

(Published in the Journal Record June 13, June 20, June 27 and July 5, 2012)

**ORDINANCE NO. 24,472**

**AN ORDINANCE ENACTING THE “COX CABLE TELEVISION FRANCHISE AGREEMENT” (FRANCHISE AGREEMENT); GRANTING TO COXCOM LLC, AND ITS SUCCESSORS AND ASSIGNS (“COMPANY”), THE RIGHT AND PRIVILEGE, FOR A TERM OF FIVE (5) YEARS, TO CONSTRUCT, ERECT, OPERATE, MODIFY AND MAINTAIN, IN, UPON, ALONG, ACROSS, ABOVE, OVER AND UNDER THE STREETS, ALLEYS, EASEMENTS AND OTHER PUBLIC WAYS AND PLACES WITHIN THE CITY OF OKLAHOMA CITY (“CITY”), SUCH FACILITIES NECESSARY FOR THE OPERATION AND MAINTENANCE OF A CABLE TELEVISION SYSTEM IN THE CITY; MAKING SAID GRANT SUBJECT TO THE FURTHER PROVISIONS OF THIS FRANCHISE ORDINANCE AND FRANCHISE AGREEMENT; PROVIDING THAT THE RIGHTS AND PRIVILEGES GRANTED HEREIN ARE EXPRESSLY MADE SUBJECT TO THE BROADBAND/CABLE TELEVISION ORDINANCE (CHAPTER 11 OF THE OKLAHOMA CITY MUNICIPAL CODE, 2010) AND THE PROVISIONS OF THE FRANCHISE AGREEMENT ENTERED INTO BY AND BETWEEN THE CITY AND THE COMPANY; INCORPORATING THE BROADBAND/CABLE TELEVISION ORDINANCE AND THE FRANCHISE AGREEMENT BY REFERENCE; REQUIRING THE COMPANY TO STRICTLY COMPLY WITH THE BROADBAND/CABLE TELEVISION ORDINANCE, AND THE FRANCHISE AGREEMENT; PROVIDING THAT THIS FRANCHISE ORDINANCE SHALL BECOME EFFECTIVE ON AUGUST 16, 2012, SO LONG AS ALL CONDITIONS OF SECTION 11-20 OF THE CABLE ORDINANCE HAVE BEEN MET; PROVIDING THAT A VOTE OF THE PEOPLE IS NOT REQUIRED AND HAS BEEN PREEMPTED BY FEDERAL LAW; INCORPORATING EXHIBIT A AS THE COX CABLE FRANCHISE AGREEMENT; PROVIDING A REPEALER OF ORDINANCE NO. 19,654; AND DECLARING THAT NOTHING IN THIS FRANCHISE ORDINANCE SHALL BE CONSTRUED TO PREVENT THE CITY FROM GRANTING A CABLE TELEVISION FRANCHISE TO ANY OTHER PERSON, FIRM OR CORPORATION.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OKLAHOMA CITY:**

**SECTION 1.** The City has authority to grant a non-exclusive franchise to a cable television operator for the right to use the public streets, and other public ways, for the purpose of maintaining and operating a cable television business within the City.

**SECTION 2.** The City granted an initial franchise to the Company’s predecessor in interest on February 27, 1979. The City renewed the franchise with the Company in 1991 and said franchise was extended through July 2, 2012, and again through August 16, 2012. Said franchise was amended by Ordinance No. 23,437 effective on October 15, 2007. Pursuant to these franchises, the Company has continuously used its authority granted by the franchises to conduct a cable television business in the City for the use, benefit and enjoyment of all the City’s inhabitants who chose to avail themselves of such service.

**SECTION 3.** The Company, an incumbent cable operator in Oklahoma City, has requested that its cable television franchise be renewed pursuant to Section 626 of the federal Cable Act, 47 U.S.C. § 546.

**SECTION 4.** The continued construction, installation, maintenance and operation of the Company's Cable Television System involve the occupation of and placement of private commercial facilities in the public streets, and other public ways within the City.

**SECTION 5.** The City has relied on the Company's representations and has considered the information that the Company has presented to it related to the Company's request for its cable television franchise renewal.

