

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING COMMERCIAL SERVICES AGREEMENT

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, Sarpy County requires a Metro Ethernet connection to be used at the Juvenile Justice Center, and;

WHEREAS, Sarpy County will enter into an agreement with Cox Communications Omaha, LLC; Cox Nebraska Telcom, LLC to provide said services, and the Commercial Services Agreement evidencing same is attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the Commercial Services Agreement between Cox Communications Omaha, LLC; Cox Nebraska Telcom, LLC and Sarpy County a copy of which is attached hereto, the same being approved by the Board.

DATED this 2nd day of November, 2010.

Moved by Rich Jansen seconded by Rusty Hoke, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
County Clerk

none

none

ABSTAIN:

none



Approved as to form

[Signature]
Deputy County Attorney

A. Terms and Conditions of Regulated Service

1. **Tariffs** Regulated Services are provided pursuant to the regulations of the FCC and the regulatory body of the state where the Cox office providing these services is located (which regulations are subject to change), and the rates, terms, and conditions contained in tariffs on file with state and federal regulatory authorities. Cox may amend such tariffs and regulated Service shall be subject to such tariffs, as amended. Customer must disclose to Cox if Customer intends to use the Services with payphone service. After the initial term, this Agreement shall automatically renew for one (1) year terms at the same rates, terms and conditions unless a party gives the other written termination notice at least thirty (30) days prior to the expiration of the then existing term. The tariffs contain Service cancellation or termination charges due to cancellation or termination of Service prior to the term selected on the first page of this Agreement. Termination charges include, but are not limited to, nonrecurring charges, charges paid to third parties on behalf of the Customer, and the monthly recurring charges for the balance of the term.

2. **Telephone Numbers** Cox will be the carrier of record for the Customer's assigned telephone numbers, and numbers that are ported to Cox from another carrier. These numbers, while not the property of the Customer, are reserved for their sole usage during the time service is active with Cox, and can be retained for the Customer's use if ported to another carrier at the termination or expiration of this Agreement. All number assignments and use shall be subject to the rules and regulations of the North American Numbering Plan Administrator. Any telephone number designated by Cox in advance of the activation of Cox telephone service is subject to change by Cox. Additional terms and conditions regarding telephone numbers are contained in Cox tariff(s). Certain 10 digit dialed IntraLata calls are billed per minute long distance charges.

3. **State-to-State and International Services** If Customer subscribes to or uses switched access state-to-state and/or International telecommunications Services from Cox, such Services shall be provided pursuant to the terms and conditions contained in Cox Customer Service Agreement which may be found at www.cox.com/telephone/customerservicesagreement.asp and the terms and conditions at www.coxbusiness.com/products/voice/basicpricing/index.html.

4. **PBX Usage, Equipment, and E911 Services** Customer is responsible for ensuring that the Customer Premises Equipment (CPE) such as a Private Branch Exchange (PBX), provisioned on the Company's network is protected from fraudulent or unauthorized access. The Customer is responsible for payment of all charges on their monthly billing statement, including any charges resulting from fraudulent or unauthorized access to any CPE. If Customer uses a PBX in connection with the Services, Customer is responsible for programming the PBX to ensure that agencies receiving E911 emergency calls through the PBX will receive appropriate information about the location of the caller. For certain telephone Services, an embedded multimedia terminal adapter (eMTA), an integrated access device (IAD), or an analog terminal adaptor (ATA) will be provided and installed by Cox at no charge to Customer. **Only the eMTA and ATA will have battery backup provided by Cox. Customer is responsible for battery backup for the IAD. In the event of a power outage, your telephone Service using an eMTA or ATA will continue to operate as usual for up to eight hours with the backup battery provided by Cox. The duration of Service during a power outage using an IAD will depend on Customer's battery backup choice. If the eMTA, ATA, or IAD that supplies your telephone Service is disconnected or removed and/or the battery is not charged, Service, including access to E911, will not be available. Cox uses your telephone Service address to identify your location for E911 Service. To ensure that E911 dispatch receives your correct address, the eMTA, ATA and/or IAD installed in your business should not be moved. Please notify Cox if you would like to move or relocate your telephone Service. It can take up to 2 business days for your new address to be updated.**

5. **PIN Access.** The FCC requires business customers to set up and use a Private Identification Number (PIN) when communicating with Cox to obtain certain information about, or to make certain changes to, their telephone account. Use of this PIN may be waived when communicating with an account representative dedicated to Customer's account. Telephone Service is subject to the Cox privacy policy posted at http://www.cox.com/policy/#Online_Privacy_Policy.

