

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**  
**RESOLUTION APPROVING COMMERCIAL SERVICES AGREEMENT FOR**  
**TELECOMMUNICATIONS SERVICE TO THE SARPY COUNTY STADIUM**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, it is necessary to provide telecommunications service to the Sarpy County Stadium.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Chairman of this Board, together with the County Clerk, be and hereby are authorized to execute on behalf of this Board a License Agreement with CoxCom, Inc. d.b.a. Cox Communications Omaha, a copy of which is attached hereto, the same being approved by the Board.

DATED this 19<sup>th</sup> day of October, 2010.

Moved by Tom Richards, seconded by Rusty Hike, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]

Rich Jansen

[Signature]  
[Signature]

Tom Alberts

ABSTAIN:

None

[Signature]  
County Clerk



Approved as to form:

[Signature]  
Deputy County Attorney

## TELECOMMUNICATIONS FACILITIES LICENSE AGREEMENT (Commercial)

This Telecommunications Facilities License Agreement ("Agreement") is entered into this **30th day of September, 2010**, by and between CoxCom, Inc. dba Cox Communications Omaha on behalf of itself and its affiliates ("Cox") and **LOT 1 SCHEWE FARMS (30.791 AC)** ("Owner"). Owner holds title to, or is the authorized agent of the titleholder of, certain real property located **12356 Ball Park Way Omaha, NE**. Owner and Cox desire to enter into this Agreement for Cox to provide its services to the Property under the terms and conditions herein.

**1. Grant of Access.** If Cox elects to serve the property, Owner hereby grants to Cox permission to install and maintain its telecommunications distribution facilities, including but not limited to, equipment, electronics, cabling and wiring and wireless communications equipment ("Facilities") on the Property to provide voice, video and data telecommunications services including, without limitation, wireless communications services ("Services") to Owner's tenants and/or other persons occupying the Property ("Tenants") and to utilize the Property including any building(s) or tower(s) situated thereon, on a non-exclusive basis, for the transmission of wireless communications services and to install and maintain appropriate facilities for such wireless communications services at the Property." Owner further grants to Cox the non-exclusive right to enter the Property including all common areas and facilities to install, connect, disconnect, transfer, service, remove or repair the Facilities during normal business hours, except in case of emergency in which event Cox shall have the right to enter the Property outside of normal business hours. Upon termination of this Agreement, Cox may at its option enter upon the Property and remove any portion or all of the Facilities. Cox's right to enter upon the Property for the purpose of removing the Facilities shall survive termination of this Agreement. At Owner's written request, if such written request is made within ninety (90) days of the termination of this Agreement, Cox shall remove the Facilities (excluding "Internal Wiring" (defined below)) within sixty (60) days of Owner's request. At Cox's option, wiring and cabling may remain on the Property following termination of this Agreement.

**2. Ownership of Facilities.** Except for Internal Wiring, the Facilities are and shall remain the sole and exclusive property of Cox and shall not become fixtures of the Property. Internal Wiring is defined as the wiring, ports and outlets located within a commercial unit receiving Services back to the demarcation point. The demarcation point in the case of telephone Services is the building's minimum point of entry, and for all other telecommunication Services is that point where the cabling or wiring enters the Tenant's individual commercial unit.

**3. Obligations of Cox.** Cox hereby agrees as follows: (i) to keep the Property free of liens resulting from the installation of the Facilities; (ii) Owner shall have no responsibility for the Services provided by Cox to Tenants or for the proper functioning of the Facilities; (iii) to repair any damage to Owner's landscaping, personal property or underground facilities located on the Property (including any necessary replacements), if such damage results directly from Cox's installation of the Facilities, and subject to the removal requirements in Section 1, to restore the Property to as near its condition prior to installation of the Facilities as may be practicable to Owner's reasonable satisfaction; and (iv) to obtain all necessary governmental authorizations for the construction and operation of the Facilities on the Property.

**4. Obligations of Owner.** Owner hereby agrees as follows: (i) not to use or knowingly permit others to use the Facilities or any equipment that interferes with the operation of the Facilities; (ii) not to move, disturb, or alter the Facilities or knowingly permit any third party to do so without Cox's prior written consent; (iii) that this Agreement and Cox's rights granted herein shall be binding upon Owner's successors and assigns; (iv) to notify, and provide a copy of this Agreement to, any successor Property

owner of Cox's rights under this Agreement; (v) that Owner has full authority to execute this Agreement and grant the rights herein granted and there are no prior or existing agreements, nor will there be any agreements during the Term, that would be breached by the execution by Owner of this Agreement or by Cox's provision of the Services; (vi) that Owner shall provide Cox with the name and phone number of Owner's representative who will provide Cox with access to any of Cox's equipment contained within locked facilities; and (vii) to be responsible for locating all private utility lines within the Property which are not identified or covered by the local Utility Protection laws.