**SECTION 6.** The City and the Company have informally agreed on the terms and conditions of a renewed cable television franchise.

**SECTION 7.** The City held a public hearing, which afforded the public adequate notice and opportunity for comment on the renewed cable television franchise and after considering the Company's request and proposal for renewal, and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

- a. The business of delivering cable television services to the residents of the City is a business affected with a public interest.
- b. The Company is a cable television business that has embraced the privilege of conducting such a cable television business in the City.
- c. The construction, installation, maintenance and operation of a cable system involves the occupation of and placement of private commercial facilities in the public streets and other public ways within the City, which is essential to the performance of the general function or purpose of the Company.
- d. The Franchise granted to the Company by the City complies with applicable local, state, and federal laws and regulations.
- e. The Franchise granted to the Company is nonexclusive.

**SECTION 8.** The City Council hereby enacts the Cox Cable Franchise Agreement attached hereto as Exhibit A and grants the Company a franchise for a cable television system in accordance with the terms and conditions of the said Agreement, which is incorporated herein by reference as if fully set forth herein.

**SECTION 9.** This Ordinance No. 24,472 shall be in force and effect on August 16, 2012, so long as all requirements of Section 11-20 of the Broadband/Cable Television Ordinance (Cable Television Ordinance) have been met.

**INTRODUCED** and **READ** in open meeting of the Council of the City of Oklahoma City this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**PASSED** by the Council of the City of Oklahoma City this \_\_\_ day of \_\_\_\_\_, 2012.

**SIGNED** by the Mayor of the City of Oklahoma City this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
City Clerk

**REVIEWED** for form and legality.

  
\_\_\_\_\_  
Assistant Municipal Counselor

**EXHIBIT A**

**THE COX CABLE TELEVISION FRANCHISE**

**A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN  
THE CITY OF OKLAHOMA CITY, OKLAHOMA AND  
COXCOM, LLC**

## CABLE TELEVISION FRANCHISE AGREEMENT

This Cable Television Franchise Agreement (the "Agreement" or "Franchise") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between The City of Oklahoma City, a municipal corporation, hereafter referred to as the "City", and CoxCom, LLC, a Delaware limited liability company qualified to do business in the State of Oklahoma, hereafter referred to as the "Company."

### WITNESSETH:

**WHEREAS**, the City has authority to grant a franchise to a cable television operator for the right to use the public streets, and other public ways, for the purpose of maintaining and operating a cable television business within the City; and

**WHEREAS**, the business of delivering cable service to the residents of the City is a business affected with a public interest; and

**WHEREAS**, the City granted an initial franchise to the Company on February 27, 1979. The City renewed the franchise with the Company in 1991. The franchise was amended pursuant to Ordinance No. 23,437, and was effective on October 15, 2007. Pursuant to these franchises, the Company has continuously used its authority granted by the franchises to conduct a cable television business in the City for the use, benefit and enjoyment of all the City's inhabitants who chose to avail themselves of such service; and

**WHEREAS**, on February 3, 2009, the Company properly requested the renewal of its current nonexclusive franchise with the City, which was set to expire on January 2, 2012, but was extended by the City and the Company until July 2, 2012, and again until August 16, 2012, and said franchise will expire at midnight on August 16, 2012, to construct, operate, maintain, update and reconstruct a cable system in the City; and

**WHEREAS**, the construction, installation, maintenance and operation of such a cable system involves the occupation of and placement of private commercial facilities in the public streets and other public ways within the City, which is essential to the performance of the general function or purpose of the Company; and

**WHEREAS**, the City has relied on the Company's representations and has considered the information that the Company has presented to it; and

**WHEREAS**, based on the Company's representations and information, and in response to its request for renewal, the Council has determined that, subject to the provisions of the Cable Ordinance, and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to the Company, to supersede the prior franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest.

**NOW, THEREFORE**, in consideration of the City's grant of a new franchise to the Company; the Company's promise to provide Cable Service to residents of the City pursuant to and consistent with the Broadband/Cable Television Ordinance (Chapter 11 of the Oklahoma City Municipal Code, 2010, as amended), this Franchise, and the terms and conditions set forth herein, and all other local, state and national laws and regulations as may be amended from time to time;

and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

**THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:**

**ARTICLE 1**  
**GRANT, TERM AND NATURE OF FRANCHISE**

**SECTION 1. Short Title.** This cable television franchise agreement shall be known and may be cited as the “Cox Cable Television Franchise.”

