

CITY CLERK ORIGINAL

C-7881

12/22/2011

COMMUNICATIONS FACILITIES LICENSE AGREEMENT (Commercial)

This Communications Facilities License Agreement ("Agreement") is entered into this 22nd day of December, 2011, by and between **CoxCom, LLC (formerly known as CoxCom, Inc.) d/b/a Cox Communications ("Cox")** on behalf of itself and its affiliates ("Cox") and: City of Glendale, an Arizona municipal corporation ("Owner"). Owner holds title to, or is the authorized agent of the titleholder of, certain real property located at: **5835 W PALMAIRE AVE Glendale, Az 85301 ("Property")**. Owner and Cox desire to enter into this Agreement for Cox to provide its services to the Property under the terms and conditions herein.

1. Grant of Access. If Cox elects to serve the property, Owner hereby grants to Cox permission to install and maintain its communications distribution facilities, including but not limited to, equipment, electronics, cabling and wiring ("Facilities") on the Property to provide voice, video and data communications services ("Services") to Owner's tenants and/or other persons occupying the Property ("Tenants"). Owner further grants to Cox the non-exclusive right to enter the Property including all common areas and facilities to install, connect, disconnect, transfer, service, remove or repair the Facilities. Upon termination of this Agreement, Cox may at its option enter upon the Property and remove any portion or all of the Facilities. Cox's right to enter upon the Property for the purpose of removing the Facilities shall survive termination of this Agreement. At Owner's written request, if such written request is made within ninety (90) days of the termination of this Agreement, Cox shall remove the Facilities (excluding "Internal Wiring" (defined below) within sixty (60) days of Owner's request. At Cox's option, wiring and cabling may remain on the Property following termination of this Agreement.

2. Ownership of Facilities. Except for Internal Wiring, the Facilities are and shall remain the sole and exclusive property of Cox and shall not become fixtures of the Property. Internal Wiring is defined as the wiring, ports and outlets located within a commercial unit receiving Services back to the demarcation point. The demarcation point in the case of telephone Services is the building's minimum point of entry, and for all other telecommunication Services is that point where the cabling or wiring enters the Tenant's individual commercial unit.

3. Obligations of Cox. Cox hereby agrees as follows: (i) to pay for any materials and labor reasonably necessary to install the Facilities in accordance with the attached **Exhibit "A"**; (ii) to keep the Property free of liens resulting from the installation of the Facilities; (iii) Owner shall have no responsibility for the Services provided by Cox to Tenants or for the proper functioning of the Facilities; (iv) to repair any damage to Owner's landscaping, personal property or underground facilities located on the Property (including any necessary replacements), if such damage results directly from Cox's installation of the Facilities, and subject to the removal requirements in Section 1, to restore the Property to as near its condition prior to installation of the Facilities as may be practicable to Owner's reasonable satisfaction; and (v) to obtain all necessary governmental authorizations for the construction and operation of the Facilities on the Property and to perform such construction in accordance with **Exhibit "A"** attached hereto.

4. Obligations of Owner. Owner hereby agrees as follows: (i) not to use or knowingly permit others to use the Facilities or any equipment that interferes with the operation of the Facilities; (ii) not to move, disturb, or alter the Facilities or knowingly permit any third party to do so without Cox's prior written consent; (iii) that this Agreement and Cox's rights granted herein shall be binding upon Owner's successors and assigns; (iv) to notify, and provide a copy of this Agreement to any successor Property owner of Cox's rights under this Agreement; (v) that Owner has full authority to execute this Agreement and grant the rights herein granted and there are no prior or existing agreements, nor will there be any agreements during the Term, that would be breached by the execution by Owner of this Agreement or by Cox's provision of the Services; (vi) that Owner shall provide Cox with the name and phone number of Owner's representative who will provide Cox with access to any of Cox's equipment contained within locked facilities; and (vii) to be responsible for locating all private utility lines within the Property which are not identified or covered by the local Utility Protection laws.

Name: Facilities Management, City of Glendale

Phone Number: (623) 930-2640

5. Indemnification. Cox agrees to indemnify, defend and hold Owner harmless from all Claims, suits proceedings, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) for personal injury or property damages arising out of or in connection with: (a) the negligent acts or omissions or intentional misconduct of Cox's employees and agents in the installation of the Facilities; or (b) Cox's breach of this Agreement. Owner agrees to indemnify, defend and hold Cox harmless from all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses, including reasonable attorneys' fees (the "Claims") for personal injury or property damages arising out of: (a) injuries or damage to Cox's employees, agents or the Facilities arising out of or in connection with the negligent acts or omissions or intentional misconduct of Owner, its agents or employees; or (b) Owner's breach of this Agreement. This Section 5 (Indemnification) shall survive the expiration or termination of this Agreement.

