

**AMENDED
A G E N D A**

Okmulgee City Council, regular session, Tuesday, September 19, 2023 at 5:00 p.m. in the Council Chambers of City Hall, 111 East Fourth Street, Okmulgee, Oklahoma.

1. CALL TO ORDER

- A) Roll Call of Members
- B) Pledge of Allegiance to the Flag of the United States
- C) Invocation

2. MINUTES - Consider and vote to approve with any necessary corrections

- A) August 15, 2023, regular session

3. CLAIMS - Consider and vote to approve and authorize payment of such.

4. ORDER OF BUSINESS

- A) Consider and vote to approve a Resolution declaring certain personal property to be surplus property and authorizing the sale, transfer and disposition of surplus property.
- B) Consider and vote to approve and ratify Resolutions and Grant Agreements to accept federal grants from the Federal Aviation Administration as a part of the Airport Infrastructure Grant Program Project AIG 3-40-0074-030-2023, Airport Improvement Program Project AIP 3-40-0074-031-2023 and Oklahoma Aeronautics Commission application/grant agreement OAC OKM-24-FS to Construct Hangars at Okmulgee Regional Airport subject to receipt of the grant agreements and authorize the Mayor/Chair and City Clerk/Secretary to execute all of the documents and certifications as required.
- C) Consider and vote to award a Contract to Jim Cooley Construction, LLC as the lowest, most responsive bidder for AIG 3-40-0074-030-2023, AIP 3-40-0074-031-2023 and OAC OKM-24-FS Construct Hangars at Okmulgee Regional Airport contingent upon and subject to receipt of the AIG 3-40-0074-030-2023 Grant and AIP 3-40-0074-031-2023 Grant from FAA and OAC Grant OKM-24-FS, rejecting bid by Bright Lighting, Inc. and releasing their bid bond, and authorize the Mayor/Chair and City Clerk/Secretary to execute all of the grant documents/agreements and certifications as required.

- D) Consider and vote to go into executive session for the following:
Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest; regarding the Okmulgee Municipal Airport and the Economic Development Agreement with Covington Aircraft Engines, Inc. Authority is 25 O.S §307B (4).
- E) Consider and vote to approve a Non-exclusive Permit & Agreement with CoxCom, LLC to construct, operate and maintain a cable system within the City of Okmulgee for a period of not to exceed ten (10) years, and authorize the Mayor and City Clerk to execute all necessary documents.

5. INFORMATION ITEMS

- A) Community Development monthly report
- B) Okmulgee Police Department monthly report
- C) Fire Department monthly report
- D) Finance Department monthly report
- E) Technology Services monthly report
- F) Financials
- G) City Manager's Report

6. COMMUNICATIONS – Not included on the agenda

7. COMMENTS AND INQUIRIES FROM COUNCIL

8. ADJOURNMENT

AGENDA MEMORANDUM

TO: Mayor and Council Members

FROM: Rickey Pearson, City Manager

DATE: September 18, 2023

SUBJECT: Consider and vote to approve a Non-exclusive Permit & Agreement with CoxCom, LLC to construct, operate and maintain a cable system within the City of Okmulgee for a period of not to exceed ten (10) years, and authorize the Mayor and City Clerk to execute all necessary documents.

Information will be provided by the City Attorney.

Recommendation: Staff recommends approval.
Exhibit: Agreement

COX CABLE TELEVISION FRANCHISE AGREEMENT

This Agreement (“Agreement”) is made and entered into this 19th day of September, 2023, by and between the City of Okmulgee, a municipal corporation, hereinafter referred to as the “City,” and CoxCom, LLC., a Delaware limited liability corporation 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, the City’s role as manager of its rights-of-way and regulator of cable service providers requires it to ensure a fair and level playing field for all service providers; and

WHEREAS, The City, having determined that the financial, legal, and technical ability of Cox is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Agreement with Cox for the construction and operation of a Cable System on the terms set forth herein.

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

1. Term of Non-exclusive Permit and Agreement: This non-exclusive Permit and 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 ten (10) 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.

(E) In consideration of the faithful performance and observance of the conditions, reservations and regulations herein specified, a non-exclusive Permit is hereby granted to Cox, its permitted successors and assigns to erect, maintain, and operate transmission and distribution facilities and additions thereto in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public ways within the City and subsequent additions thereto for the purpose of producing, receiving, amplifying, and transmitting by coaxial cable, fiber optics, microwave or other means, audio and/or audio/visual electrical impulses of television, radio and other intelligences, either analog or digital, including, but not limited to, Cable Television Service pursuant to the Cable Act for sale to the inhabitants and businesses of the City in accordance with the laws and regulations of the United States of America and State of Oklahoma and the ordinances and regulations of the City, for a period of ten (10) years from and after the effective date of this non-exclusive Permit and Agreement.

3. Obligations of Cox:

(A) 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 ("Permit 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 Permit 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 Permit 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 Permit 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 Permit 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 Permit 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) In the event that any other municipality enters into any agreement or makes any arrangement with Cox during the term of this Agreement whereby Cox is required or allowed to pay a fee to the City that is similar to the Permit Fee described herein, Cox shall allow City 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 upon the written request of the City Council, and that Cox shall be afforded at least ninety (90) days to implement the change.

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

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

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

(D) 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 Permit 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.

(E) 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.

(F) Cox shall maintain in full force and effect, at no cost and expense to the City, during the term of this Agreement, commercial general liability insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City. Upon written request, Cox shall provide a certificate of insurance showing evidence of coverage required by this Section.

(G) The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers agents and employees, from and against any and all liability for damage and for any liability or claim resulting from property damage or bodily injury (including accidental death) which arise out of the Grantee's construction, operation maintenance of its Cable System, or damages arising out of any provisions or requirement of this agreement or its enforcement, including but not limited to, reasonable attorney's fees and costs.

(H) If Grantee is at fault for any disturbance of pavement, sidewalk, driveway, or other surfacing of a public way or private property, Grantee shall, at its own expense, replace and restore such surface in accordance with the standards of the City applicable to all users of the public way.

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 Permit 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.

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 Okmulgee, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

(F) The parties agree that either Okmulgee County District Court (24th Judicial District) or the United States District Court for the Eastern 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, governing body 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 Act" shall refer to the federal statutes at, 47 U.S.C. §522 et. al. as of the effective date of this Agreement.

(B) "Cable Service" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(6) on the effective date of this Agreement.

(C) "Cable System" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(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 _____, 2023.

CoxCom, LLC.:

Name: Roger Ramseyer
Title: Market Vice President

City:

APPROVED by the City Council of the City of Okmulgee, Oklahoma, on the 19th day of September, 2023.

MAYOR

ATTEST:

CITY CLERK

REVIEWED as to form and legality this _____ day of _____, 2023.

Municipal Counselor