

**AGENDA  
SPECIAL MEETING**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. DISCUSSION ITEMS**

1. **Discussion** regarding Wrecker Rotation Policy.
2. **Discussion** regarding Beautification Meters.
3. **Discussion** regarding Silver Star Estimates for Drainage Channel Cleaning.
4. **Discussion** regarding "No Knock" Ordinance.
5. **Discussion** regarding Cox Cable Franchise Ordinances and Agreements.
6. **Discussion** regarding Supplementing Budget for Current Fiscal Year.

**D. EXECUTIVE SESSION**

1. **Discussion** regarding Application of Mid-Con Energy III, LLC and Mid-Con Energy Operating, LLC, Cause CD No. 201505037, Corporation Commission, State of Oklahoma; and, **Proposed Executive Session as authorized by 25 Okla. Stat. §307(B)(4).**

**E. UPDATE ON MANAGEMENT RELATED ISSUES**

**F. ADJOURNMENT**

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY  
CITY MANAGER**

**RE: CONCERNS REGARDING WRECKER ROTATION POLICY**

**DATE: November 5, 2015**

**BACKGROUND:**

Prior to August 2015, there was not a need for a wrecker rotation in Mustang as there was only one wrecker service business located in Mustang. In August, 2014, Mr. Winkelman contacted the Mustang Police Department and requested to be added to the Mustang "Wrecker Rotation" as he had established Bronco Towing, LLC located at 908 W. Highway 152 in Mustang. A copy of that request is attached for your information and review.

The request by Mr. Winkelman necessitated the City of Mustang to pass a resolution to establish a "Wrecker Rotation" for the City of Mustang that adheres to Oklahoma State Statutes Chapter 47, 72-952. Staff, working with City Attorney Miller, developed Resolution No. 16-013 for that purpose and to address Mr. Winkelman's request that a rotation list be created.

Oklahoma State Statutes Chapter 47, 952 reads as follows:

***In cities of less than fifty thousand (50,000) population, all such licensed wrecker or towing services located near or in the city limits of such cities shall be considered as being equal distance and shall be called on an equal basis as nearly as possible.***

Resolution No. 16-013, passed, approved, and adopted by the City Council unanimously not more than 75 days ago, adheres to the Oklahoma State Statutes which may be contrary to what is being communicated to you. A copy of Resolution No. 16-013, as well as the minutes and motions from the meeting that pertain to this item are attached for your information and review.

As you have become aware during my 2+ years of service with the City of Mustang, as well as my 25+ years of public service, subtlety is not my strong suit and I think it's important to be direct when the facts of the issues facing a decision tend to get lost. The crux of the issue is this: Upon the development of a "Wrecker Rotation", Mr. Winkelman thought he would be receiving 50% of the wrecker service business in Mustang as there is only one other wrecker service located in Mustang. However, once a "Wrecker Rotation" was developed per his request in accordance with Oklahoma State Statutes, it allowed wrecker service providers outside of the City Limits of Mustang to also request to be added to the "Wrecker Rotation" – again reference the language outlined in the State Statutes in bold italics above. This brought the number of wrecker businesses from 2 to 4, meaning that he only receives 25% of the potential business rather than 50%.

If the City Council would like alter the course it adopted September 1, 2015, staff would recommend the following be included in a new resolution:

1. Two rotation lists be developed.
  - A. The first list would contain those wrecker service businesses located within the City Limits of Mustang that meet all of the licensing requirements outlined in the Oklahoma State Statutes.
  - B. The second list would contain those wrecker service businesses located outside the City Limits of Mustang but near the city limits that meet all of the licensing requirements outlined in the Oklahoma State Statutes.
2. When wrecker service is needed and/or requested by the Mustang Police Department, the first list would be contacted on a rotating basis. If neither wrecker service provider is available or cannot respond, those wrecker service providers contained on the second list would be contacted on a rotating basis.
3. Under any scenario, if the driver or owner of the vehicle requests to utilize a specific wrecker service provider over another, they shall be permitted to do so. All officers would have a list of licensed wrecker service providers that a driver or vehicle owner could review if they wished to select a wrecker service provider independent of the rotation list.

If the above outlined course is more palatable to the City Council and also addresses the concerns expressed by Mr. Winkelman, staff will develop a Resolution with Mr. Miller's assistance and have it placed on the November 17, 2015 or December 1, 2015 agenda for action by the City Council.

I feel it is important to note that while the course outlined above may address the City Council's concerns as well as those of Mr. Winkelman's, it would not adhere to the Oklahoma State Statutes.

**ATTACHMENTS:**

1. Request by Mr. Winkelman to be added to the Wrecker Rotation.
2. Resolution No. 16-013
3. Minutes from September 1, 2015 City Council meeting.

# BRONCO TOWING, LLC

908 W. HWY 152      MUSTANG, OK 73064

OFFICE: 405-256-6278    FAX: 405-256-6303

BRONCOTOWING1@GMAIL.COM

PLEASE ACCEPT THIS LETTER AS OUR WRITTEN REQUEST TO BE PLACED ON THE MUSTANG POLICE DEPARTMENT TOWING ROTATION. ENCLOSED IS OUR WRECKER LICENSE ISSUED BY THE DEPARTMENT OF PUBLIC SAFETY AND OUR BUSINESS LICENSE ISSUED BY THE CITY OF MUSTANG. IF YOU HAVE ANY QUESTIONS OR CONCERNS, PLEASE DO NOT HESITATE TO CONTACT ME AT THE ABOVE PHONE NUMBER OR MY CELL: 405-464-4315.

SINCERELY,



JIM WINKELMAN

BRONCO TOWING, LLC



**RESOLUTION NO.: 16-013**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MUSTANG,  
OKLAHOMA DESIGNATING WRECKERS TO BE USED WHEN  
IMPOUNDING VEHICLES, CREATING A WRECKER ROTATION  
SYSTEM AND IMPOSING REQUIREMENTS FOR PROVIDING  
WRECKER SERVICES WHEN REQUESTED BY THE CITY OF  
MUSTANG**

Whereas, from time to time it is necessary and/or required that the Mustang Police Department impound vehicles; and,

Whereas, Sec. 114-565 of the Mustang Code of Ordinances provides that every vehicle that is impounded shall be removed to the nearest garage or place of safe keeping designated by the city council; and,

Whereas, the City of Mustang now has more than one wrecker service within and near the City limits, and the City Council desires to establish a system for rotating among wrecker services for responding to requests to impound, tow or otherwise move vehicles.

Now, therefore, be it resolved by the city council of the City of Mustang, Oklahoma as follows:

A. For purposes of this resolution, the following definitions apply:

1. "Wrecker" means any vehicle, other than a transport as defined in 47 O.S. §1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle incapable of self-propulsion. Wrecker does not include a vehicle with a push bumper only.

2. "Wrecker service" means the business of offering the service of a wrecker to tow or otherwise remove a vehicle from the place where it was disabled or impounded to a safe protected storage area in response to official calls from the City.

