

AGREEMENT

This Agreement ("Agreement") is made and entered into this _____ day of _____, 2013, by and between the City of Norman, OK, a municipal corporation, hereinafter referred to as the "City," and CoxCom, LLC (formerly known as CoxCom, Inc.) a Delaware limited liability company hereinafter referred to as "Cox" or "Company," with Cox and City sometimes separately referred to hereinafter as a "party," and sometimes collectively as "parties."

WHEREAS, CoxCom, LLC, ("Cox") holds a cable television franchise in the City pursuant to a cable television franchise set forth in City Ordinance No. 0-9192-20 dated October 22, 1991; assigned to Cox pursuant to Ordinance No. 0-9900-18, dated September 28, 1999; further extended pursuant to Contract No. K-0708-136 dated April 22, 2008; and,

WHEREAS, the City revised its Cable Television Ordinance in Ordinance No. O-0708-31, and in doing so amended Chapter 6, Cable Television, of the City of Norman City Code; and, , authorizing the company to construct, operate, and maintain a cable system within the City of Norman, and

WHEREAS, the Franchise Agreement is scheduled to expire by its terms on or about May 1, 2013; and

WHEREAS, Cox has requested, and the City has agreed, to renew Cox's franchise agreement pursuant to the terms contained herein, pursuant to the amended Cable Television Ordinance O-0708-31 thereby ensuring a fair and level playing field for all video providers in the City; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties agree as follows:

1. Term of Agreement: This non-exclusive Agreement shall take effect upon approval hereof by Cox and by the City Council of the City and shall be effective for a term of five (5) years thereafter. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification and/or extension of this Agreement.

2. Nature of Agreement:

(A) No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.

(B) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City by this Agreement shall be subject to transfer by the City to any other officer, employee, department, or board of the City.

(C) This Agreement shall not relieve Cox of any existing obligations involved in obtaining permits, pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.

(D) This Agreement shall be a privilege to be held in personal trust by Cox for the benefit of the public. Said privilege cannot in any event be sold, transferred, leased, assigned or disposed of (except to an affiliate of Cox), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall not, however, be unreasonably withheld.

3. Obligations of Cox:

(A) In accordance with Section 6-411 (payment to the City) of Chapter 6 (Cable Television) of the City Code, as amended by Ordinance No. 0-0708-31, during the term of this Agreement, Cox shall pay to City a fee equal to 5% of the gross revenues of Cox and its affiliates collected from each subscriber to Cox's Cable Services product, and 5% of the portion of gross revenues from advertising which are defined in subsection 3(A)(3), below; the fee ("Franchise Fee") may be identified and passed through on any subscriber bill by Cox, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each quarter.

(1) For purposes of this Agreement, gross revenues are limited to the following:

- (i) recurring charges for Cable Services;
- (ii) event-based charges for Cable Services, including but not limited to pay-per-view and video-on-demand charges;
- (iii) rental of set top boxes and other Cable Services equipment;
- (iv) service charges related to the provision of Cable Services, including, but not limited to, activation, installation, and repair; and
- (v) administrative charges related to the provision of Cable Services, including, but not limited to, service order and service termination charges;
- (vi) amounts billed to Cable Services subscribers to recover the Franchise Fee authorized by this section.

(2) For purposes of this Agreement, gross revenues do not include:

- (i) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
- (ii) late payment fees;
- (iii) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Cable Services and not for the provisioning of any other service provided by Cox or its affiliates;

(iv) amounts billed to Cable Services subscribers to recover taxes, fees or surcharges imposed upon Cable Services subscribers in connection with the provision of Cable Services, other than the Franchise Fee authorized by this section;

(v) revenue from the sale of capital assets or surplus equipment; or

(vi) charges, other than those described in subsection (1), that are aggregated or bundled with amounts billed to Cable Services subscribers.

(3) “Gross Revenues” which are subject to the Franchiser Fee paid by Cox additionally include a pro rata portion of all revenue collected by Cox pursuant to compensation arrangements for advertising (less any commissions Cox receives from any third parties for advertising) and home-shopping sales derived from the operation of Cox’s Cable System within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(4) Bundling discounts shall be apportioned fairly among video and other services. Cox shall not apportion revenue in such a manner as to avoid the Franchise Fee.