**SECTION 2. Definitions.** The word “City” as used herein shall mean The City of Oklahoma City in Oklahoma, Canadian, Cleveland, and Pottawatomie Counties, State of Oklahoma, and the word “Company” as used herein shall mean CoxCom, LLC, d/b/a Cox, a limited liability company organized and existing under the laws of the State of Delaware and licensed to do business in the State of Oklahoma, and its successors and assigns. All of the definitions contained in Section 11-1 of the Oklahoma City Municipal Code, 2010, as it may be amended from time to time, are expressly incorporated herein.

**SECTION 3. Grant.** The City hereby grants to the Company a non-exclusive Franchise to install, construct, operate and maintain a Cable Television System to provide Cable Television Services under such terms and conditions as are set forth in this Agreement. This franchise does not grant the Company any right of eminent domain, nor does it grant the authority to provide telecommunications service or any information service.

Any requirement, duty, obligation, or privilege arising from the Broadband/Cable Television Ordinance (Chapter 11 of the Oklahoma City Municipal Code, 2010), not specifically mentioned herein, is incorporated into this Franchise Agreement just as if it had been fully set forth. All words used in this Franchise Agreement shall have the same meanings as set forth in the definitions contained in Section 11-1 of the Broadband/Cable Television Ordinance (Cable Television Ordinance).

**SECTION 4. Franchise Area.** This Franchise is granted for the entire corporate boundaries of the City as of the Effective Date of August 16, 2012, and shall also include any additions thereto, by annexation or other legal means, during the term of the Franchise. The Company shall provide Cable Television Service to the entire franchise area pursuant to Section 11-25 of the Broadband/Cable Television Ordinance.

**SECTION 5. Service Discrimination Prohibited.** The Company is prohibited from denying access to Cable Service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. The Company shall not discriminate among subscribers and potential subscribers to Cable Service.

**SECTION 6. Legal Compliance.** The Company shall comply with all applicable federal, state and local laws and standards with respect to the construction, maintenance and operation of a cable system.

**SECTION 7. Term.** The City hereby grants to the Company the right and privilege, for a term of five (5) years, commencing on August 16, 2012, to construct, erect, operate, modify and maintain, in, upon, across, above, over and under the streets, alleys, easements and other public ways and places now laid out or dedicated within the City, and all extensions thereof or additions

thereto within the City, such towers, antennas, cables, electronic equipment and other network appurtenances necessary for the operation and maintenance of a Cable Television System within the City; provided, however, that this grant shall be exercised by the Company pursuant to and in full compliance with the further provisions of this Franchise and the City's Cable Television Ordinance.

**SECTION 8. Rights and Privileges.** The rights and privileges granted by this Franchise Ordinance are expressly made subject to and shall be limited by: (1) the provisions of the Broadband/Cable Television Ordinance, which ordinance is codified as Chapter 11 of the Oklahoma City Municipal Code, 2010, as it presently exists or may hereafter be amended; (2) the provisions of this Franchise Agreement entered into by and between The City and the Company; (3) the City's City Charter; (4) the Oklahoma State Constitution; (5) Oklahoma State law; and (6) the Federal Cable Act of 1984, as amended. The provisions of Chapters 11 and 50 of the Oklahoma City Municipal Code, 2010, are specifically incorporated and made a part of this Franchise Agreement by reference and said provisions shall be strictly complied with by the Company during the life of the franchise.

**SECTION 9. Written Acceptance.** After this Franchise is approved by the Council of the City, the Company shall file its written acceptance with the City Clerk in accordance with the terms and conditions of Section 11-20 of the Cable Television Ordinance.

**SECTION 10. Effective Date.** This Franchise Ordinance shall become on August 16, 2012, so long as the conditions of Section 11-20 of the Cable Television Ordinance (Chapter 11 of the Oklahoma City Municipal Code, 2010) have been met. The Oklahoma Attorney General has opined (2002 OK AG 21) that the Oklahoma Constitutional provision requiring a vote of the people to approve the grant or renewal of franchises is preempted by 47 U.S.C. §§541 and 546 of the Communications Act of 1934 as amended; therefore, renewal of this franchise shall not be submitted to a vote of the citizens of Oklahoma City.

