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# MEMO

APPROVED  
08/10/2020



DATE: August 5, 2020  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Cox Business

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached Commercial Services Agreement between the Tulsa County Board of County Commissioners on behalf of the Tulsa County Information Technology and Cox Business for internet services located at Tulsa County Parks Bixby Recreation Center, 211 N. Cabaniss Ave., Bixby, Oklahoma 74008.

Respectfully submitted for your approval and execution.

MME / arh

SUBMITTED FOR: The August 10, 2020 BOCC meeting agenda.

CMF# 20201990

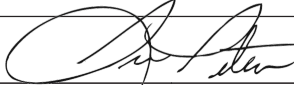
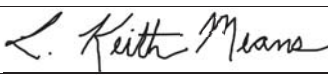


**Special Conditions**

Cox hereby acknowledges and agrees that customer is a governmental authority, and as such it is limited in the indemnities it can provide to Cox. Accordingly, notwithstanding anything to the contrary contained anywhere in this agreement, including but not limited to, the General Terms, Customer will have no obligation to indemnify, defend or hold Cox harmless here under except to the extend such indemnification, defense or hold harmless is expressly permitted under Oklahoma law. Notwithstanding any provision to the contrary in the Agreement, the parties understand and agree the term of this Agreement shall commence upon the installation of service and run through June 30, 2021 ("term"). The parties agree and understand that while Customer may seek renewal of this agreement at the end of such term, such renewal cannot be automatic. The parties further agree that each party has the right to renew this Agreement for successive one year terms or for such shorter term as the parties agree with any amendments hereto, but such renewal shall not be effective until the contract has been approved by the customer. After the initial term, this agreement may be renewed at the same rates, terms, and conditions subject to termination by either party upon at least thirty (30) days prior notice to the other party. Customer has not incur any penalty for failure by the BOCC to renew or extend this agreement. Notwithstanding any foregoing provision to the contrary, the parties understand and agree that any prior and contemporaneous oral and written agreements shall be construed under the laws of the State of Oklahoma (without regard to conflict-of-law principles) and that they consent to the jurisdiction and venue of the Federal and State Courts in Tulsa County, Oklahoma.


**Promotion Details**

This Commercial Services Agreement (the "Agreement") includes (i) this paragraph, the language above and Exhibit A (collectively, the "Service Terms"); (ii) the terms and conditions set forth at <http://ww2.cox.com/aboutus/policies/business-general-terms.cox> (the "General Terms") and (iii) any other terms and conditions applicable to the Services set forth above, including without limitation, the Cox tariffs, Service Guides set forth at <http://ww2.cox.com/business/voice/regulatory.cox> ("SG"), State and Federal regulations, the Cox Acceptable Use Policy (the "AUP"), and Cox's Internet Service Disclosures located at [www.cox.com/internetdisclosures](http://www.cox.com/internetdisclosures). Exhibit A is attached to and incorporated into this Agreement by this reference. Customer acknowledges receipt and acceptance of the Service Terms (including Exhibit A), the AUP, General Terms, and all other referenced terms and conditions by signing this Agreement. By signing this Agreement, Customer accepts that any and all disputes arising out of, relating to or concerning this Agreement and/or the Services shall be resolved through mandatory and binding arbitration unless Customer opts out pursuant to the Dispute Resolution Provision in the General Terms. This Agreement is subject to credit approval and Customer authorizes Cox to check credit. The prices above do not include applicable taxes, fees, assessments or surcharges which are additional and may change. This proposal is valid provided Customer signs and delivers this Agreement to Cox unchanged within thirty (30) days from the date above. By signing this Agreement, Customer acknowledges that if (i) the transport Service(s) (e.g. Private Line Type Services, Ethernet Services) cross state boundaries or (ii) at least 10% of traffic on said transport Service(s) is Interstate in nature or designated for Internet traffic, then the entire transport Service(s) is considered Interstate. Customer has reviewed the interstate/intrastate designation of the transport Service(s) listed in the Service Description above and attests that all such designations are correct. Each party may use electronic signature to sign this Agreement, provided the electronic signature method used by Customer is acceptable to Cox. This Agreement shall be effective upon execution by Customer and "Acceptance" by Cox. "Acceptance" of the Agreement by Cox shall occur upon the earlier of (i) Cox's countersignature of this Agreement or (ii) Cox's installation of Service at Customer's location. Customer acknowledges that it has read and understands the 911 disclosures in Section 2 of the Service Terms. By signing this Agreement, you represent that you are the authorized Customer representative.

