June 30, 2017 unless earlier terminated in accordance with the provisions of this First Amendment and/or other applicable provisions of the License Agreement. At such time as this First Amendment expires or is earlier terminated, the provisions of this First Amendment shall no longer be in effect and the License Agreement, in its original and unmodified version, shall be in effect unless or until the License Agreement expires or is earlier terminated. However, any overlashing properly completed by Licensee while this First Amendment is in effect shall be permitted to remain in place until the License Agreement terminates or expires, or unless the aerial plant subject to the overlashing is undergrounded.

1.1 Adjustment. Nothing herein shall prohibit Licensee from requesting and being granted an extension of the Upgrade Period. Any such request shall be in writing. An extension of up to six (6) months may be granted by the City Manager, in his or her sole discretion. Any extension beyond six (6) months shall require approval of the Chandler City Council.

2. **Additional Definitions.** In this First Amendment, unless a different meaning clearly appears from the context, (i) the definitions expressly set forth in the License Agreement and in Chapter 46 of the Chandler City Code shall apply, and (ii) the following shall apply:

2.1. "Aerial plant" means that portion of Licensee's Cable System that consists of the cable suspended above-ground generally through the use of suspension strands.

2.2. "Fiber optic" means a technology that uses specially designed bundles of transparent fibers to transmit light.

2.3. "Gigabit upgrade" means Licensee's planned upgrade of its Cable System as referenced in Paragraph C of the above Recitals, and which is intended to extend fiber to the home or fiber to the building (FTTH/FTTB) through the use of overlashing during the Upgrade period.

2.4. "Microduct" means small ducts for the installation of small microduct fiber optic cables generally installed as bundles in larger ducts.

2.5. "Overlashing" means the lashing or wrapping of additional cable around already existing or installed fiber optic or copper cable.

2.6. "Snowshoe" or "dogbone" means a device used for above-ground storage of excess cable associated with a cable system.

2.7. "Strand-mount" means the attachment of above-ground communications cable through the use of a strand consisting of a grounded, uninsulated bundle of several galvanized, high-tensile-strength steel wires.

3. Amendment of Existing Provisions. The several existing provisions under Subsection 12.3 of the License Agreement, entitled Undergrounding, are amended to read as follows:

12.3.1. EXCEPT AS PROVIDED IN SUBPARAGRAPHS 12.3.4 AND 12.3.5, Licensee shall place all of its new Facilities underground. No underground Facilities may be moved to poles. Licensee may not install any poles.

12.3.2. Subject to later undergrounding as required in this Subsection 12.3, AND EXCEPT AS PROVIDED IN SUBPARAGRAPHS 12.3.4 AND 12.3.5, Licensee may replace existing aerial Facilities with Facilities that are no larger in cross-section than the existing aerial Facilities and for which Licensee shall obtain all applicable necessary construction permits. Nothing contained in this Section 12.3 requires Licensee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, stand-by and other power supplies, network reliability units, pedestals, or other related equipment.

12.3.2.1. Where aerial Facilities of other utilities in the same span are placed underground, Licensee shall concurrently (or earlier) place its existing aerial Facilities underground.

12.3.2.2. Such undergrounding shall be at Licensee's own expense, except to the extent that (i) public funds are designated specifically to compensate Licensee therefor or (ii) third-party (such as but not limited to a developer) funds are made available to compensate Licensee therefor. That one or more other utilities with prior existing rights to the Streets and Public Ways are eligible for and granted public funds because they hold prior rights shall not entitle Licensee to specific designation of public funds for changes required by undergrounding.

12.3.3. All new underground wires or cable placed by Licensee after the effective date of this License shall be placed in conduit except for service drops. Service drops shall be installed pursuant to the standards set forth in the City of Chandler Utility Permit Manual.

4. New Provisions. New provisions are added under Subsection 12.3 of the License Agreement, entitled Undergrounding, to read as follows:

12.3.4. SOLELY WHEN DONE AS PART OF THE GIGABIT UPGRADE, AND UPON OBTAINING ALL APPLICABLE NECESSARY CONSTRUCTION PERMITS, LICENSEE MAY OVERLASH NEW MICRODUCT AND/OR FIBER OPTIC CABLING ON ITS EXISTING AERIAL PLANT.

