

## MEMORANDUM

**TO:** Commissioner John Smaligo, Chairman  
Tulsa County Board of County Commissioners

**FROM:** Richard Bales, Director  
Tulsa County Park Division

**SUBJECT:** Cox Cable Agreement

**DATE:** November 10, 2015

The Park Division respectfully request BOCC approval of the attached agreement between the BOCC and CoxCom, LLC., Cox Oklahoma Telcom. The agreement allows Cox Cable to provide cable service to the South County Community Center in Glenpool.

The agreement has been signed off "Approved As To Form" by the District Attorney's office.

**ORIGINAL TO COUNTY CLERK'S OFFICE FOR MONDAY NOVEMBER 16,  
2015 COMMISSION AGENDA.**

attachment:

rb:

xc: Comm. Keith  
Comm. Peters  
Pat Ward (e-mail copy memo only)  
Eddie Shackelford (e-mail copy memo only)  
file



This "Agreement" includes the terms and conditions (i) on the previous page or, if in the Cox Business e-commerce environment, as selected above (the "Cover Page"); (ii) on this page, including without limitation all policies and terms incorporated into this page (the "Service Terms"); and (iii) set forth at <http://ww2.cox.com/aboutus/policies/business-general-terms.cox> (the "General Terms").

**1. Tariffs/Service Guide** If Customer is purchasing any Service that is regulated by the FCC or any State regulatory body ("Regulated Service"), then Customer's use of such Regulated Service is subject to the regulations of the FCC and the regulatory body of the State in which the Customer location receiving the Regulated Service is located (which regulations are subject to change), as well as the rates, terms, and conditions contained in tariffs on file with State and Federal regulatory authorities. For States where the Regulated Service is de-tariffed, the Regulated Service is provided pursuant to the rates, terms and conditions for the Cox Service Guide for that State (the "SG"), which may be found at <http://ww2.cox.com/business/voice/regulatory.cox> and which terms are incorporated herein by reference. Cox may amend such tariffs and the SG and the Regulated Service shall be subject to such tariffs, or, if applicable, the SG, as amended. Customer must disclose to Cox if Customer intends to use the Regulated Services with payphone service. The tariffs and the SG contain cancellation or termination fees due in the event of cancellation or termination (including partial termination) of a Regulated Service prior to the Term selected on the Cover Page. Termination fees include, but are not limited to, non-recurring charges, charges paid to third parties on behalf of Customer, and the monthly recurring charges for the balance of the Term.

**2. E911 Services** FOR IMPORTANT INFORMATION ABOUT COX'S 911 PRACTICES, PLEASE REVIEW THE INFORMATION ABOUT E911 SERVICE IN THE GENERAL TERMS AND ON THE WEBSITE <http://ww2.cox.com/business/voice/regulatory.cox>. ONLY THE EMTA WILL HAVE BATTERY BACKUP PROVIDED BY COX. CUSTOMER IS RESPONSIBLE FOR BATTERY BACKUP FOR THE IAD, ESBC, ATA AND ALL CUSTOMER EQUIPMENT. IN THE EVENT OF A POWER OUTAGE, CUSTOMER'S TELEPHONE SERVICE USING AN EMTA WILL CONTINUE TO OPERATE AS USUAL FOR UP TO EIGHT HOURS WITH THE BACKUP BATTERY PROVIDED BY COX. THE DURATION OF SERVICE DURING A POWER OUTAGE USING AN IAD, ATA, AND ESBC WILL DEPEND ON CUSTOMER'S BATTERY BACKUP CHOICE. IF THE EMTA, ATA, ESBC OR IAD THAT SUPPLIES YOUR TELEPHONE SERVICE IS DISCONNECTED OR REMOVED AND/OR THE BATTERY IS NOT CHARGED OR IS DAMAGED, SERVICE, INCLUDING ACCESS TO 911 OR E911, WILL NOT BE AVAILABLE. COX SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY FAILURE TO RECEIVE SERVICE OR FOR THE FAILURE OF ANY 911 OR E911 CALL IF CUSTOMER REMOVES OR DISCONNECTS THE EMTA, ATA, ESBC OR IAD OR IF CUSTOMER FAILS TO CHARGE THE BATTERY FOR SAID DEVICES AT ANY TIME DURING THE TERM OF THIS AGREEMENT. COX USES YOUR TELEPHONE SERVICE ADDRESS TO IDENTIFY YOUR LOCATION FOR E911 SERVICE. IF THE EMTA, ATA ESBC AND/OR IAD INSTALLED IN YOUR BUSINESS IS MOVED, THE E911 DISPATCH MAY NOT RECEIVE YOUR CORRECT ADDRESS. PLEASE NOTIFY COX IF YOU WOULD LIKE TO MOVE OR RELOCATE YOUR TELEPHONE SERVICE. IT CAN TAKE UP TO 2 BUSINESS DAYS FOR YOUR NEW ADDRESS TO BE UPDATED.