6. Term. The "Term" shall begin upon execution by the parties and continue for five (5) years from the first day of the first full calendar month following both parties' execution of this Agreement. Thereafter, this Agreement shall automatically renew for consecutive one year terms, so long as the underlying lease agreement has not expired or has been terminated, provided that either party may terminate the Agreement by providing the other party at least ninety (90) days written notice of its intent to terminate. Cox may terminate this Agreement in the event Cox is unable to continue the distribution of any Services because of any law, rule, regulation or judgment of any court, or any similar reason beyond the reasonable control of Cox, or if the applicable franchise or licenses are assigned, terminated, surrendered or revoked for any reason.

7. **Default.** If either party fails to perform any material condition or agreement to be performed or observed by it hereunder and such default is not cured within thirty (30) days after written notice from the other party, the non-defaulting party may immediately terminate this Agreement by providing written notice to the defaulting party.

8. **Subordination.** This Agreement is subordinate to all valid ground leases, mortgages, and/or deed of trust of record that may now or hereafter affect the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof.

9. **Insurance.** Cox shall maintain (a) comprehensive liability insurance with a policy limit of at least \$2,000,000 to protect Owner against bodily injury or damage resulting from the installation, operation or maintenance of the Distribution System on the Property and (b) Worker's Compensation insurance in statutory amounts. All policies written pursuant to this Section 9 shall be with insurers (i) licensed to do business in the state in which the Property are located and (ii) carrying an A.M. Best rating of at least A-VIII. All policies, including any renewals thereof, shall specify that such policy cannot be canceled without at least thirty (30) days written notice to the other party.

10. **Compliance.** Any construction, improvement, or installation of any Facilities must comply with A.R.S. § 34-101 *et seq.*, all applicable City of Glendale Codes, and Sections 6 and 8 of the Lease Agreement between the City of Glendale and SW General, Inc., doing business as Southwest Ambulance.

11. **Miscellaneous.** This Agreement is the entire understanding between the parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. This Agreement is governed by the laws of the state where the Property is located. Cox may assign this Agreement without consent to any affiliate or any entity merging with or acquiring substantially all of the assets of Cox. Notices required to be given shall be sent by United States Certified Mail or nationally recognized courier to the address set forth below each party's signature. This is not a service agreement nor is Cox obligated to provide Services to the Property unless and until its Facilities have been constructed on the Property, which construction shall be at the sole discretion of Cox. Following the execution of this Agreement by Owner, Cox shall determine in its sole discretion the appropriate date to begin construction and/or installation of Cox Facilities on the Property to provide communications services to Owner's Tenants. All equipment placed in the cabinet room or MPOE by Cox belongs to Cox and in the event of bankruptcy of Tenant or Owner, or disconnection order, Cox retains the right to recover its equipment at anytime (during normal business hours) within thirty (30) days.

RE: 5835 W PALMAIRE AVE Glendale, Az 85301

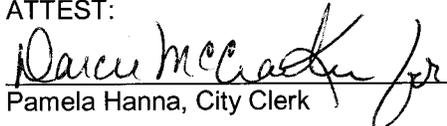
OWNER: City of Glendale, an Arizona municipal corporation

Signature: 
Name: Larry J. Bryles
Title: City Engineer
Date: 12-21-2011

APPROVED AS TO FORM:


Craig Tindall, City Attorney

Owner: City of Glendale
Address: 5850 West Glendale Avenue
Attn: Property Manager, Ste. 315
Glendale, Arizona 85301
Telephone: (623) 930-3630
Fax: (623) 915-2861

ATTEST:

Pamela Hanna, City Clerk

COXCOM, INC. dba Cox Communications Phoenix

Signature: 
Name: **Michael C. Norman**
Title: **BAA Team Leader**
Date: _____
Address: **1550 W. Deer Valley Rd. DV1-04,
Phoenix, AZ 85027**
Fax: **623-322-7983**

Additional Information: See Attached - Site Plan – CONSTRUCTION NECESSARY