Name Ross Richards

Phone Number 593-4358 (work) 740-1920 (cell)

**5. Indemnification.** Owner agrees to indemnify, defend and hold Cox harmless from all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses, including reasonable attorneys' fees (the "Claims") for personal injury or property damages arising out of (a) injuries or damage to Cox's employees, agents or the Facilities arising out of or in connection with the negligent acts or omissions or intentional misconduct of Owner, its agents or employees; or (b) Owner's breach of this Agreement. Cox agrees to indemnify, defend and hold Owner harmless from all Claims, suits proceedings, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) for personal injury or property damages arising out of or in connection with (a) the negligent acts or omissions or intentional misconduct of Cox's employees and agents in the installation of the Facilities; or (b) Cox's breach of this Agreement. This Section 5 (Indemnification) shall survive the expiration or termination of this Agreement.

**6. Term.** The "Term" shall begin upon execution by the parties and continue for three (3) years from the first day of the first full calendar month following both parties' execution of this Agreement. Thereafter, the Term shall continue for as long as Cox has Tenants subscribing to Services within the Property. If, after twelve (12) months from the date of the last Service provisioning to any Tenant as evidenced by Cox's records, Cox has not resumed Service to any other Tenants or Cox has not received any written request from any current or future Tenant to provide Service to the Property, this Agreement will terminate and Cox shall vacate and remove its Facilities from the Property in accordance with Paragraph 1 of this Agreement. The foregoing notwithstanding, Cox may terminate this Agreement if Cox is unable to provide any Services because of any law, rule, regulation or judgment of any court, or any similar reason beyond the reasonable control of Cox, or if the applicable franchise or licenses are assigned, terminated, surrendered or revoked for any reason.

**7. Default.** If either party fails to perform any material condition or agreement to be performed or observed by it hereunder and such default is not cured within thirty (30) days after written notice from the other party, the non-defaulting party may immediately terminate this Agreement by providing written notice to the defaulting party.

**8. Subordination.** This Agreement is subordinate to all valid ground leases, mortgages, and/or deed of trust of record that may now or hereafter affect the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof.

**9. Insurance.** Cox shall maintain (a) comprehensive liability insurance with a policy limit of at least \$2,000,000 to protect Owner against bodily injury or damage resulting from the installation, operation or maintenance of the Distribution System on the Property and (b) Worker's Compensation insurance in statutory amounts. All policies written pursuant to this Section 8 shall be with insurers (i) licensed to do VIII. All policies, including any renewals thereof, shall specify that such policy cannot be canceled without

business in the state in which the Property are located and (ii) carrying an A.M. Best rating of at least A- at least thirty (30) days written notice to the other party.

**10. Miscellaneous.** This Agreement is the entire understanding between the parties and supercedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. This Agreement is governed by the laws of the state where the Property is located. Cox may assign this Agreement without consent to any affiliate or any entity merging with or acquiring substantially all of the assets of Cox. Notices required to be given shall be sent by United States Certified Mail or nationally recognized courier to the address set forth below each party's signature. This is not a service agreement nor is Cox obligated to provide Services to the Property unless and until its Facilities have been constructed on the Property, which construction shall be at the sole discretion of Cox. Following the execution of this Agreement by Owner, Cox shall determine in its sole discretion the appropriate date to begin construction and/or installation of Cox Facilities on the Property to provide telecommunications services to Owner's Tenants. All equipment placed in the cabinet room or MPOE by Cox belongs to Cox and in the event of bankruptcy of Tenant or Owner, or disconnection order, Cox retains the right to recover its equipment at anytime (during normal business hours) within thirty (30) days.

Owner: Sarpy County

Signature: Joni Albrecht

Name: Joni Albrecht

Title: Chairman

Date: 10/19/2010

Address: 1210 Golden Gate Dr.

Papillion NE 68046

Telephone: 402-593-4155

Fax: 402-593-4471

COXCOM, INC. dba Cox Communications

Signature: Guy Cherp

Name: Guy Cherp

Title: VP Cox Business Services

Date: 12/18/10

Address: 401 N. 117<sup>th</sup> St  
Omaha NE 68154

Telephone: 402-934-0252

Fax: 402-504-9337

# Sarpy County Board of Commissioners

1210 GOLDEN GATE DRIVE  
PAPILLION, NE  
593-4155  
[www.sarpy.com](http://www.sarpy.com)

ADMINISTRATOR Mark Wayne  
DEPUTY ADMINISTRATOR Scott Bovick  
FISCAL ADMIN./PURCHASING AGT. Brian Hanson



## COMMISSIONERS

**Rusty Hike** District 1  
**Joni Albrecht** District 2  
**Tom Richards** District 3  
**Pat Thomas** District 4  
**Rich Jansen** District 5

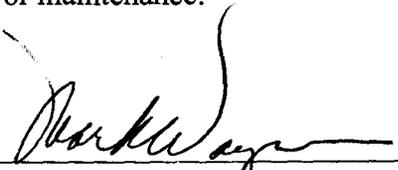
## MEMO

To: Sarpy County Commissioners  
From: Mark Wayne, County Administrator  
Re: Telecommunications Facilities License Agreement

The Agreement on the agenda allows service to be provided to the Ballpark. The Royals will pay for service and there is not cost to the County for installation or maintenance.

The County must sign the agreement as property owner.

October 1, 2010

  
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Mark Wayne  
County Administrator

MW/lt