

RESOLUTION NO. 2805

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, APPROVING THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN GUTIERREZ-PALMENBERG (CANYON BROADBAND'S SUCCESSOR IN INTEREST) AND THE TOWN OF PAYSON FOR WIRELESS INTERNET SERVICES FACILITIES AND EQUIPMENT PLACED ON THE TOWN'S WATER TANKS.**

**WHEREAS**, in 2003, the Town of Payson and Canyon Broadband ("Canyon") entered into an Agreement for the placement of Canyon's wireless internet facilities and equipment on the Town's water tanks (the "Agreement"); and

**WHEREAS**, Canyon subsequently assigned the Agreement to Last Mile Communications, dba Wydebeam Broadband (Wydebeam); and

**WHEREAS**, Wydebeam is being acquired by Phoenix Internet; and

**WHEREAS**, Wydebeam has requested and the Town desires to approve the assignment of the Agreement to Gutierrez-Palmenberg, dba Phoenix Internet; and

**WHEREAS**, Payson and Phoenix Internet desire to amend (1) Paragraph 2 of the Agreement to allow the Agreement to continue month to month; and (2) Paragraph 5 to (a) allow Phoenix Internet to pay a onetime payment of \$2,000.00 in lieu of the annual CPI payments that should have been paid in years 3-10 of the Agreement; (b) amend the monthly rent amount to \$1,050.00 as of November 1, 2014; and (c) provide for an annual rent increase of \$50.00 per month as of July 1 of each year; and

**WHEREAS**, Phoenix Internet desires to change the contact information as contained in Paragraph 17 of the Agreement; and

**WHEREAS**, a First Amendment to the Agreement has been prepared to accomplish these desires,

**NOW, THEREFORE, THE MAYOR AND PAYSON TOWN COUNCIL RESOLVE AS FOLLOWS:**

Section 1. The First Amendment to the Agreement between Gutierrez-Palmenberg (Canyon Broadband's successor in interest) and the Town of Payson, dated September 19, 2003, is approved in substantially the form attached.

Section 2. Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the First Amendment in substantially the form attached.

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Section 3. The Town of Payson is authorized to take other actions as are necessary to carry out the terms and intent of the Agreement.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON** this 16<sup>th</sup> day of October, 2014, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Timothy M. Wright, Town Attorney

**Exhibit A**  
**To**  
**Resolution 2805**

**FIRST AMENDMENT TO THE  
AGREEMENT BETWEEN GUTIERREZ-PALMENBERG  
(CANYON BROADBAND'S SUCCESSOR IN INTEREST)  
AND THE TOWN OF PAYSON  
RE  
WIRELESS INTERNET SERVICES FACILITIES AND  
EQUIPMENT PLACED ON THE TOWN'S WATER TANKS**

This First Amendment to the Agreement between Gutierrez-Palmenberg, successor in interest to Last Mile Communications, successor in interest to Canyon Broadban is entered into by the Town of Payson, a municipal corporation of the State of Arizona (the "Town"), and Gutierrez-Palmenberg, Inc., dba Phoenix Internet, an Arizona Corporation ("Phoenix Internet") (Collectively the "Parties").

**BACKGROUND**

1. In 2003, the Town of Payson and Canyon Broadband ("Canyon") entered into a Agreement for the placement of Canyon's wireless internet facilities and equipment on the Town's water tanks (the "Agreement").
2. Canyon subsequently assigned the Agreement to Last Mile Communications, dba Wydebeam Broadband (Wydebeam).
3. Wydebeam is being acquired by Phoenix Internet.
4. Wydebeam has requested and the Town desires to approve the assignment of the Agreement to Phoenix Internet.
5. The Parties desire to amend Paragraph 2 of the Agreement to allow the contract to continue month to month.
6. The Parties desire to amend Paragraph 5 of the Agreement to (a) allow Phoenix Internet to pay a onetime payment of \$2,000.00 in lieu of the annual CPI payments that should have been paid in years 3-10 of the Agreement; (b) amend the monthly rent amount to \$1,050.00 as of November 1, 2014; and (c) have annual rent increase of \$50.00 per month as of July 1 of each year.
7. The Phoenix Internet desires to change the contact information as contained in Paragraph 17 of the Agreement.

## AMENDMENT

The Parties agree to amend the Agreement as follows:

A. Paragraph 2 of the Agreement (Term) is amended, and shall read as follows:

2. Term.

(A) The initial term of this Agreement shall be five (5) years commencing upon the date of the Agreement. The Agreement shall automatically renew for five (5) additional periods of one (1) year each unless either Party notifies the other Party of its intention to not renew the Agreement. Such Notice of non-renewal shall be in writing and made at least ninety (90) days prior to the expiration of the initial term and each extended term thereafter.

(B) Following the initial term and renewals contemplated in subsection (A) above, this Agreement shall continue month to month. Either Party may terminate this Agreement by providing thirty (30) days written notice to the other Party.

B. Paragraph 5 of the Agreement (Contract Payment) is amended, and shall read as follows:

5. Contract Payment.

(A) The monthly Contract Payment shall be one thousand dollars (\$1,000.00) for each month or portion thereof during the first two (2) years of the initial term of the Agreement, commencing the first of the month after the signing of the Agreement.

(B) All payments shall be made to the Town by the 5<sup>th</sup> of the Month for which they are being paid. In the event such contract payment is not made within five (5) days after the due date, there shall be a penalty fee of ten percent (10%) of the payment due, added to the payment due and owing. The penalty payment shall be added to and become part of that month's regular payment. Additionally any amount of the contract payment and penalties unpaid after thirty (30) days shall bear interest at one and one-half percent (1 ½%) per month on all unpaid amounts. This additional penalty shall also become part of the contract payment.

(C) In lieu of any CPI payments that were due during years 3-10 of this Agreement, upon signing this First Amendment, Phoenix Internet shall pay a onetime payment of two thousand dollars (\$2,000.00) to the Town.

(D) Notwithstanding subsection (A) above, as of November 1, 2014, the contract payment for each month shall be one thousand fifty dollars (\$1,050.00) for each month or portion thereof. The contract payment shall annually increase by fifty dollars (\$50.00) per month on July 1 of each year.

C. The Town of Payson consents to the assignment of the Agreement to Gutierrez-Palmenberg, dba Phoenix Internet.

D. Pursuant to Paragraph 17 of the Agreement, Gutierrez-Palmenberg, dba Phoenix Internet's contact info shall be as follows:

Last Mile Communications, Inc.  
Attention David Sneddon  
225 E. Germann Road, Suite 210  
Gilbert, AZ 85297  
480-964-4749  
[dlsneddon@wydebeam.org](mailto:dlsneddon@wydebeam.org)

and

Gutierrez-Palmenberg, dba Phoenix Internet  
Attention Andrew Gutierrez  
2922 West Clarendon Avenue  
Phoenix, AZ 85017  
602-234-0696  
[andy@phoenixinternet.net](mailto:andy@phoenixinternet.net)

E. Except as amended in Paragraphs A through D above, all other terms of the Agreement shall remain in full force and effect.

GUTIERREZ-PAMENBERG, INC.

TOWN OF PAYSON:

By \_\_\_\_\_  
Andrew Gutierrez dated

By \_\_\_\_\_  
Kenny J. Evans, Mayor dated

APPROVED AS TO FORM:

\_\_\_\_\_  
Timothy M. Wright, Town Attorney

ATTEST:

\_\_\_\_\_  
Silvia Smith, Town Clerk