**SECTION 11. Additional Cable Franchises.** Nothing in this Agreement shall be construed to prevent the City from granting a cable franchise to any other person, firm or corporation. The City shall comply with applicable law concerning the granting of additional cable television franchises. In the event the City grants any other entity a cable television franchise with terms and conditions that are more favorable or less burdensome, to use the public streets or rights-of-way to deliver cable services to residents, the Company may request that this Cable Franchise be modified.

**SECTION 12. Non-Waiver.** Neither the Company nor the City shall be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the other party to promptly enforce compliance with this Franchise, nor does either party waive or limit any of its rights under this Franchise by reason of such failure or neglect.

## **ARTICLE 2** **GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

**SECTION 1. Right to Construct.** The Company may perform all construction in the Rights-of-Way for any facility needed for the maintenance, operation or extension of the Company's Cable Television System, subject to the terms of this franchise and the Oklahoma City Municipal Code, 2010, Chapters 11 and 50 and generally applicable laws.

**SECTION 2. General Standard.** All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law.

**SECTION 3. Joint Trenching/Boring.** To the extent it makes economic sense, the Company shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, telecommunications, gas and electric companies), licensees, permittees and franchisees so as to reduce the number of Right-of-Way cuts within the City.

**SECTION 4. Removal at Expiration of the Franchise.** At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall, subject to any other lawful and valid authorizations the Company may have to use the System in Public Rights-of-Way, have the right to require the Company, at the Company's sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition. The City may not order removal of the System, or portions thereof, until the parties have exhausted all applicable processes governing cable television franchise renewals set forth in 47 U.S.C. § 546. Should the Company fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City, or be removed, altered or relocated by the City at the cost of the Company. The City shall not be liable to the Company for damages resulting from such removal, alteration or relocation.

**SECTION 5. Right-of-Way Use Conditions.**

In addition to complying with the construction and street occupancy standards set forth in the Cable Television Ordinance and Chapter 50 of the Oklahoma City Municipal Code, 2010, the Company shall comply with the following:

(a) The Company shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduits, or other facilities, on public property, until written approval of the City, is obtained, which approval by the City shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the Company shall be a vested interest and such poles or structures shall be removed or modified by the Company at its own expense whenever the City determines that the public convenience would be enhanced thereby.

(b) The facilities of the Company shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of network construction. In the areas where either telephone or electric utility facilities are installed aerially at the time of network construction, the Company may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Company shall likewise place its facilities underground.

(c) The Company shall notify the City as required by Chapter 50 "Streets and Sidewalks" of the Oklahoma City Municipal Code, 2010, as amended prior to beginning any work, of the Company's intention to commence any construction in any streets. The City shall cooperate with the Company in granting any permits required, providing such grant and subsequent construction by the Company shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with provisions of Chapter 50, "Streets and Sidewalks" of the Oklahoma City Municipal Code, 2010, as amended.



(d) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Company shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Suitable barricades, flags, lights, flares or other safety devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Company shall be placed in such a manner as not to interfere with the usual travel on such public way.

(e) The Company shall, at its own expense and in a manner approved by the City, restore to City standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf. Company shall guarantee and maintain such restoration for a period of one year against defective materials or workmanship.

(f) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the City Manager or the Chief of the Fire or Police Department, to remove or damage any of the Company's facilities, no charge shall be made by the Company against the City for restoration and repair, unless such acts taken by the City amount to gross negligence.

(g) The Company shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the City. Trimming of trees on private property shall require written consent of the private property owner.

(h) The Company at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of the Company when in the opinion of the City Manager the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction or reconstruction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structures or improvements by governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, urban renewal and redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The Company shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of the Company in place. Nothing hereunder shall be deemed a taking of the property of the Company and the Company shall not be entitled to any costs, fees, damages or surcharges by reason of anything hereunder. To the extent there are state or federal funds available to compensate the Company for the cost of relocating its facilities, the Company shall be offered such compensation on a nondiscriminatory basis.