B. Those persons providing wrecker services that maintain an office and storage facility in or near the limits of the City of Mustang may submit a request to the Mustang Police Department to have their name included on list of available wrecker service providers. By requesting that their name be included on such rotation list, the wrecker service provider certifies and agrees as follows:

1. The wrecker service provider shall maintain a current wrecker license issued by the Oklahoma Department of Public Safety and all licensing requirements in current status;
2. The wrecker service provider shall maintain an office and a storage facility located in or near the limits of the City of Mustang that are located within areas properly zoned for such office and storage;
3. The wrecker service provider shall comply with the terms of this Resolution and with the provisions of the Mustang Code or Ordinances, including but not limited to Chapter 114, Article IX, Impoundment of Vehicles;
4. The wrecker service provider shall maintain a safe and secure storage facility to protect stored vehicles;
5. The wrecker service provider shall provide service 24 hours per day, each and every day, and every call for a wrecker shall be answered promptly;
6. The wrecker service provider shall not accept a dispatch call from the Mustang Police Department unless a wrecker and driver are immediately available for dispatch at the time such call is received, and the wrecker is adequate to tow or service the subject vehicle;

7. The wrecker service provider dispatched to the scene of an accident shall be responsible for clearing from the street all debris existing as a result of such accident, including any ordinary vehicle fluids found at the scene of collisions with absorbing material used to absorb vehicle fluids as allowed by law;

8. An inventory of the contents in each towed vehicle shall be prepared by the wrecker driver before the vehicle is removed, and such inventory shall be verified by the owner or driver or the police officer at the scene by signature. Any erasures on such inventory shall be initialed by both the wrecker driver and the owner or driver or police officer. For those vehicles being impounded by the Mustang Police Department, an inventory shall be conducted pursuant to the policies of the Mustang Police Department;

9. The wrecker service provider shall keep records in which he will log each police call received, the time such call was received, the time the wrecker reached the scene, and the time the wrecker returned. Such records shall be kept on a daily basis and shall be open to inspection by the Police Department on request;

10. The wrecker service provider shall clearly mark their wreckers with the name of the wrecker service on each side of the vehicle in letters not less than two inches in height and one-half inch in width. The color of such letter shall contrast with the body color of the vehicle so as to be easily readable;

11. The wrecker service provider agrees that the City will not be liable for payment of any fees for impounded or towed vehicles, and that vehicles impounded or towed at the request of the City will be released at no cost, or at an adjusted cost, as

determined pursuant to the provisions of Chapter 114, Article IX, Impoundment of Vehicles, of the Mustang Code of Ordinances; and

12. The wrecker service provider shall notify the Mustang Chief of Police within ten (10) days if (a) they no longer maintain a current wrecker license or meet the licensing requirements, (b) they change business name or change ownership, (c) they move their physical business location, (d) they change their telephone number, (e) they obtain additional wreckers, or (f) there is any change in their compliance or ability to comply with the terms of this Resolution.

C. The wrecker service providers shall be listed in order based on the date placed on the rotation list. In event two or more are listed the same date, they shall be listed alphabetically. In the event a wrecker service provider is needed by the Mustang Police Department, the Mustang Police Chief, or his designee, will call the wrecker service provider next on rotation. The wrecker service provider shall advise the Mustang Police Chief or his designee if it is unable to provide immediate service or does not have a wrecker adequate to tow or service the subject vehicle, in which event the Mustang Police Chief or his designee shall call the next wrecker service provider in rotation. The rotation will be on a per vehicle basis; with a wrecker service provider being called for each vehicle needing service. No wrecker service provider shall proceed to the scene of an accident until and unless it has been directed to do so by the Mustang Police Chief or his designee or the owner of an involved vehicle.

D. The rotation system shall not apply in instances where the vehicle owner or driver designate the wrecker service provider to be called for towing.

E. The Chief of Police or his designee may select a wrecker service provider that is not the next wrecker service provider on the rotation list, or a wrecker service provider not on the rotation list, in order to respond when necessary to respond to exigent circumstances and provide for the public safety and the efficient flow of traffic.

F. The wrecker service rotation system shall not apply to instances in which a truck wrecker is needed to service, tow or impound a truck, truck-tractor, road tractor, trailer, semi-trailer, bus and/or other vehicle or conveyance. In such instances, the Mustang Chief of Police or his designee shall call a provider having a Class AA-TL truck wrecker. For purposes of this provision, "truck wrecker" means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers, buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma, and shall be used for Class AA-TL wrecker vehicles having operators meeting the qualifications for Class AA truck wrecker services.

G. A wrecker service provider shall not be removed from rotation without notification to the wrecker service provider stating the reason for removal from the rotation list. All notifications for removal from a rotation log shall be mailed to the wrecker service provider at least ten (10) days before removal from the rotation list and shall state the procedure and requirements for reinstatement.

[Remainder of page intentionally blank.]

PASSED this 1<sup>st</sup> day of September, 2015. .

THE CITY OF MUSTANG, OKLAHOMA

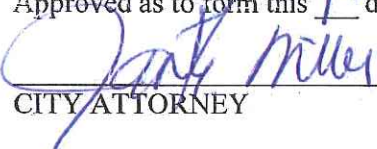
By: 

MAYOR

ATTEST:

  
CITY CLERK

Approved as to form this 1<sup>st</sup> day of September, 2015.

  
CITY ATTORNEY

**City Attorney Miller** read the Ordinance in its entirety.

**Councilwomen Hagan** and **Staples** stated they were against granting the partial vacation of easement.

**Miller** stated discussion for this item should be held at the October 6, 2015, meeting.

**MOTION** was made by **Councilman Schweinberg**, seconded by **Councilwoman Staples**, to set the October 6, 2015 City Council Meeting as the Date for Final Consideration of Ordinance No. 1131.

**AYE: Riley, Staples, Hagan, Schweinberg, Adams**

**NAY: None**

2. **Discussion, Consideration and Possible Action** regarding Approval of **Resolution No. 16-013**, a Resolution of the City Council of the City of Mustang, Oklahoma, Designating Wreckers to be Used when Impounding Vehicles, Creating a Wrecker Rotation System and Imposing Requirements for Providing Wrecker Services when requested by the City of Mustang.

**City Manager Rooney** stated prior to August, 2015, there was not a need for a wrecker rotation in Mustang since there was only one wrecker service. He stated Jim Winkelman with Bronco Towing, LLC recently made notice to Mustang Police that he had established business in Mustang and requested to be added to the Mustang wrecker rotation per statute, O.S. 47§72-952.

**Rooney** stated this request necessitated a municipal resolution to establish a "Wrecker Rotation" for the City of Mustang.

**MOTION** was made by **Councilman Schweinberg**, seconded by **Councilwoman Staples**, to Approve **Resolution No. 16-013**, a Resolution of the City Council of the City of Mustang, Oklahoma, Designating Wreckers to be Used when Impounding Vehicles, Creating a Wrecker Rotation System and Imposing Requirements for Providing Wrecker Services when requested by the City of Mustang

**AYE: Riley, Staples, Hagan, Schweinberg, Adams**

**NAY: None**

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY  
CITY MANAGER**

**RE: BEAUTIFICATION METERS**

**DATE: November 4, 2015**

**BACKGROUND:**

This item has been placed on the agenda at the request of Councilor Staples.

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY  
CITY MANAGER**

**RE: DRAINAGE CHANNEL MAINTENANCE  
SILVERSTAR ESTIMATES**

**DATE: November 4, 2015**

**BACKGROUND:**

Staff will provide an overview of the drainage channel maintenance estimates received from SilverStar at Monday evening's meeting.

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY  
CITY MANAGER**

**RE: "NO KNOCK" ORDINANCE**

**DATE: November 4, 2015**

**BACKGROUND:**

One of the more significant complaints we deal with on a regular basis – particularly in the Spring – is the unsolicited vendors or sales that go door-to-door in neighborhoods. Quite frankly, people do not want to be disturbed when they are home and want the ability to be added to a "list" similar to the national "Do Not Call" list that they can place themselves on to eliminate sales calls.

Recently, the City of Owasso, Oklahoma has adopted and implemented a "No Knock" Ordinance that allows residents of that community to add their property to the "No Knock" list. Door-to-door vendors or solicitors are required to get a license from the Community Development Department for door-to-door sales. If approved, the vendor would also receive the most current copy of the "No Knock" list that they would be instructed not to solicit or approach regarding sales of any item or service. Additionally, solicitors would not be permitted to approach a residence with a "No Solicitation" or "No Trespassing" sign. Violating the "No Knock" list or any signage outlined above could result in revocation of the solicitor license. The "No Knock" list would not be applicable to non-profit groups (Boy Scouts, Girl Scouts, School Fundraisers, etc).

A copy of the proposed ordinance is attached for your information and review. If Council directs staff to move forward with this item, staff would develop a form that residents could fill out online on the City's website. Additionally, forms would be available at the Community Development window in City Hall to be completed in person and could also be mailed out as an insert in Utility Bills.

Staff will be happy to answer any questions you may have on Monday evening.