6. **Letter of Agency.** The Letter of Agency executed in connection with this Agreement shall be valid during the term of this Agreement for all telephone lines purchased hereunder. Customer may purchase additional telephone lines under this Agreement for the above location(s) or additional location(s), but at pricing quoted to Customer by Cox at the time Customer orders such additional telephone lines.

B. Unregulated Services and Service not subject to tariffs.

1. **Payment** Customer shall pay for all monthly service charges, plus one-time set-up, installation and/or construction charges. Unless stated otherwise herein, monthly charges for Services shall begin upon installation of Service, and installation charges, if any, shall be due upon completion of installation. Any amount not received by the due date shown on the applicable bill will be subject to interest or a late charge at the maximum rate allowed by law.

Upon notice to Customer, Cox may change Video Service prices periodically during the Term of this Agreement. If applicable to the Service, Customer shall pay sales, use, gross receipts, excise, access, universal service fund assessments, 911 fees, franchise fees, bypass or other local, state and Federal taxes or charges imposed on the use of the Services. Taxes will be separately stated on the Customer's invoice. No interest will be paid on deposits unless required by law.

2. **Service and Installation** Cox shall provide Customer with the "Services" and "Equipment" identified on the first page of this Agreement. Customer is responsible for damage to any Equipment. Customer may use the Services for any lawful purpose, provided that such purpose (a) does not interfere or impair the Cox network or Equipment and (b) complies with the applicable Acceptable Use Policies ("AUP") which are incorporated herein by reference. Customer shall use the Equipment only for the purpose of receiving the Services. Unless provided otherwise herein, Cox shall use reasonable efforts to maintain the Services in accordance with applicable performance standards. For cable modem Internet Services, bandwidth speeds may vary and Customer may not always receive or obtain optimal bandwidth speeds. Cox network management needs may require Cox to modify upstream and downstream speeds. Use of the data, Internet, web conferencing / web hosting Services shall be subject to the AUP at www.coxbusiness.com/acceptableusepolicy.pdf. Web hosting customers may view the AUP by clicking on the Control panel. Upon notice to Customer, the AUP may be amended from time to time during the Term of this Agreement. Customer's continued use of the Services following an AUP amendment shall constitute acceptance.

3. **Service Start Date and Term** This Agreement shall be effective upon execution by the parties. Services shall be provided for the applicable term set forth on the first page of this Agreement and such term of Service shall begin upon installation of Service; provided that if Customer delays installation or is not ready to receive Services, 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 resulting from delays in meeting service dates due to construction delays or reasons beyond its control.

4. **Customer Responsibilities** Customer is responsible for all internal wiring, Customer equipment (e.g. Customer phones, handsets, keystones, etc.), installation of hardware and software on Customer equipment, and arranging all necessary rights of access for Cox including space for cables, conduits, and equipment as necessary for Cox-authorized personnel to install, repair, inspect, maintain, replace, or remove any and all facilities and Equipment provided by Cox. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for Equipment. Customer shall use the Services in compliance with all applicable laws and ordinances, as well as applicable leases and other contractual agreements between Customer and third parties. If Customer engages in a public performance of any copyrighted material contained in any of the Services, the Customer, and not Cox, shall be responsible for obtaining any public performing licenses. Customer is responsible for ensuring that Customer's equipment is compatible for the Services selected and with the Cox network.

5. **Equipment** Unless otherwise provided herein, Customer agrees that Cox shall retain all rights, title and interest to facilities and equipment installed by Cox, and Customer shall not create or permit to be created any liens or encumbrances on such equipment. Internal Wiring shall not be considered equipment and shall become the property of Customer upon initiation of Service. Cox shall install equipment necessary to furnish the video Services to Customer. Customer shall not modify or relocate equipment installed by Cox without Cox' prior written consent. Customer shall not permit tampering, altering, or repair of the Equipment by any person other than Cox's authorized personnel. Customer shall, at the expiration or termination of this Agreement, return the Cox equipment in good condition, ordinary wear and tear accepted. In the event the Equipment is not returned to Cox in good condition, Customer shall be responsible for the value of such equipment. Cox shall repair any equipment owned by Cox at no charge to Customer provided that damage is not due to the negligence of Customer. If additional equipment, including but not limited to, televisions, monitors, computers, circuits, software, or other devices, are required by Customer to use the Services, Customer shall be responsible for such equipment.

6. **Resale of Service** Unless authorized in writing by Cox, Customer may not resell any portion of the Service to any other party; provided, however, Customer may, with Cox's prior written consent, resell web hosting for third parties through the Services. Customer shall be responsible for any software and content displayed and distributed by Customer or Customer's web hosting customers, if any.