12.3.5. THE FOLLOWING APPLY TO CONSTRUCTION UNDER SUBPARAGRAPH 12.3.4:

12.3.5.1. SUCH CONSTRUCTION IS SUBJECT TO LATER UNDERGROUNDING AS REQUIRED IN THIS SUBSECTION 12.3.

12.3.5.2. THE OVERALL DIAMETER OF ALL MICRODUCT AND/OR FIBER OPTIC CABLING AT ANY AERIAL PLANT LOCATION SHALL NOT EXCEED ONE AND ONE-HALF INCH (1.5") AND THE DIAMETER OF THE ADDITIONAL DUCT/CONDUIT AND CABLING SHALL BE MEASURED BEFORE IT IS OVERLASHED TO THE EXISTING AERIAL PLANT.

12.3.5.3. WITH A STRAND-MOUNT AERIAL PLANT THAT LICENSEE CONSTRUCTS UNDER SECTION 12.3.4, LICENSEE MAY INSTALL ADDITIONAL RELATED EQUIPMENT IF DEEMED TO MEET CITY'S UTILITY CONSTRUCTION STANDARDS BY THE CITY ENGINEER. EXAMPLES INCLUDE OVERHEAD SPLICING TRAYS AND OVERHEAD DROP CROSS CONNECTS.

12.3.5.4. ANY EXCESS CABLING, WHICH NORMALLY IS STORED IN A FIBER OPTIC STORAGE PRODUCT SOMETIMES KNOWN AS A "SNOWSHOE" OR "DOGBONE", SHALL BE ALTERNATELY LOCATED IN BELOW-GROUND FIBER VAULTS. AERIAL STORAGE PLACEMENT SHALL BE ALLOWED IF APPROVED BY THE CITY ENGINEER BASED ON SUCH FACTORS AS: (A) WHEN PLACEMENT OF A BELOW-GROUND FIBER VAULT IS NOT FEASIBLE DUE TO EXISTING SURFACE CONDITIONS; (B) LACK OF POLE QUADRANT SPACE TO ACCOMMODATE NEEDED RISERS WITHIN ONE POLE SPAN (EITHER SIDE); (C) LACK OF GROUND SPACE TO ACCOMMODATE INSTALLATION OF FIBER VAULT PLACEMENT OR WHERE FIBER VAULT PLACEMENT IMPEDES THE NORMAL FUNCTION OF THE RIGHT-OF-WAY (MOVEMENT OF REFUSE TRUCKS THROUGH ALLEYWAYS, ETC.). IN SUCH EVENT, EXCESS AERIAL STORAGE WILL BE LIMITED TO A MAXIMUM OF 100 FEET ON EACH SIDE OF THE INSTALLATION.

12.3.5.5. DURING CONSTRUCTION ACTIVITIES UNDER SUBPARAGRAPH 12.3.4 ABOVE, LICENSEE WILL REVIEW IN ITS RECORDS AND IN THE FIELD ALL THE AERIAL PLANT THAT IS BEING OVERLASHED AND WILL REMOVE ANY OUTDATED, DEFECTIVE OR NONFUNCTIONING OVERHEAD CABLE AND EQUIPMENT. EXAMPLES ARE CONSOLIDATING OPTICAL FIBERS AND REMOVING EXISTING UNUSED COAXIAL CABLE.

5. No Further Modifications. Except as specifically modified and amended in this First Amendment, the terms and conditions of the License Agreement shall remain in full force and effect and is hereby ratified and affirmed by City and Licensee. This includes, without limitation, the remedial provisions under Sections 17 and 18 of the License Agreement. To the extent that the terms and conditions of this First Amendment may conflict, in whole or in part, with any of the terms and conditions of the underlying License Agreement, the terms and conditions of this First Amendment shall prevail and control.

6. **Remedies Under Chapter 46.** This First Amendment, as with the License Agreement itself, is subject to the provisions of Chapter 46 of the Chandler City Code, which includes, without limitation, City's right to initiate revocation of the License Agreement in the event of a substantial breach. However, in lieu of revocation for a breach of this First Amendment, the parties mutually agree that City may suspend further overlashing activity upon ten (10) days written notice to Licensee unless the basis for the suspension has been cured by Licensee.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the day and year set forth below each Party's signature.

CITY: CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny, Mayor

Date: _____

Attest:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney GAB

LICENSEE: COX COMMUNICATIONS ARIZONA, LLC, a Delaware limited liability company

By: _____
John Wolfe, Senior Vice President/ Southwest Region Manager

Date: 8/4/15

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APPROVED AS TO FORM:

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City Attorney GAB

LICENSEE: COX COMMUNICATIONS ARIZONA, LLC, a Delaware limited liability company

By: _____
John Wolfe, Senior Vice President/ Southwest Region Manager

Date: _____