**ATTACHMENTS:**

1. Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MUSTANG, OKLAHOMA, AMENDING THE MUNICIPAL CODE BY AMENDING CHAPTER 82 BY (1) AMENDING SECTION 82-1 TO DEFINE TERMS; (2) ADDING NEW SECTION 82-6 TO CREATE A NO KNOCK LIST; (3) AMEND SECTION 82-21 TO REQUIRE PERMIT AND DISPLAY OF PERMIT; (4) AMENDING SECTION 82-22 TO ESTABLISH APPLICATION REQUIREMENTS AND CLARIFY EXISTING REQUIREMENTS; (5) AMENDING SECTION 82-23 TO CLARIFY REFERENCE AND ESTABLISH EXPIRATION DATE OF BOND; (6) AMENDING SECTION 82-25 TO CLARIFY TERMS; AND (7) AMENDING SECTION 82-41 PROHIBITING SOLICITATION IN CERTAIN INSTANCES; DECLARING REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSTANG, OKLAHOMA;

Section 1. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-1 to read as follows:

Sec. 82-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Peddler* means ~~and includes any person who~~ travels on foot or by any type of conveyance from place to place, house to house, ~~from~~ street to street, or upon any street or public place, carrying, conveying or transporting goods, foodstuffs, products, wares, merchandise, or other thing of value for the purpose of offering and exposing the same for sale or making sales of such articles to purchasers.

*Peddler* means any person who peddles.

*Solicitor* means and includes ~~any person who~~ (a) travels on foot or by any type of conveyance from place to place, house to house, ~~from~~ street to street, or upon any street or public place, selling or offering for sale or taking or attempting to take orders for the sale of goods, foodstuffs, products, wares, merchandise, services, magazines, periodicals, insurance, or other thing of value for future delivery or for services to be performed or furnished in the future, (b) requesting, directly or indirectly, contributions of funds on the plea or representation that such

contributions will be used for a charitable purpose, and (c) peddling, as defined in this section.

Solicitor means any person who solicits.

Section 2. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by adding new Section 82-6 to read as follows:

Sec. 82-6 No knock list.

The community development director shall prepare and maintain a list of all residents within the City who desire to prevent soliciting at their residence which shall be known as the No Knock List. Residents of the City who desire to have their addresses placed on the No Knock List may do so by contacting the community development director's office.

Solicitors must obtain a copy of the No Knock List from the community development director's office at the time they obtain a license, and are expressly prohibited from soliciting at any residence listed on the No Knock List. Contacting residents in disregard of the No Knock List may result in revocation of a Solicitor's license and/or assessment of a fine.

Secs. 82-~~76~~—82-20. - Reserved.

Section 3. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-21 to read as follows:

Sec. 82-21. ~~— Permit R~~required.

It shall be unlawful for any person, firm or corporation, either as a principal, officer, agent, servant or employee, to No solicitor or peddler shall peddle, canvass or solicit for money or peddle, canvass, solicit or sell any goods, foodstuffs, products, wares, merchandise, services, magazines, periodicals, insurance, or other thing of value within the city without having first applied for and obtained a solicitor's or peddler's permit, for that purpose, from the community development director or his designee. The permit must be kept on the person of the solicitor or peddler, on display and visible at all times.

All persons issued a license under this section shall at all times display the license prominently on their person, shall carry at least one (1) form of photo identification, and shall produce the license and photo identification for inspection and review at any time upon request by any City official, law enforcement officer or person to whom the solicitor is attempting to solicit or peddle or on whose property the solicitor is present.

Section 4. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-22 to read as follows:

Sec. 82-22. - Application; applicant's photograph and fingerprints.

An applicant for a solicitor's ~~or peddler's~~ permit under the terms of this chapter shall be required to:

a. Complete and submit an application in aa-registration form provided by the community development ~~director or his designee~~department, which shall include no less than the following information:

1. show the name of the person, firm or corporation in whose behalf the applicant proposes to solicit;
2. the ~~current~~ address of said person, firm or corporation, and their phone and email contact information;
3. the kind of products, merchandise or service to be solicited and/or sold;
4. the ~~current, valid~~ license number and description, including make, model, year and copy of current insurance verification, of any vehicle to be used (if applicable);
5. ~~Detailed personal information and physical description of solicitor(s);~~
6. ~~Social security number, current, valid driver's license number or state issued identification card of solicitor(s);~~
7. ~~A statement as to whether or not the applicant has been convicted of a felony or misdemeanor involving moral turpitude within the past five (5) years; and~~
8. ~~and~~ any other pertinent facts or information required by the community development ~~director~~department, including sufficient information to investigate the application.

b. File a photograph and fingerprints of the solicitor(s) with the police department.

No license shall be issued under this article to any person under the age of 16 years except those persons and organizations exempted under ~~{subsection}~~ 82-42(1).

Section 5. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-23 to read as follows:

Sec. 82-23. - Applicant's bond.

Every applicant for a solicitor's permit ~~registration card~~ required by this article, who shall require, accept or receive payment or deposit of money in advance of final delivery of any goods, wares, or merchandise, shall file a surety bond, in the amount of \$500.00, conditioned upon making final delivery of the goods ordered in accordance with the terms of such order, or failing therein that the advance

payment be refunded. Any person aggrieved by the action of the solicitor or peddler shall have a right of action on the bond for the recovery of the money or damages, or both. Such bond shall remain in full force and effect for a period of 60 days after the expiration of any permit issued under this article, ~~unless sooner released by the city manager.~~

Section 6. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-25 to read as follows:

Sec. 82-25. ~~— Issuance, or denial~~ or revocation.

(a) The community development director or his designee is hereby authorized to issue a solicitor's ~~or peddler's~~ permit ~~in all proper cases and~~ when the applicant has complied with this article. Registration may be denied any applicant for a solicitor's ~~or peddler's~~ permit if he is not of good moral character; if he has been convicted of a felony or misdemeanor involving moral turpitude, or has such criminal charges pending; if the proposed sales proposition shall include some element of trickery, fraud or deceit, in which case, in the interest of the public health, safety and welfare, the applicant shall not be registered.

(b) The City Clerk's office shall give notice either in person, by telephone, mail or email to the licensee of the denial or revocation of their license. If mailed, the notice shall be sent to the address listed on the application or license. The license shall stand revoked or denied from the time notice is made to the licensee either in person or by telephone or is received by mail by the licensee.

~~(a)(c)~~ Any person aggrieved by the action of the community development director or his designee may appeal to the city. Any applicant or licensee may appeal a denial or revocation to the City Manager within ten (10) days after delivery or receipt of the notice by filing a written request with the community development director for a hearing. The hearing shall be held by the City Manager or his or her designee. The appealing applicant or licensee may be represented by counsel. The hearing shall be conducted in an informal manner, but no license shall be revoked or denied except upon a preponderance of the evidence. The City Manager or his or her designee may affirm, modify or vacate the order of revocation or denial and such decision shall constitute the final decision on behalf of the City council, and may appeal from the city council to the district court of the county in the manner provided by law. Any appeal from a City Manager's decision shall be in a manner provided by law.

Section 7. Chapter 82 of the Municipal Code of the City of Mustang, Oklahoma, is hereby amended by amending Section 82-41 to read as follows:

Sec. 82-41. - Invitation required to enter on posted premises.

It shall be unlawful for a solicitor to ring the bell, or knock on the door, or otherwise attempt to gain admittance for the purpose of soliciting at a residence or dwelling which is list on the No Knock list or upon which a sign stating No peddler or solicitor shall enter on any premises or attempt to sell, peddle or solicit where the owner or occupant of such premises has indicated his desire not to be contacted for sales or solicitations by the placing of a "No Solicitors," "No Trespassers" or words of similar import indicating such persons are not wanted on the premises is painted, affixed or otherwise plainly displayed to public view either on or near the primary entrance of the residence. sign on the premises, and Any such entrance or attempt to solicit sell, peddle or solicit shall constitute a trespass upon private property and a violation of this chapter.