(5) In the event that any other video services provider, including but not limited to a cable operator or open video service provider, enters into any agreement or makes any arrangement with City during the term of this Agreement whereby it is required or allowed to pay a fee to the City that is similar to the Franchise Fee described herein, City shall allow Cox to substitute the definition of “gross revenue” set forth in that agreement or arrangement for the definition of “gross revenue” set forth in this Agreement immediately upon request of Cox.

(6) Cox will grant the City the right to conduct reasonable audits to assure that the Franchise Fee has been properly calculated.

(B) Cox and City agree that the Franchise Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments *except* sales taxes, personal or real property taxes, and ad valorem taxes.

(C) During the term of this Agreement, Cox shall comply with all provisions of Chapter 6 (Cable Television) of the City of Norman Code, as amended by Ordinance No. 0-0708-31, with the following exceptions:

Cox will provide the channels set forth in Chapter 6 (Cable Television) of the City of Norman Code, as amended by Ordinance No. 0-0708-31 through Cox's Cable System so long as City and educational institutions designated by the City provide any educational or governmental programming content in a standard format compatible with Cox's technology. City and educational institutions designated by the City shall provide this programming, and Cox shall receive this

programming at Cox's headend location in Norman, Oklahoma. City and educational institutions designated by the City will be solely and individually responsible for their own programming content.

(4) Cox shall not be required to share video programming with any other video service provider authorized to do business in the City.

(D) Cox shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).

(E) The parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

In addition to the termination rights set forth above, Cox shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days notice to the City, if (i) state or federal law changes in a manner that would allow Cox to opt into franchise requirements that are, in Cox's sole judgment, more beneficial than those contained herein; or (ii) another provider of video services is permitted, through a City authorization or otherwise, to use the public rights-of-way to provide video services on terms that are, in Cox's sole judgment, more beneficial than those contained herein.

(F) Cox shall determine, in its sole discretion where in the City its facilities shall be constructed, operated, maintained, repaired and upgraded to provide, and where in the City to provide its Cable Services. However, Cox agrees that it will offer Cable Service to all residential subscribers residing within its current service footprint within the boundaries of the City, subject to density, technical feasibility, and access limitations based on standard industry practice (e.g., density limitation of forty (40) homes per mile, authorized access to private property/developments, etc.).

4. Obligations of City. City will not attempt to nor subject the provision of Cox's Cable Service to regulation under any provision of the City's cable television or broadband telecommunications franchise ordinance or similar ordinance(s) that are inconsistent with or more burdensome than those contained herein. In addition:

(A) City agrees to subject the construction and installation of the facilities that will be used in whole or in part to provide Cox's Cable Service to the same process and review as it subjects the installation and construction of traditional telecommunications infrastructure;

(B) City agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide Cox's Cable Service;

(C) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner;

(D) Cox represents and claims that its Cable Service is a "cable service" under federal law and will comply with all obligations imposed by federal law on cable operators. This Agreement shall not apply to any service Cox provides that is not a "cable service" as such service is defined under federal law.

5. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

6. Entire Agreement. This Agreement constitutes the entire agreement between City and Cox with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and Cox regarding the subject matter hereof. Specifically, this Agreement replaces the franchise granted by Ordinance 0-9192-20 any subsequent extensions thereof.

7. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

8. Miscellaneous.

(A) Cox and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(B) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(C) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

(D) This Agreement shall not be exclusive and the City expressly reserves the right to enter into similar agreements with any other company offering the same or similar video services at any time.

(E) The geographic area covered by this Agreement shall be the incorporated limits of the City of Norman, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

(F))The parties agree that either Cleveland County District Court (21st Judicial District) or the United States District Court for the Western District of Oklahoma shall be the sole and exclusive forum for any judiciable disputes concerning this Agreement.

9. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

10. Definitions. The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section:

(A) “Cable service” shall have the same meaning as contained in federal statutes, 47 U.S.C. §542(6) on the effective date of this Agreement.

(B) “Cable System” shall have the same meaning as contained in federal statutes, 47 U.S.C. §542(7) on the effective date of this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the ____ day of _____, 2012.

[Remainder of this page left blank intentionally]

CoxCom, LLC:

Name: Percy Kirk
Title: General Manager

City of Norman, Oklahoma:

APPROVED by the City Council of The City of Norman, Oklahoma, on the ____
day of _____, 2013.

MAYOR

ATTEST:

City Clerk

REVIEWED as to form and legality this _____ day of _____, 2013.

Kathryn Walker
Assistant City Attorney