Customer Authorized Signature	CoxCom, LLC., Cox Oklahoma Telcom, LLC Signature
Signature: 	Signature: 
Print: Ron Peters	Print: L. Keith Means
Title Position: Chairperson, Board of County Commissioners of the County of Tulsa	Title Position: Manager-Sales
Date: 08/10/2020	Date: 7/28/2020

Approved as to form:

James G. Rea Digitally signed by James G. Rea  
Date: 2020.08.03 18:14:29 -05'00'  
Assistant District Attorney

Attest:   
Michael Willis, County Clerk



**1. 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](http://ww2.cox.com/business/voice/regulatory_cox).

**2. Service Start Date and Term** The "Initial Term" shall begin upon installation of Service and shall continue for the applicable Term commitment set forth above in the Service Terms. 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.

**3. Termination** Customer may terminate any Service before the end of the Term selected by Customer above in the Service Terms upon at least thirty (30) days written notice to Cox; 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 nonrecurring charges (if unpaid) and One Hundred Percent (100%) of the monthly recurring charges for the terminated Service(s) multiplied by the number of months, including partial months, remaining in the Term. Cox may terminate this Agreement without liability at any time prior to installation of Services if Cox determines that Customer's location is not reasonably serviceable or there is signal interference with any Cox Service(s) according to Cox's standard practices. If Customer terminates or decreases any Service that is part of a bundle offering, the remaining Service(s) shall be subject to price increases for the remaining Term. If Customer terminates this Agreement prior to installation of Service by Cox, Customer shall be liable for Cox's costs incurred. This provision survives termination of the Agreement.

**4. 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.

**5. Service and Installation** Cox shall provide Customer with the Services identified above in the Service Terms and may also 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. If Cox Equipment is not returned to Cox after termination or disconnection of Services, Customer shall be liable for the Cox Equipment costs. 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 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.

**6. General Terms** The General Terms are hereby incorporated into this Agreement by reference. 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.

**7. LIMITATION OF LIABILITY** IN ADDITION TO ANY OTHER LIMITATIONS ON LIABILITY CONTAINED IN THE AGREEMENT, NEITHER COX NOR ANY COX RELATED PARTY SHALL BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, OR FOR ANY LOSS OF DATA OR STORED CONTENT, IDENTITY THEFT, OR FOR ANY PROBLEM WITH THE SERVICES OR EQUIPMENT OF ANY THIRD PARTY, NOR SHALL COX NOR ANY COX RELATED PARTY BE RESPONSIBLE FOR FAILURE OR ERRORS OF ANY COX SERVICE, COX EQUIPMENT, SIGNAL TRANSMISSION, LICENSED SOFTWARE, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. NEITHER COX NOR ANY COX RELATED PARTY WILL BE LIABLE FOR DAMAGE TO PROPERTY OR FOR PHYSICAL INJURY TO ANY PERSON ARISING FROM THE INSTALLATION OR REMOVAL OF EQUIPMENT UNLESS CAUSED BY THE NEGLIGENCE OF COX. UNDER NO CIRCUMSTANCES WILL COX OR ANY COX RELATED PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING FROM THIS AGREEMENT OR PROVISION OF THE SERVICES.

**8. 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. COX DOES NOT GUARANTEE THAT SERVICE CAN BE PROVISIONED TO CUSTOMER'S LOCATION, OR THAT INSTALLATION OF SERVICE WILL OCCUR IN A SPECIFIED TIMEFRAME. COX DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR THE LIKE. INTERNET AND WIFI SPEEDS WILL VARY. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

**9. 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 performance licenses at Customer's expense. The Video Service that Cox provides under this Agreement does not include a public performance license.