Section 8. REPEALER

All former ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 9. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 10. EMERGENCY

It being immediately necessary for the preservation of the public health, peace and safety of the City of Mustang and the inhabitants thereof, an emergency is hereby declared to exist by reason whereof, this Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

PASSED AND APPROVED and the Emergency Clause voted upon separately and passed and approved this \_\_\_\_\_ day of November, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED as to form this \_\_\_\_\_ day of November, 2015.

\_\_\_\_\_  
City Attorney

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY  
CITY MANAGER**

**RE: COX CABLE FRANCHISE AGREEMENT**

**DATE: November 5, 2015**

**BACKGROUND:**

Mr. Miller's negotiations with Cox Cable regarding a new franchise agreement are complete. Highlights and/or changes in the agreement will be reviewed by Mr. Miller on Monday evening.

## **ORDINANCE NO. 1132**

AN ORDINANCE RELATING TO CABLE SERVICE AND THE CITY'S REGULATION THEREOF, AMENDING CHAPTER 22, ARTICLE IV, DIVISIONS 1, 2 AND 3 OF THE MUSTANG MUNICIPAL CODE BY: (1) REPEALING ORDINANCE 19,654 WHICH GRANTED A PRIOR FRANCHISE TO COXCOM, INC.; (2) DELETING IN THEIR ENTIRETY EXISTING SECTIONS 22-101 THROUGH 22-110 OF DIVISION 1, SECTIONS 22-151 THROUGH 22-164 OF DIVISION 2, AND SECTIONS 22-181 THROUGH 22-197 OF DIVISION 3; (3) ENACTING IN DIVISION 1 NEW SECTION 22-101 PROVIDING A TITLE, SECTION 22-102 DEFINING TERMS, SECTION 22-103 PROVIDING FOR WAIVER BY FRANCHISEE, SECTION 22-104 PROVIDING CHOICE OF LAW, VENUE AND ATTORNEY FEES, SECTION 22-105 PROVIDING FOR FORFEITURE OR REVOCATION, SECTION 22-106 PROVIDING FOR ADMINISTRATION, SECTION 22-107 ADDRESSING FILINGS WITH REGULATORY AGENCIES; (4) ENACTING IN DIVISION 2 NEW SECTION 22-151 PROVIDING FOR GRANT OF AUTHORITY, SECTION 22-152 PROVIDING CHARACTERISTICS OF FRANCHISE, SECTION 22-153 PROVIDING FOR APPLICATIONS, SECTION 22-154 PROVIDING FOR GRANT OF FRANCHISE, SECTION 22-155 PROVIDING FOR ACCEPTANCE OF FRANCHISE, SECTION 22-156 PROVIDING FOR A FRANCHISE FEE, SECTION 22-157 PROVIDING FOR RENEWAL, SECTION 22-158 PROVIDING FOR TRANSFERS, SECTION 22-159 PROVIDING FOR FRANCHISE REVIEWS, SECTION 22-160 PROVIDING FOR ELECTIONS AND COSTS, SECTION 22-161 PROVIDING FOR INSURANCE, SECTION 22-162 PROVIDING FOR INDEMNIFICATION, SECTION 22-163 PROVIDING FOR PERFORMANCE BOND, AND SECTION 22-164 PROVIDING FOR MAPS, REPORTS AND RECORDS; (5) ENACTING IN DIVISION 3 NEW SECTION 22-181 PROVIDING FOR MINIMUM FACILITY AND SERVICE, SECTION 22-182 PROVIDING SIGNAL QUALITY, SECTION 22-183 PROVIDING FOR CARRIAGE OF SIGNALS, SECTION 22-184 ADDRESSING POLE REGULATIONS, SECTION 22-185 PROVIDING SAFETY REQUIREMENTS, SECTION 22-186 PROVIDING FOR REMOVAL OF FACILITIES, SECTION 22-187 PROVIDING CUSTOMER SERVICE REQUIREMENTS, SECTION 22-188 ADDRESSING FACILITY PLACEMENT AND REGULATIONS, SECTION 22-189 PROVIDING RESERVATION OF RIGHTS, SECTION 22-190 PROVIDING FOR PRIVACY, AND SECTION 22-191 REQUIRING COMPLIANCE WITH

LAWS; (6) PROVIDING FOR REPEALER; (7) PROVIDING FOR SEVERABILITY; (8) AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE

WITNESSETH:

WHEREAS, the City of Mustang, Oklahoma (City) has the authority to grant a non-exclusive franchise to a cable service provider for the right to use the public streets, and other public ways, for the purpose of maintaining and operating a cable service business within the City.

WHEREAS, the City granted a franchise to Multimedia Cablevision, Inc. ("Multimedia") pursuant to Ordinance Nos. 712 and 713 (the "Franchise"), as approved by the qualified electors of the City on September 14, 1999 which ordinances are incorporated by reference as if fully set forth therein.

WHEREAS, by Ordinance No. 718 adopted by the City on September 7, 1999, the City consented and approved of the transfer of the Franchise from Multimedia to CoxCom, Inc. CoxCom, LLC (the "Company") is the successor-in-interest to CoxCom, Inc..

WHEREAS, the Company, an incumbent cable operator in the City of Mustang, has requested that its cable franchise be renewed pursuant to Section 626 of the federal Cable Act, 47 U.S.C. § 546.

WHEREAS, the continued construction, installation, maintenance and operation of the Company's Cable System involves the occupation of and placement of private commercial facilities in the public streets, and other public ways within the City.

WHEREAS, 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.

WHEREAS, the City and the Company have informally agreed on the terms and conditions for the renewal of its cable franchise.

WHEREAS, 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.
- f. This Ordinance No. \_\_\_\_\_ shall be in force and effect on November 17, 2015, so long as the requirements of Section 22-155 of the Mustang Cable Ordinance have been met.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MUSTANG, OKLAHOMA:**

SECTION 1. Ordinance Nos. 712 and 713 of The City of Mustang are hereby repealed as of the Effective Date of this ordinance.

SECTION 2. That Sections 22-101 through 22-110 of Chapter 22, Article IV, Division 1, of the Mustang Municipal Code are hereby deleted in their entirety, and new Sections 22-101 through 22-107 are adopted to read as follows:

Sec. 22-101. Short title.

This article shall be known and may be cited as the Mustang Cable Ordinance.

Sec. 22-102. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings given in this section, except where the content clearly indicates a different meaning.

“Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

“Application” means any proposal, submission or request to:

- (1) Construct and operate a cable system within the city;
- (2) Transfer a franchise or control of a franchise;
- (3) Renew a franchise;
- (4) Modify a franchise; or

- (5) Seek any other relief from the city pursuant to this article, a franchise agreement, the cable act as amended, or the Federal Communications Commission (FCC) rules and regulations.

“Basic service” means any service tier which includes the retransmission of local television broadcast signals.

“Cable act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time

“Cable service” means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming and other programming service.

“Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of the Federal Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

“City” means the City of Mustang, a municipal corporation.

“Council” or “City Council” means the City Council of The City of Mustang, Oklahoma, or such other legally appointed or elected successor or agency constituting the governing body of the City.

“FCC” means the Federal Communications Commission and any legally appointed or elected successor thereof.

“Franchise” means an initial authorization, or renewal thereof, (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546), issued by the City, which authorizes the construction or operation of a cable system within public rights-of-way for the business of delivering a cable service

to the residents of the City, which is a business affected with a public interest. Said business could not be conducted without the occupation of and placement of private commercial facilities in the public streets and other public ways of the City, which is essential to the performance of the general function or purpose of the grantee.

"Franchise fee" means the fee a franchisee is required to pay under the terms of a Franchise for consideration of the rights and privileges granted therein, subject to the limitations of 47 U.S.C. §542.

"Franchisee" means any person granted a franchise pursuant to this article and shall include any successor thereto.

