

NOTICE & AGENDA
TAHLEQUAH CITY COUNCIL - SPECIAL MEETING

A Special meeting was called by the Mayor to be held at the following location and for the following purposes. A public notice of meeting is hereby being provided in compliance with 25 O.S. § 311.

Date/Time of

City Council Meeting:

Monday, May 16, 2022 at 12:00 p.m.

Place of Meeting:

The meeting will be held at 111 Cherokee Ave. Tahlequah, OK 74464.

-
1. **Meeting called to order.**
 2. **Roll call.**
 3. **Public Comments:** Comments will be accepted from the general public concerning topics that are not included in the meeting's agenda. Individuals will be limited to 3 minutes of speaking time and the cumulative total of all comments from the public shall not exceed 15 minutes. Preference will be given to Tahlequah residents. In compliance with the Oklahoma Open Meeting Act, no action or discussion is permitted by the City Council on any issue or topic raised by a speaker during this public comment period.
 4. **Discussion and possible action to approve, approve with modification(s), or reject Cox Cable Television License Agreement.** Mayor Sue Catron
 5. **Adjourn.**

Filed in the office of City Clerk
@ 2:10 p.m. by Tat
Chief of Police

COX CABLE TELEVISION LICENSE AGREEMENT

This License Agreement (“Agreement”) is made and entered into this 16th day of May, 2022, by and between the City of Tahlequah, 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, Cox has requested, and the City has agreed, to grant Cox a license pursuant to the terms contained herein, thereby ensuring a fair and level playing field for all video providers in the City; and

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

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 License 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 License 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 places 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 License.

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 ("Cable Services Provider 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 License 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 License 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 License 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 License 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 License 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 License Fee has been properly calculated.

(B) Cox and City agree that the License 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) 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 written notice to the City, if (i) state or federal law changes in a manner that would allow Cox to opt into license 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.

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

(F) The parties agree that either Cherokee County District Court (15th 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, 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 Act" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522 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 _____, 2022.

CoxCom, LLC.:

Name: Coleen Jennison
Title: SVP, Region Manager

City:

APPROVED by the City Council of The City of Tahlequah, Oklahoma, on the ____ day of _____, 2022.

MAYOR

ATTEST:

CITY CLERK

REVIEWED as to form and legality this 11th day of May, 2022.

City Attorney