(i) Upon failure of the Company to commence, pursue or complete any work to be done in any street and required by law or by the provisions of the Cable Television Ordinance, within the time prescribed and to the satisfaction of the City Council, the City Council may, at its option, cause such work to be done and the Company shall pay to the City the cost thereof in the itemized amounts reported by the City Manager to the Company within thirty (30) days after receipt of such itemized report.

(j) The Company shall make no paving cuts or curb cuts unless absolutely necessary, but only after written permission has been given by the City Manager.

(k) The Company shall install, in conduit, all cable passing under any roadway.

(l) Except as provided for herein and in Chapters 11 and 50 of the City Code, the City shall not unreasonably block, restrict, or limit the construction of the Company's Cable System and shall process any and all applicable permits for the installation, construction, maintenance, repair, removal or other activities associated with the Company's Cable System of any kind in a timely and prompt manner.

(m) Except as provided for herein and in Chapters 11 and 50 of the City Code, the City shall process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the placement of the Company's Cable System in a timely and prompt manner.

#### **SECTION 6. Insurance.**

The Company shall maintain insurance in the amounts and pursuant to the conditions set forth in Section 11-76(b) & (c) of the Broadband/Cable Television Ordinance. Further, the Company shall indemnify and hold the City harmless in compliance with, and to the extent as set forth in, Section 11-76(a) of the Broadband/Cable Television Ordinance.

### **ARTICLE 3** **FRANCHISE FEE/CONSIDERATION**

#### **SECTION 1. Franchise Fee.**

(a) The Company shall pay to the City a franchise fee of five percent (5%) of the gross revenues derived from operation of the Cable System by the Company to provide cable service, as compensation for use of the public streets and other public ways. Said franchise fee shall comply with the provisions of the Broadband/Cable Television Ordinance, in particular, Section 11-16 thereof. The Franchise Fee shall be paid on a quarterly basis with payments made no later than forty-five (45) days following the end of each calendar quarter. Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.

(b) Such payment shall be in addition to any other payment, charge, permit, fee or bond owed to the City by the Company and shall not be construed as payment in lieu of personal or real property taxes levied by State, County or local authorities; provided, however, such fee shall include and be in lieu of any fee required by the City for any construction, building, or other permit for use or occupation of, or work in, the streets, except for the inspection fee and service charge levied under Article VII of Chapter 13 of the Oklahoma City Municipal Code, 2010.

**SECTION 2. Additional Commitments Not Franchise Fees.** No term or condition in this Franchise shall in any way modify or affect the Company's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Company's Gross Revenues in any 12-month period, the Company agrees that the additional commitments herein are not franchise

fees, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to subscribers.

**SECTION 3. Alternative Compensation.** In the event the obligation of the Company to compensate the City through franchise fee payments is lawfully suspended or eliminated, in whole or part, then the Company shall pay to the City such other compensation as is permitted by state or federal law.

**SECTION 4. Audit.** The City shall have the right to conduct audits pursuant to Section 11-17(c) of the Broadband/Cable Television Ordinance.

#### **ARTICLE 4** **CUSTOMER SERVICE STANDARDS**

**SECTION 1. Compliance with FCC Customer Service Standards.** The Company shall comply with all customer service standards of the Federal Communications Commission, as may be set forth in the applicable sections of the Code of Federal Regulations, including without limitation 47 C.F.R. §§ 76.309, 76.1602, 76.1603, 76.1604, and 76.1619.

**SECTION 2. Rate Review.** The City reserves the right to regulate all rates and charges for Cable Service consistent with applicable laws and regulations.

#### **ARTICLE 5** **TERMINATION**

If this franchise ordinance is terminated, the Company shall comply with all further requirements as set forth in Section 11-82 of the Cable Ordinance.

#### **ARTICLE 6** **ACCESS CHANNELS AND SERVICES**

**SECTION 1. Access Channels.** The Company shall continue to provide two (2) Access Channels to Subscribers on the basic service tier within the Franchise Area throughout the term of this Franchise. One channel is designated as a Government Access Channel, programmed by the City and the second channel is designated as an Educational Access Channel, programmed by an educational consortium designated by the City. The City may designate an Access Channel as a governmental access or educational access channel at its sole discretion and shall have sole editorial control over such channels.