"Gross revenues" means all cash, credits, property or other consideration of any kind or nature received directly or indirectly by the franchisee, its subsidiaries and affiliates who are cable operators arising from, attributable to, or in any way derived from the operation of the system to provide cable service within the city. Gross revenues shall include, but not be limited to, monthly fees charged to subscribers for basic service; any optional, pay per view, premium, per-channel or per-program service or charges for any other type of service; installation, disconnection and change in service fees; leased channel fees; fees, payments or other consideration received from programmers for carriage of cable service programming; converter and equipment rental fees; advertising revenues; revenues from home shopping channels; fees from use of access channels; and revenues from studio rental, production fees and equipment charges when applicable. Gross revenues shall not include any sales, excise or other taxes or fees which are imposed directly on any cable service subscriber by any governmental unit or agency and which are collected by the franchisee on behalf of such governmental unit or agency, late payment fees, revenues from contracts for in-home maintenance service unless they relate solely to the maintenance of equipment used only for the provisioning of cable services and not for the provisioning of any other service provided by a franchisee or its affiliates, revenue from the sale of capital assets or equipment. Exchange or other nonmonetary compensation shall be includable in gross revenues at the retail value of the compensation received by the franchisee.

"May" is permissive.

"Normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

"Ordinance" means the Mustang Cable Ordinance, unless otherwise indicated.

"Person" means an individual, partnership, association, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

"Public school" means any elementary, junior high or high school within the City by a public school system.

"Public way" means each of the following which has been dedicated to the public or hereafter is dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of street from time to time..

"Service area" means the present municipal boundaries of the city and any additions thereto by annexation or other legal means.

"State" means the State of Oklahoma.

"Shall" and "will" are mandatory and not merely directory.

"Subscriber" means any person who lawfully receives any form of Cable service from a Franchisee.

"Transfer of franchise" means any transaction in which:

- (1) Any ownership or other interest in a franchise or its system is transferred from one person or group of persons to another person or group of persons, none of whom already own a controlling ownership interest in the transferring person; or
- (2) The rights and/or obligations held by the franchisee under a franchise agreement are transferred or assigned to another person or group of persons, none of whom already own a controlling ownership interest in the transferring person..

Sec. 22-103. Waiver by franchisee.

A franchisee shall abide by all provisions of this article and the franchise agreement, and by accepting a franchise agrees that it will not at any time in the future set up as against the city or the council that claim that the provisions of this

article are unreasonable, unlawful, arbitrary or void, except as to matters that are preempted or superseded by federal or state law or regulations.

Sec. 22-104. Choice of law, venue and attorney fees.

- (a) Except as otherwise provided in this section, this article and any franchise agreement shall be governed by the laws of the state. The district court of the county and the United States Court for the Western District of Oklahoma shall have venue and jurisdiction exclusively for any action in law or equity which may be instituted to enforce the terms of this article, the franchise agreement or other applicable laws, rules and regulations.
- (b) If any legal action is instituted by either party to enforce any terms of this article or the franchise agreement, the attorney fees, costs of the action including, but not limited to, court costs, expert witness fees and all other actual expenses incurred by the prevailing party shall be paid by the losing party.

Sec. 22-105. Forfeiture or revocation.

- (a) Grounds for revocation. The City reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise only under the following circumstances, each of which shall represent a default and breach under this chapter and the franchise grant:
  - (1) if the franchisee should default in the performance of any of its material obligations under this chapter or under the franchise.
  - (2) if the franchisee should fail to provide or maintain in full force and effect, the liability and indemnification coverages as may be required herein.
  - (3) if any court of competent jurisdiction, the Federal Communications Commission or any State regulatory body by rules, decision, or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable prior to the commencement of construction of the cable system.
  - (4) if the franchisee should frequently violate any orders or rulings of any regulatory body having jurisdiction over the franchisee relative to this franchise.

- (5) if the franchisee fails to receive necessary Federal Communications Commission certification.
  - (6) if the franchisee fails to provide cable services for any reason within the control of the franchisee over the cable system.
  - (7) if the franchisee is found by a court of competent jurisdiction to have attempted to evade any of the provisions of this chapter or the franchise agreement or practices any fraud or deceit upon the City.
- (b) A franchisee shall not be declared at fault or be subject to any sanction under any provision of this chapter in any case in which performance of any such provision is prevented for reasons beyond the franchisee's control. A fault shall not be deemed to be beyond the franchisee's control if committed by an Affiliate or a corporation or other business entity in which the franchisee holds a controlling interest, whether directly or indirectly.
- (c) Procedure prior to revocation.
  - (1) the City Manager may make written demand that the franchisee do or comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect of the franchisee continues for a period of 30 days following such written demand, the City Manager may place his request for termination of the franchise upon the next regular Council meeting agenda. The City Manager shall cause to be served upon such franchisee, at least ten days prior to the date of such Council meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the City Clerk at least once ten days before such meeting in a newspaper of general circulation within the City.
  - (2) the Council shall consider the request of the City Manager and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.
  - (3) if such failure, refusal or neglect by the franchisee was with just cause, the Council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

- (4) if the Council shall determine such failure, refusal or neglect by the franchisee was without just cause, then the Council may, by resolution, declare that the franchise of such franchisee shall be terminated and bond forfeited unless there be compliance by the franchisee within such period as the Council may fix.
- (d) Disposition of facilities. In the event a franchise is revoked, or is otherwise terminated, the City may order the removal of the network facilities from the City within a period of time as determined by the City or require the original franchisee to maintain and operate its network until a subsequent franchisee is selected.
- (e) Restoration of property. In removing its plant, structures and equipment, the franchisee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the public ways and public places, and cables, wires, attachments and poles after removal. The liability indemnity and insurance as provided herein and the performance bond provided herein shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the terms and conditions of this paragraph and this chapter.
- (f) Restoration by City, reimbursement of costs. In the event of a failure by the franchisee to complete any work required by Subsection (c) above and/or Subsection (d) above, or any other work required by City law or ordinance within the time as may be established and to the satisfaction of the City, the City may cause such work to be done and the franchisee shall reimburse the City the costs thereof within 30 days after receipt of an itemized list of such costs or the City may recover such costs through the performance bond provided by the franchisee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- (g) Extended operation. Upon the revocation of a franchise, the City may require the franchisee to continue to operate the network for an extended period of time not to exceed one year from the date of such expiration or revocation, or as otherwise provided for by applicable law. The franchisee shall, as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period,

the franchisee shall not sell any of the system assets nor shall the franchisee make any physical, material, administrative or operational change that would tend to (1) degrade the quality of service to the subscribers, (2) decrease income, or (3) materially increase expenses without the express permission, in writing, of the City or its assignee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

- (h) City's rights not affected. The revocation or termination and forfeiture of any franchise shall in no way affect any of the rights of the City under the franchise or any provision of law.

Sec. 22-106. Administration.

- (a) The city manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this article and any franchise agreement issued hereunder. The city manager shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this article that are reserved to the council. The city manager may recommend that the council take certain actions with respect to the franchise. The city manager shall keep the council apprised of developments in cable and provide the council with assistance, advice and recommendations as appropriate.
- (b) A franchisee shall have the right to appeal to the council any decision of the city manager relating to such franchisee or its franchise agreement. Such appeal must be made by written request within 15 calendar days of the city manager's written decision which the franchisee seeks to appeal.

Sec. 22-107. Filings and communications with regulatory agencies.

A franchisee shall comply with the rules of any court or agency requiring service of pleadings, filings, or other documents upon the City. Upon request of the City, a franchisee shall provide the City a copy of, or an electronic link to, all petitions, applications and any communications submitted by the franchisee to or received from the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting, directly or indirectly, the system operations authorized pursuant to a franchise.

Secs. 22-108—22-150. - Reserved.

SECTION 3: That Sections 22-151 through 22-164 of Chapter 22, Article IV, Division 2, of the Mustang Municipal Code are hereby deleted in their entirety, and new Sections 22-151 through 22-164 are adopted to read as follows:

Sec. 22-151. Grant of authority; franchise required.

- (a) In order to make cable services available to the residents of the city, the city may grant one or more franchises in accordance with this article and the execution of a franchise agreement.
- (b) No person may construct or operate a system in the city without a franchise granted by the city and having entered into a franchise agreement with the city.
- (c) Nothing in this article shall be deemed to prevent the city from seeking additional franchisees at any time pursuant to a request for proposals or applications. Responses shall comply with this article.