7. **Default** If Customer fails to comply with any material provision of this Agreement or any other agreement with Cox, including, but not limited to failure to make payment as specified either in this Agreement or any other Agreement with Cox, then Cox, may pursue one or more of the following courses of action upon notice to Customer as required by tariff or applicable law: (i) terminate service whereupon all sums then due and payable shall become immediately due and payable, (ii) suspend all or any part of

Services, and/or (iii) pursue any other remedies, including reasonable attorneys' fees, as may be provided at law or in equity, including the applicable termination liabilities.

8. **IP Address/Domain Name Registration** Cox allocates IP addresses to Customer according to InterNIC guidelines. All IP addresses assigned by Cox must be relinquished by Customer upon the expiration or termination of this Agreement. IP addresses are subject to the IP policy in the AUP. Domain name registrations are subject to rules promulgated by the domain name registrar, which may be amended from time to time and are presently posted at Register.com:

<http://www.register.com/retail/policy/servicesagreement.rcm> or Versign: http://www.netsol.com/en_US/legal/static-service-agreement.jhtml. Customer is responsible for payment and maintenance of domain name registration.

9. **Termination** Customer may terminate video, data, VoiceManager, Internet, web hosting, unregulated telephone Services, and/or web conferencing Services before the end of the term selected by Customer on the first page of this Agreement; provided, however, if Customer terminates such Service before the end of the term (except for breach by Cox), or Cox terminates Services for Customer's breach of this Agreement or the AUP, Customer will be subject to termination liability equal to the nonrecurring charges (if unpaid) and 100% of the monthly recurring charges for the terminated Services multiplied by the number of full months remaining in the term commitment. This provision survives termination of the Agreement. After the initial term, this Agreement shall automatically renew for one (1) year terms at the same rates, terms and conditions unless a party gives the other written termination notice at least thirty (30) days prior to the expiration of the then existing term. If Cox is delivering Services via wireless network facilities and there is signal interference with such Service, Cox may terminate this Agreement if Cox cannot resolve the interference by using commercially reasonable efforts.

10. **LIMITATION OF LIABILITY** COX SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL COX BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION OR REMOVAL OF EQUIPMENT UNLESS CAUSED BY THE NEGLIGENCE OF COX. UNDER NO CIRCUMSTANCES WILL COX BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS ARISING FROM THIS AGREEMENT.

11. **Assignment** Customer may not assign or transfer any part of this Agreement without the prior written consent of Cox. Cox may assign this Agreement and Service may be provided by one or more legally authorized Cox affiliates.

12. **Warranties** EXCEPT AS PROVIDED HEREIN, 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 MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

13. **Indemnity** Customer shall indemnify and hold Cox and its respective affiliates, subcontractors, employees or agents harmless (including payment of reasonable attorneys fees) from and against any claim, actions or demands relating to or arising out of Customer's use of the Service including without limitation: (i) any content or software displayed, distributed or otherwise disseminated by the Customer, its employees, or users of the Services, (ii) any claim that Customer's content or registration and maintenance of Customer's selected domain name(s), infringes on the patent, copyright, trademark or other intellectual property right of any third party; (iii) any act in violation of any laws committed by Customer, its employees or users using the Services; and/or (iv) violation by Customer, its employees or authorized users of the Cox AUP.

14. **Viruses, Content, Customer Information** Software or content obtained from the use of Service may contain viruses or other harmful features and Customer is solely responsible for protecting its network, equipment, and software through the use of firewalls, anti-virus, and other security devices. Through the use of the Service, Customer may obtain or discover content that is offensive or illegal and Customer assumes the risk and is solely responsible for its access to such content. Cox may disclose Customer information to law enforcement or to any Cox affiliate. Cox may delete any Internet traffic or e-mail that contains a virus. If Customer operates a wireless local access network in connection with the Services, Customer is solely responsible for the security of its network. Use of the Service is subject to Cox's privacy policy posted at http://www.cox.com/policy/#Online_Privacy_Policy.

15. **Miscellaneous** This Agreement, the tariffs, and the documents referenced herein constitute the entire agreement between Cox and Customer for the Services and equipment. The invalidity or unenforceability

of any term or condition of this Agreement shall not affect the validity or enforceability of any other provision. Except as provided herein, this Agreement may be modified, waived, or amended only by a written instrument signed by the parties. The rights and obligations of the parties under this Agreement shall be governed by the laws of the state where Services are installed. The failure by either party to exercise one or more rights provided in this Agreement shall not be deemed a waiver of the right to exercise such right in the future. Notices required by this Agreement shall be in writing and shall be delivered by hand delivery or express or certified mail, return receipt requested, all postage prepaid, to the other party at the address on this Agreement.