**SECTION 2. Location of Access Channels.** The Company shall provide ninety (90) days written notice to the City prior to any relocation of the Government Access Channel.

**SECTION 3. Access Interconnections.** The Company may interconnect the Access Channels of the Cable System with the Access Channels of any other cable service provider in the City in accordance with applicable law.

**SECTION 4. Access Channel Quality.** The Access Channels required shall transmit the primary video signal or stream, related audio, and accompanying program related material within the Access Channel video signal or stream at the same or better level of technical quality and

reliability as commercial signals or streams carried by the Company on its System, so long as the video signal or stream comes to the Company at that level of quality. "Program related material" shall mean (i) closed captioning for the hearing impaired, (ii) one alternative language or secondary audio program feed, (iii) program ratings information, (iv) such other material as may be essential to or necessary for the delivery of distribution of the primary video stream in a digital form; (v) video description information; and (vi) any material the FCC specifically identifies as program-related material that a cable operator retransmitting a broadcast television signal pursuant to FCC must-carry rules is required to retransmit as part of a broadcast television signal on the Company's basic service tier; provided, however, that Company is technically capable of passing through any such program related material; and provided, further, that program related material shall not include any interactive element or transactional application that requires the functionality of a two-way cable or similar plant or otherwise suggests that a return path will be provided, including, without limitation, any feature that prompts a customer to attempt to utilize "triggers" or other options that are enabled by a return path. All such related audio and other material shall be provided as part of the Access Channel programming feed transmitted to the Company; Company shall not be required to insert such related audio and other material onto an Access Channel. The Company shall not degrade the signal received at the demarcation points at City Hall and the Oklahoma City Community College and shall provide the necessary equipment on the Company's side of the demarcation point to retransmit such programming to Subscribers.

**SECTION 5. Return Lines.** The Company shall provide an activated cable or fiber connection to the Company's headend from City Hall, 200 N Walker, Oklahoma City, Oklahoma and to the Company's headend from the Oklahoma City Community College, 7777 S May Avenue, Oklahoma City, Oklahoma that will allow video programming produced by the City and the education consortium to be cablecast on the Access Channels. The parties shall agree on the location of a demarcation point at City Hall and at the Oklahoma City Community College. The Company shall provide such activated cable or fiber connection at no cost to the City and shall have no obligation to require any third party access to such video path on the Company's side of the demarcation point, unless required by state or federal law.

**SECTION 6. Connection of Public Facilities.**

(a) Existing Service Locations. The Company shall continue to provide, at no cost to the City and without the need for separate reception/converter equipment, basic service to the existing outlets at all existing service locations at public schools, public libraries, and municipal buildings in the City as of the effective date of this Franchise.

(b) Audit. Upon request of either party, the Company and the City shall conduct an audit to ascertain the existing service locations and number of existing outlets and equipment provided pursuant to this Section 6. The results of the audit must be mutually agreed upon by the parties. The parties agree to cooperate with each other to complete such audit.

(c) New Installations.

(1) The Company shall provide within the service area, without charge for installation, one (1) service drop to each occupied municipal building located within two hundred (200) feet of the Company's activated cable network. The Company shall provide its basic service, or equivalent, without the need for separate reception/converter equipment, at no charge to two (2) service outlets at each installation location, which

shall not be located in areas of buildings generally available to the public, such as waiting rooms and lobbies.

(2) If during the term of this Franchise the City moves its police department headquarters to a new building, the Company shall provide the same number of complimentary basic service outlets as in the existing building. The City shall not be required to pay monthly service charges for the transferred outlets. The City shall pay the Company for a drop installation beyond two hundred (200) feet and for internal wiring provided by the Company.

(d) Service Extensions. The service provided in subsection (a) and (c) above, shall not be extended by the persons receiving such service to other outlets within the building without the written approval of the Company. All requests for service connections, or extensions of service within existing locations, shall be made in writing by the City's Director of Public Information and Marketing, or the Director's designee, to the Company. The entity receiving such service shall pay all costs, including installation and monthly service charges, for any extension beyond the existing outlets provided in subsections (a) and (c), above.