Sec. 22-152. Characteristics.

- (a) A franchise shall be for a term or period of time not to exceed 15 years to serve all or specified areas of the city, and shall take effect upon the execution of a franchise agreement.
- (b) A franchise authorizes the franchisee to use the public ways within the city for installing cables, wires, lines, underground conduit and other facilities to operate a cable system within the city, but does not authorize such use on private property or privately owned easements. Provided, nothing herein is intended nor shall be construed as limiting any right that may be granted to franchisee under federal law to use private easements dedicated to compatible uses without obtaining the owner's consent.
- (c) A franchise shall be nonexclusive, and will not preclude the issuance of another franchise, nor affect the city's right to authorize use of any public way by other persons as it deems appropriate. However, any additional grant of franchise to provide cable service in the city shall be in compliance with applicable law.
- (d) A franchise shall not relieve the franchisee of any requirement of any applicable ordinance, rule, regulation or specification of the city lawfully enacted by the city. The franchisee shall at all times be subject to the lawful exercise of the police power of the city to the full extent that such powers may be vested in or granted to the city. However, any ordinance, rule, regulation or specification of the city enacted after a franchisee has

entered into a franchise agreement shall not materially alter the rights or obligations of the franchisee under the existing ordinance and franchise agreement unless specifically authorized by state or federal law.

- (e) The franchisee, at its expense, shall comply with all laws, orders and regulations of Federal, State and municipal authorities and with any directive of any public officer pursuant to law who shall legally impose any regulation, order or duty upon the grantee with respect to the franchise.
- (f) Any franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, or any successor to any interest of the grantee, of, or pertaining to, the construction, operation, or maintenance of any cable system in the City; and the acceptance of any franchise hereunder shall operate, as between the grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the City, to the effect that, as between the grantee and the City, all construction, operation and maintenance by any grantee of any cable television system in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to another right, privilege, power, immunity, or authority whatsoever.
- (g) The provisions of this article shall apply to a franchise agreement as if fully set out in such agreement. The terms of this article shall prevail over conflicting provisions of the franchise agreement unless the franchise agreement contains an explicit intent of waiver.
- (h) The franchisee shall make cable service available to all residents and businesses within the city, subject to the provisions of subsection 22-181(a)(3).
- (i) No privilege or exemption shall be granted or conferred by any franchise granted except those specifically prescribed therein.
- (j) Any privilege claimed under a franchise by a grantee in any street or other public property shall be subordinate to any prior existing lawful occupancy of the streets or other public property.
- (k) Any franchise granted hereunder shall be binding upon the grantee, and all successors, lessees or assignees as may be approved by the City.

- (l) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City.
- (m) Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.

Sec. 22-153. Applications for grant, modifications or transfer.

- (a) In selecting a franchisee pursuant to this chapter, the City may prepare a request for proposal to seek bids for a cable system to be established by franchise in the City. This request for proposal shall include information and instructions relating to the preparation and filing of proposals.
- (b) A written application shall be filed with the city clerk for the:
  - (1) Grant of a new franchise;
  - (2) Modification of a franchise agreement;
  - (3) Transfer of a franchise pursuant to this article, the franchise agreement or the cable act.

The applicant has the burden to demonstrate compliance with all applicable laws and entitlement to the relief sought.

- (c) The applicant must file an original and five copies of the application together with any required filing fee as set forth in subsection (j) of this section. The application shall also conform to any request for proposals and shall contain all requested information.
- (d) All applications shall identify persons authorized to act on behalf of the applicant with respect to the application.
- (e) All applications shall identify persons authorized to act on behalf of the applicant with respect to the application.
- (f) All applications accepted for filing by the city shall be available during the city's regular business hours for public inspection.
- (g) An application for the initial grant of a franchise shall contain, at a minimum, the following information:
  - (1) The name and address of the applicant and identification of ownership and control of the applicant, including:

- A. The names and addresses of the ten largest holders of an ownership interest and all persons with a five percent or more ownership interest in the applicant;
  - B. The names of persons who control the applicant including, without limitation, all officers and directors;
  - C. Any other business affiliation and cable interest of each named person.
- (2) A statement as to whether the applicant, or any person controlling the applicant, or any officer, director or major stockholder has been adjudged bankrupt, had a cable franchise revoked, or been found guilty of any violation of any security or antitrust law, or of the commission of a felony or crime involving moral turpitude; and if so, the identification of such person and a full explanation of such circumstances.
  - (3) A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed system, including identification of key personnel.
  - (4) A description of the applicant's prior experience in system ownership and construction, and identification of all communities the applicant or its principals have served.
  - (5) Identification of the proposed cable service area and a detailed description of the facilities proposed and the characteristics of the system including, but not limited to, channel capacity, technical design, and performance and quality expectations.
  - (6) A detailed description of the construction of the proposed system, together with a proposed construction schedule. Where appropriate, the applicant shall include an explanation of how services will be converted from the existing facilities to the new facilities.
  - (7) A description of all services to be provided, including, without limitation, all broadcast and nonbroadcast signals and all nontelevision services to be carried on the system. If tiers of service are to be used by the franchisee, a description of each tier service to be available to subscribers shall be provided.

- (8) A description of the proposed rate schedule for cable service and equipment to be provided or used in association with the basic cable service tier, together with all forms or information required to allow the determination by the city of the maximum initial permitted rates and charges. Additionally, and for informational purposes, the franchisee shall disclose to the city any and all charges to be made for all other services and equipment.
  - (9) A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, taking into account the costs thereof including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the city.
  - (10) A statement showing pro-forma financial projections for the first five years.
  - (11) An affidavit of the applicant or authorized officer thereof certifying to the truth and accuracy of all information in the application, acknowledging the enforceability of application commitments and that the application proposal meets all regulatory authority requirements.
  - (12) Any other information which may be necessary to demonstrate compliance with all laws as may be relevant to the city's consideration of the application.
- (h) An application for modifications of the franchise agreement shall include, as a minimum, the following information:
- (1) The specified modifications requested.
  - (2) The justification and basis for the requested modification, including a statement of impact the requested modification may have on subscribers or others, and the financial impact approval or disapproval may have on the applicant.
  - (3) Any other relevant information which may be reasonably necessary for the city to make an informed decision.
- (i) An application for approval of the transfer of a franchise shall comply with the requirements of section 22-158.

- (j) Each application shall be accompanied by a non-refundable filing fee in the amount of \$5,000.00.

Sec. 22-154. Grant of franchise.

- (a) The city may grant or renew a franchise for a period not to exceed 15 years in accordance with the requirements of this article and the terms of a franchise agreement.
- (b) The grant of a franchise may be conditioned upon completion of construction within times prescribed or upon performance of specific obligations as set forth in the franchise agreement.
- (c) Proposals will be evaluated according to the legal, financial, character, technical and other public interest qualities of the applicant as required or suggested by the Federal Communications Commission. Preference may be given to applicants demonstrating the best total service package and more reasonable installment and subscriber rate schedules, the most expeditious installation schedule, and to those applicants demonstrating a significant sensitivity to the knowledge of local conditions.
- (d) The application shall be reviewed by the city manager and staff to determine whether the application complies with all requirements of this division. If, the application is sufficient, the city manager and the applicant shall negotiate the terms and conditions of the proposed franchise agreement. The proposed franchise agreement shall provide that it is subject to the approval of the qualified electors of the city. The proposed franchise agreement shall further provide that the applicant acknowledges its acceptance of the proposed franchise and the obligation of the applicant to comply with all the provisions of this article, the proposed franchise agreement and the terms and conditions of the applicant's proposal as submitted to the city as a part of the application, except to the extent such items are preempted or superseded by federal or state law.
- (e) After examining all applications submitted pursuant to the prescribed procedures, with respect to the applicant's legal, character, financial, technical and other qualifications, including adequacy and feasibility of its construction plans, and after reviewing the recommendations of the staff, the Council shall select the person who they consider has presented the proposal in the best interests of the City and if required by applicable law, shall submit the question of granting a nonexclusive franchise, pursuant to the terms of this chapter, to the citizens of the City for their choice either at a special or general election. However, no provision of this chapter shall

be deemed or construed as to require the Council to submit to a vote any prospective grantee following the receipt of any franchise application.