16. **Regulatory Authority-Force Majeure** This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, and administrative orders, as amended. In no event shall either party have any claim against the other for failure of performance if such failure is caused by acts of God, natural disasters including fire, flood, or winds, civil or military action, including riots, civil insurrections, acts of terrorists, or the taking of property by condemnation.

17. **Web Hosting Servers** Cox reserves the right to select the server for Customer's web site for best performance. The Customer understands that the Services provided by Cox may be provided on a shared server. This means that one web site cannot be permitted to overwhelm the server with heavy CPU usage, for example from the use of highly active CGI scripts or chat scripts. If the Customer's web site overwhelms the server and causes complaints from other users, the Customer has outgrown the realm of shared services and will be required by Cox to relocate its web site. If the Customer refuses to comply with this Section, then Cox has the right to terminate Services. Cox will use reasonable efforts to maintain a full time Internet presence for the Customer. The Customer hereby acknowledges that the network may, at various time intervals, be down due to, but not restricted to, utility interruption, maintenance, equipment failure, natural disaster, acts of God, or human error. Cox shall not be liable to Customer for such outages or server downtime.

18. **Digital Millennium Copyright Act** Cox is registered under the Digital Millennium Copyright Act of 1998. Pursuant to 17 U.S.C. Section 512(c)3, if you believe that a Web page hosted by Cox is violating your rights under U.S. copyright law, you may file a complaint with Cox's designated agent. Please contact DMCA@Cox.com for information necessary to file your complaint with Cox.

19. **E-Rate Customers** This paragraph applies only to educational institutions or libraries seeking reimbursement under the Federal Universal Service Fund. Customer shall apply annually to the Schools and Libraries Division, "SLD" for E-Rate funding and Customer shall designate Cox as its provider of Services. Customer shall also provide Cox with all documentation that is in response to all queries, inquires and requests as part of the Program Integrity Assurance (PIA) process within three (3) business days of receipt and/or delivery thereof. Customer also acknowledges that increases and decreases in funding for Services may occur from the SLD. If Customer is denied SLD funding for any reason, Cox may then elect to decrease the level of Services provided to Customer. If full E-Rate funding is not received within 6 months of application date, or by the opening of the application window for the following funding year, then Cox may terminate the Agreement without further liability to either party. Additionally, if full E-Rate funding is not received and Cox elects to terminate the Services during the Term, then Customer may be subject to termination liabilities.

20. **VoiceManager Service** In addition to these terms and conditions, if Customer purchases VoiceManager under this Agreement, the terms and conditions located at <http://www.coxbusiness.com/products/voice/voicemanager> and set forth in Sections A.2, A.3, and A.4 of this Agreement shall apply to VoiceManager. The VoiceManager web site contains descriptions and charges for a network interface fee and ancillary services such as directory assistance, 411 charges, directory listing and operator services. Prices and rates for the network interface fee and ancillary services are subject to change from time to time during the term of this Agreement. The VoiceManager web site is incorporated into this Agreement as if fully set forth herein.

21. **Demarcation** The demarcation point for 1) Cox's telephone service, is the punch-down box installed by Cox at Customer's location; and 2) Cox's internet service, is the Ethernet port of the internet connection provided to Customer by Cox. Unless otherwise agreed by the parties, Customer is responsible for wiring, cabling, equipment and access beyond the applicable demarcation points.



Sarpy County Information Systems
1210 Golden Gate Drive Suite 1128
Papillion, Nebraska 68046

402 . 593 . 2325
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MEMORANDUM

To: County Board
From: Mark L. Walters, Information Systems Director
Subject: Agreement with Cox Communications
Date: October 28, 2010

On November 2, 2010, Information Systems (I.S.) will be requesting the Board sign a 36 month agreement with Cox Communications for a MetroE 1.5Mb connection to the Patrick J. Thomas Juvenile Justice Center (JJC). The monthly charges will be \$212.50. This connectivity will be used for the Voice Over Internet Protocol (VOIP) phones.

Information Systems and the Communications Department are working on removing the old Merlin Phone System at the JJC and connecting it directly to the Avaya phone system located at the Courthouse. This will alleviate many of the phone issues that have been occurring frequently at the JJC facility.

Please contact me if you have any questions or you need any additional details.

cc: Mark Wayne
Scott Bovick
Brian Hanson
Larry Lavelle