**3. Service Start Date and Term** This Agreement shall be effective upon execution by Customer and "Acceptance" by Cox (as such term is defined on the Cover Page). The "Initial Term" shall begin upon installation of Service and shall continue for the applicable Term commitment set forth on the Cover Page. However, if Customer delays installation or is not ready to receive Services on the agreed-upon installation date, Cox may begin billing for Services on the date Services would have been installed. Cox shall use reasonable efforts to make the Services available by the requested service date. Cox shall not be liable for damages for delays in meeting service dates due to install delays or reasons beyond Cox's control. If Customer delays installation for more than ninety (90) days after Customer's execution of this Agreement, Cox reserves the right to terminate this Agreement by providing written notice to Customer and Customer shall be liable for Cox's reasonable costs incurred. AFTER THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR ONE (1) YEAR TERMS (EACH AN "EXTENDED TERM") UNLESS A PARTY GIVES THE OTHER PARTY WRITTEN TERMINATION NOTICE AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR THEN CURRENT EXTENDED TERM. "Term" shall mean the Initial Term and Extended Term (s), if any. Cox reserves the right to increase rates for all Services by no more than ten percent (10%) during any Extended Term by providing Customer with at least sixty (60) days written notice of such rate increase. This limitation on rate increases shall not apply to video Services or Services for which rates, terms and conditions are governed by a Cox tariff or SG. Upon notice to Customer, Cox may change the rates for video Services periodically during the Term. Cox may change the rates for telephone Service subject to a Cox tariff or SG periodically during the Term. For the avoidance of doubt, promotional rates and promotional discounts provided to Customer will expire at the end of the Initial Term or earlier as set forth in the promotion language. Customer's payment for Service after notice of a rate increase will be deemed to be Customer's acceptance of the new rate.

**4. Termination** Customer may terminate any Service before the end of the Term selected by Customer on the Cover Page; provided, however, if Customer terminates any such Service before the end of the Term (except for breach by Cox), unless otherwise expressly stated in the General Terms,

Customer will be obligated to pay Cox a termination fee equal to the non-recurring charges (if unpaid) and One Hundred Percent (100%) of the monthly recurring charges for the terminated Service(s) multiplied by the number of full months remaining in the Term. This provision survives termination of the Agreement. If there is signal interference with any Cox Service(s), Cox may terminate this Agreement without liability if Cox cannot resolve the interference by using commercially reasonable efforts.

**5. Payment** Customer shall pay Cox all monthly recurring charges ("MRCs") and all non-recurring charges ("NRCs"), if any, by the due date on the invoice. Any amount not received by the due date shown on the applicable invoice will be subject to interest or a late charge no greater than the maximum rate allowed by law. If Cox terminates this Agreement due to Customer's breach, or if Customer fails to pay any amounts when due and fails to cure such non-payment upon receipt of written notice of non-payment from Cox, Customer will be deemed to have terminated this Agreement and will be obligated to pay the termination fee described above. If applicable to the Service, Customer shall pay sales, use, gross receipts, and excise taxes, access fees and all other fees, universal service fund assessments, 911 fees, franchise fees, bypass or other local, State and Federal taxes or charges, and deposits, imposed on the use of the Services. Taxes will be separately stated on Customer's invoice. No interest will be paid on deposits unless required by law.

**6. Service and Installation** Cox shall provide Customer with the Services identified on the Cover Page and may provide related facilities and equipment, the ownership of which shall be retained by Cox (the "Cox Equipment"), or for certain Services, Customer, may purchase equipment from Cox ("Customer Purchased Equipment"). Customer is responsible for damage to any Cox Equipment. Customer may use the Services for any lawful purpose, provided that such purpose: (i) does not interfere or impair the Cox network or Cox Equipment; (ii) complies with the AUP; and (iii) is in accordance with the terms and conditions of this Agreement. Customer shall use the Cox Equipment only for the purpose of receiving the Services. Customer shall use Customer Purchased Equipment in accordance with the terms of this Agreement and any related equipment purchase agreement. Unless provided otherwise herein, Cox shall use commercially reasonable efforts to maintain the Services in accordance with applicable performance standards. Cox network management needs may require Cox to modify upstream and downstream speeds. Use of the data, Internet, web conferencing/web hosting Services shall be subject to the AUP at <http://ww2.cox.com/aboutus/policies/business-policies.cox>, which is incorporated herein by reference. Cox may change the AUP from time to time during the Term. Customer's continued use of the Services following an AUP amendment shall constitute acceptance of the revised AUP.

**7. E-Rate Customers** If Customer is an educational institution, library or other entity that qualifies as an applicant seeking reimbursement under the Federal Universal Service Fund Schools and Libraries Program (collectively, "E-Rate Customers"), the E-Rate provisions of the General Terms will apply, in addition to all other terms and conditions of this Agreement.

**8. General Terms** The General Terms are hereby incorporated into this Agreement by reference. Cox, in its sole discretion, may modify, supplement or remove any of the General Terms from time to time, without additional notice to Customer, and any such changes will be effective upon Cox publishing such changes on the website listed above. BY EXECUTING THIS AGREEMENT AND/OR USING OR PAYING FOR THE SERVICES, CUSTOMER ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE GENERAL TERMS.

**9. LIMITATION OF LIABILITY** COX AND/OR ITS AGENTS SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL COX OR ITS AGENTS BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION OR REMOVAL OF EQUIPMENT UNLESS CAUSED BY THE NEGLIGENCE OF COX. UNDER NO CIRCUMSTANCES WILL COX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING FROM THIS AGREEMENT OR ITS PROVISION OF THE SERVICES.

**10. WARRANTIES** EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT THE SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. INTERNET AND WIFI SPEEDS WILL VARY. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

**11. Public Performance** If Customer engages in a public performance of any copyrighted material contained in any of the Services, Customer, and not Cox, shall be responsible for obtaining any public performing licenses at Customer's expense. The Video Service that Cox provides under this Agreement does not include a public performance license.