- (f) The grant, transfer, modification of a franchise agreement or other actions related to such proceedings may be subject to a processing fee in an amount not to exceed the city's reasonable out of pocket expenses. In the event of an initial grant of a franchise, such costs shall include fees incurred by the city for consultants or attorneys required to consider the application. The city shall notify the franchisee of such costs and the franchisee shall have 30 days to render payment in full. All fees shall be due the city irrespective of the approval or disapproval by the city of the requested action or the approval or disapproval by the electorate.

Sec. 22-155. Acceptance and effective date of franchise.

- (a) No franchise granted pursuant to this chapter and passed by the City Council or a vote of the qualified electors, as applicable, shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Clerk, duly executed by the proper officers of the franchisee. Written acceptance, which shall be in the form and substance approved by the Municipal Counselor, must contain, in addition to any other matters included, the following express representations by the grantee that:
  - (1) it has carefully read the terms and conditions of this chapter and the franchise agreement and accepts all of the terms and conditions imposed by this chapter and the franchise agreement and agrees to abide by same; and
  - (2) it further acknowledges by acceptance of the franchise that it has carefully read the terms and conditions of this chapter and expressly waives any claims that any provisions hereof are unreasonable, arbitrary or void; and
  - (3) by accepting the franchise, it acknowledges that it has not been induced to accept same by any promise, verbal or written, by or on behalf of the City or by any third person regarding any term or condition of this chapter or the franchise agreement not expressed therein. The grantee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding receipt of the cable system franchise.

- (b) The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the 30th day next following the passage of an ordinance approving a Franchise, or if an election was allowed, following the franchise election granting such franchise. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and repudiated the franchise and shall be deemed to have forfeited the grantee's proposal bond or certified check in lieu thereof. Thereafter, the acceptance of the grantee shall not be received by the City Clerk. The grantee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received, and then upon such terms and conditions as the Council may impose.
- (c) In addition to the written acceptance and within the same 30-day period the grantee shall:
  - (1) file a certificate of insurance as provided herein; and
  - (2) file a performance bond if required by the franchise; and
  - (3) advise the City in writing of the grantee's address for mail and official notifications from the City.

Sec. 22-156. Franchise Fee.

- (a) Finding. 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. The business of delivering cable services to the residents of the City is a business affected with a public interest. The construction, installation, maintenance and operation of a Cable System involves the occupation of and placement of private commercial facilities in the valuable and scarce public streets and other public ways within the City and which are maintained by the City at a significant cost, and such use is essential to the performance of the general function or purpose of the cable television operator. The City further finds that the grant of a franchise for use of rights-of-way to provide service is a valuable property right without which a grantee would be required to invest substantial capital.
- (b) A grantee of a franchise hereunder shall pay to the City a franchise fee in an amount to be set by the franchise agreement as a percentage of gross revenues derived from operation of the cable system by the grantee to provide cable service. Such payment shall be in addition to any other

payment, charge, permit fee or bond owed to the City by the grantee 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 Chapter 42 of this Code.(a) As compensation for the use of valuable public ways and privileges granted to operate a system, and to defray the cost of the regulation, the franchisee shall pay to the city a franchise fee of three percent of the franchisee's gross revenues received from the operation of its system to provide cable service within the city. The city reserves the right to increase the franchise fee up to five percent of the franchisee's gross revenue upon 90 days' notice to the franchisee. Further, in the event the cable act, the FCC rules and regulations or other federal laws are amended to permit the city to assess a franchise fee of a greater amount than stated in this subsection, the city shall have the right to negotiate with the franchisee for an increase in the franchise fee to the maximum then permitted.

- (c) The franchise fee shall be payable to the city on a quarterly basis and shall be due no later than 45 days after the end of the calendar quarter for which the franchise fee is being calculated.
- (d) Should FCC, state or federal law or regulation be amended in the future to allow the city to recover fees for services not set forth in the definition of gross revenues set forth in section 22-102, then, in that event, the franchisee shall upon 90 days' written notice commence making the additional payment to the city as legally authorized and to the fullest extent of such authorization.
- (e) If the franchise fee payment is not received by the city on the due date, the franchisee shall be assessed interest on any delinquency from the due date until paid in full at the rate of 18 percent per annum. If any franchise fee shall be delinquent for more than 90 days, the franchisee shall be deemed in material default and subject to the provisions of this article regarding termination of a franchise.
- (f) The franchisee shall submit with each payment a report showing the amounts of gross revenues for the preceding quarter on which the franchise fee is determined. Additionally, the franchisee shall submit to the city an annual revenue audit statement within three months of the close of the fiscal year, setting forth the computation of gross revenues for the

preceding year and an explanation of the method of computation. The annual statement shall be submitted to the city by a nationally recognized certified public accountant firm. The required reports shall be prepared at the expense of the franchisee on forms reasonably acceptable to the city and certified by the franchisee's chief financial officer or the certified public accountant firm. The same reports shall be due within 90 days of the termination of the franchise.

- (g) Except as otherwise provided in the cable act and FCC regulations, all payments required by this section shall be in addition to all other fees and payments required to be made by the franchisee to the city.
- (h) Acceptance by the city of any payment shall not be construed as an accord or satisfaction that such payment is correct, nor shall acceptance be construed as a release of any claim the city may have for additional sums which may be due.
- (i) The city shall have the right, at its cost and upon reasonable notice, to inspect and audit all books and records of the franchisee which may be necessary for the determination of gross revenues and computation of franchise fees due. If the city determines franchise fees have been underpaid in an amount in excess of three percent, the cost of audit shall be paid by the franchisee. The books and records necessary for such audit shall be maintained by the franchisee in Oklahoma County or Canadian County.

#### Sec. 22-157. Renewal.

A franchise granted pursuant to this chapter shall be renewed pursuant to the procedures established by the Cable Act or such other procedure to which the City and a grantee mutually agree. In the event that the City and an existing franchisee cannot agree upon terms for renewal of the franchise agreement, the parties may mutually agree to hold over the current franchise agreement for no more than one year or as otherwise provided for by applicable federal law.

#### Sec. 22-158. Transfers.

- (a) No transfer of a franchise shall occur without prior approval of the city, which shall not be unreasonably withheld, conditioned or delayed.
- (b) An application for a transfer of a franchise shall provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the

potential impact of the transfer on subscriber rates and service, to the extent required by FCC rules.

- (c) At least 120 calendar days prior to the contemplated effective date of a transfer, the franchisee shall submit to the city an application, together with any required FCC transfer forms, for approval of the transfer. To the extent consistent with FCC rules, such application and/or the FCC forms shall include the following:

- (1) A statement of the reason for the contemplated transfer.
- (2) The name, address and telephone number of the proposed transferee.
- (3) A detailed statement of the corporate or other business entity organization of the proposed transferee, including, but not limited to, the following:
  - A. The names, business addresses, state of residence and country of citizenship of all general partners and corporate officers of the proposed transferee.
  - B. The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling or being entitled to have or control ten percent or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.
  - C. The name and address of any parent or subsidiary of the proposed transferee and of any other business entity owning or controlling in whole or in part, or owned or controlled in whole or in part by the proposed transferee.
  - D. A detailed and complete financial statement or annual report of the proposed transferee, for the three fiscal years immediately preceding the date of the request for transfer approval, or a letter or other acceptable evidence in writing from the proposed transferee's lending institution or funding source, addressed to both the proposed transferee and the city, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the proposed transfer to construct, install, maintain and operate the proposed system

in the city. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three years, the proposed transferee shall submit a certified financial statement for the period of existence.