## **ARTICLE 7** **DISPUTE RESOLUTION**

**Notice of Noncompliance and Opportunity to Cure.** In the event either party believes that the other party has not complied with the terms of the Franchise, it shall notify the other party in writing with reasonably specific details regarding the nature of the alleged noncompliance or default. Prior to issuing the written notice of noncompliance or default, the City shall make a good faith effort to contact the Company in an attempt to resolve the issue through good faith consultation in the ordinary course of business. The City Manager, or his designee, has the authority to make initial determinations regarding noncompliance with the Franchise and to issue written notice of any alleged violations. The City Manager, or his designee, may mediate any controversy or charge arising from the operations of the Company under this Franchise Agreement.

## **ARTICLE 8** **MISCELLANEOUS PROVISIONS**

**SECTION 1. Severability.** If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

**SECTION 2. Choice of Forum.** Any litigation between the City and the Company arising under or regarding this Franchise shall occur, if in the state courts, in Oklahoma County District Court, and if in the federal courts, in the United States District Court for the Western District of Oklahoma.

**SECTION 3. Force Majeure.** The Company shall have no liability to City for penalties or damages, nor shall City have the right to terminate this Franchise as a result of any failure or delay of the Company to perform its obligations hereunder if such failure or delay is caused by factors beyond the control of the Company, including without limitation, war, civil disturbance, flood or other Act of God, laws, regulations, rules or orders of any governmental agency, sabotage, or strikes. In the event that delay in performance or failure to perform affects only part

of the Company's capacity to perform, then the Company shall perform to the extent it is reasonably able to do so. In correcting any causes of non-performance or delay, and in effecting any partial performance, the Company shall take all necessary corrective actions as expeditiously as possible without unduly endangering the health, safety and integrity of the Company's employees or property, or the health, safety and integrity of the public, the rights-of-way, public property or private property.

**SECTION 4. Notice.** Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

(a) Notices to the Company shall be mailed to:

Cox Communications – Oklahoma  
ATTN: Vice President, Government Affairs  
6301 Waterford Blvd.  
Oklahoma City, OK 73118

with a copy to:

Cox Communications, Inc.  
ATTN: Law & Policy  
1400 Lake Hearn Dr.  
Atlanta, GA 30319

(b) Notices to the City shall be mailed to:

City of Oklahoma City  
Office of the City Clerk  
200 North Walker  
Oklahoma City, Oklahoma 73102

with a copy to:

City of Oklahoma City  
Office of Public Information and Marketing  
200 North Walker Avenue  
Oklahoma City, OK 73102

(c) The Company shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of the Company and whose acts will be considered to bind the Company.

**SECTION 5. Binding Acceptance.** This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

**SECTION 6. Governing Law.** This Franchise Agreement shall be governed in all respects by the law of the State of Oklahoma and the federal cable act.

**SECTION 7. Captions and References.** The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

**SECTION 8. Contractual Obligation.** The preemption or preclusion of the exercise by the City of any of its police power shall not diminish, impair, alter, or affect any contractual benefit to the City or Company nor any contractual obligation of the Company under this Agreement. Any and all rights, powers, privileges and authorities arising under this Agreement are each and all hereby declared by the City and Company to be contractual in nature and to be for the benefit of the parties.

**SECTION 9. No Third Party Beneficiaries.** This Franchise is for the benefit of the City and the Company. Nothing in this Franchise Agreement grants or is intended to grant any claim, cause of action or right of action for breach of this Franchise Agreement to any person not a party to or the grantor of this Franchise, it being the explicit intent of the parties that this Franchise shall not be construed as a third-party beneficiary contract.

**SIGNATURES NEXT PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

CoxCom, LLC

By: [Signature]  
Senior Vice President  
Title  
Date May 23, 2012

APPROVED by the City Council of the City of Oklahoma City, Oklahoma, on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

Acceptance filed by CoxCom on \_\_\_\_\_, 2012 and received by resolution of the City Council on \_\_\_\_\_, 2012.

REVIEWED for form and legality.  
[Signature]  
Assistant Municipal Counselor