- E. A detailed description of all previous experience of the proposed transferee in operating cable television systems and providing cable television services or related or similar services, including a statement identifying, by place and date, any other cable television franchises awarded to the proposed transferee, its parent, subsidiaries or affiliates currently operating or in the status of transfer; and the status of such franchises with respect to completion thereof.
  - F. Other information the city may reasonably request consistent with FCC regulations.
- (d) In making a determination on whether to grant an application for a transfer of a franchise, the city council, in good faith, shall consider the legal, financial, technical and other qualifications of the transferee to operate the system; whether the incumbent franchisee is in material compliance with its franchise agreement and this article and, if not, the franchisee's or proposed transferee's commitment to cure such material noncompliance; and whether operation by the transferee would adversely affect cable service to subscribers, or otherwise be contrary to the public interest.
  - (e) No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this article and the franchise agreement, and that it will assume the obligations and liabilities of the previous franchisee under this article and the franchise agreement.
  - (f) Approval by the city of a transfer of a franchise does not constitute a waiver or release of any of the rights of the city under this article or the franchise agreement, whether arising before or after the date of the transfer.
  - (g) The city may impose on a proposed transferee a processing fee to reimburse the city for its actual out of pocket costs in excess of the filing fee in considering an application for transfer of a franchise. The fee shall not exceed \$10,000.00.

- (h) Notwithstanding the forgoing, a franchisee may transfer a franchise agreement or cable system to an Affiliate by providing written notice to the City at least 30 days in advance of such internal corporate restructuring or transfer, provided such transfer is not related to a merger or acquisition between the grantee or an Affiliate and an unaffiliated third party.

Sec. 22-159. Franchise reviews and modification.

Upon written notice given by the City or the franchisee, one to the other, the terms and conditions of the franchise agreement may be modified, provided that both the City and the franchisee are agreeable to such modification. Modifications shall be directed toward effecting alterations in the terms and conditions to reflect those technical, economic, or regulatory changes which have occurred during the interim period.

Sec. 22-160. Election and costs.

The Cable Act preempts any state or local requirement of a voter-approved cable television franchise. In the event the preemption is eliminated and applicable state or local law requires franchises to be voter-approved, then, in order for a nonexclusive franchise to be granted pursuant to this chapter, an election must be held and a majority of those voting must vote in favor of the granting of such franchise. The entire cost of the election together with all printing and publishing costs relating thereto shall be prepaid by the applicant selected by the Council to be grantee, regardless of whether or not the applicant is granted a franchise by said election. When the actual costs of the election are known, the final payment may be adjusted accordingly.

Sec. 22-161. Insurance.

- (a) The franchisee shall maintain throughout the term of the franchise, at its own cost and expense, automobile insurance on all its vehicles, and general comprehensive liability insurance, insuring the franchisee and the city, the council, its officers, private subcontractors, agents and employees, whether elected or appointed, from and against all claims by any person whatsoever for loss, injury or damage to persons or property, both real and personal, occasioned or caused by the construction, erection, operation or maintenance of the system. The insurance shall provide amounts of coverage not less than the following:

General Liability Insurance

Bodily injury per person .....\$1,000,000.00

Bodily injury per occurrence .....2,000,000.00

Property damage per occurrence .....500,000.00

Automobile Insurance

Bodily injury per person .....1,000,000.00

Bodily injury per occurrence .....2,000,000.00

Property damage per occurrence .....500,000.00

In no event shall the coverage or amounts be less than those established as the city's liability limits under Oklahoma Governmental Tort Claims Act, as may be amended from time to time.

- (b) The franchisee shall also provide workers' compensation coverage as required by the laws of the state.
- (c) All insurance policies shall be with companies licensed to conduct business in the state.
- (d) All insurance policies must name the city as an additional insured and no cancellation shall be effective, except upon 30 days' written notice to the city, and unless another policy is in effect on or before the date of cancellation.
- (e) The insurance coverage, as evidenced by the certificates of insurance, shall be filed and maintained with the city.
- (f) The franchisee shall provide proof to the city of compliance with this section no later than the effective date of the franchise.
- (g) If the franchisee fails to maintain the insurance required in this section, the city may, at its option, obtain and keep such insurance in full force and effect. The franchisee shall promptly reimburse the city for such insurance costs.

Sec. 22-162. Indemnification.

- (a) Except in the event of the city's, its employees' or agents' negligence or wrongful acts, the franchisee shall, at its cost and expense, indemnify, save, hold harmless and defend the city, its officials, boards, commissions, agents, consultants and employees against any and all claims, suits, causes of action, demands, penalties, liabilities, proceedings or judgments for

damages or equitable relief filed by third parties resulting from or arising out of or through:

- (1) The franchisee's construction, installation, maintenance or operation of its system.
  - (2) Any processes or procedures, acts or omissions by the franchisee in connection with the consideration of an award to the franchisee of a franchise and/or any amendments thereto.
  - (3) The conduct of the franchisee's business, including, without limitation, any acts or omissions of the franchisee, its servants, employees or agents, whether or not such act or omission is authorized, required, allowed or prohibited by this article or the franchise agreement.
- (b) This indemnification shall include all expenses, including, but not limited to, out of pocket expenses, attorneys' fees and litigation expenses incurred by the city in defending itself from such claims and demands, provided, if any action at law or suit in equity is instituted by a third party (a "claim") with respect to which the city intends to seek indemnification under this section, the city shall promptly notify the franchisee of such action or suit. The franchisee shall have the right to conduct and control any claim through counsel of its own choosing, but the city may, at its election, participate in a defense of any such claim at its sole cost and expense. It is further provided that if a conflict of interest should exist or develop between the franchisee and the city, then the city may proceed in the litigation, claim, proceeding or action which, in the exercise of its discretionary authority, represents the best interest of the city, at its own cost and expense.
- (c) This indemnification shall also include, but not be limited to, claims based on invasion of right of privacy, libel, slander, copyright infringements, defamation, violation of trade name, service mark or patent rights.
- (d) In addition to the provisions of subsection (b) of this section, nothing in this section shall prohibit the city from participating in the defense of any litigation by its own separate counsel at its own costs. Compliance by the franchisee with these indemnity provisions shall not limit any other remedies available to the city, at law or equity or waive any defense, position or objection the city may assert.

- (e) Nothing in this section shall be construed as an intent to waive or circumvent the provisions of the Governmental Tort Claims Act, 51 O.S. § 151 et seq.

Sec. 22-163. Performance bond.

- (a) The franchise agreement shall provide that, prior to the initial commencement of any system construction, upgrade or other work in the streets or other public ways of the city, the franchisee shall establish and maintain a performance bond in favor of the city, in an amount specified in the franchise agreement or other authorization as may be necessary to ensure the franchisee's faithful performance of each term and condition of this article, the franchise agreement and all applicable ordinances, statutes, rules and regulations, relating to the performance of any construction, upgrade or other work which is required of the franchisee.
- (b) If the franchisee shall fail to fulfill the material obligations as imposed, or breaches any such obligations, there shall be recoverable, jointly and severally, from the principal and sureties, any damages or loss suffered by the city proximately resulting from the failure of the franchisee to faithfully perform the material provisions of this article and the franchise agreement, including the cost of removal of property of the franchisee, the cost of completing the obligations of the franchisee, together with a reasonable attorney's fee.
- (c) The franchise agreement may provide the amounts, terms and periods of maintenance of such performance bond. Upon completion of all construction, upgrade or other work in the streets or other public ways to the satisfaction of the city, the city may reduce the amount of the bond to an amount determined by the city sufficient to protect the city in the event of breach. Bond requirements may be also increased by the city to secure additional construction upgrade or other work.
- (d) Any performance bond required by this action shall be issued by a surety authorized to conduct business in the state. The performance bond shall contain a restriction prohibiting cancellation or lapse without 30 days' written notice to the city from the surety or issuer of the performance bond of its intention to cancel or not renew. In the event of such cancellation or nonrenewal, the franchisee shall establish and maintain another performance bond, subject to the terms and conditions contained in this section; the intent of this provision is to prevent any lapse in coverage of a performance bond so long as applicable and required.

- (e) The performance bond shall be filed and maintained with the city clerk.
- (f) The rights available to the city pursuant to the performance bond are in addition to all other rights and remedies available to the city. The exercise of any such rights shall not be construed to excuse or waive unfaithful performance or breach by the franchisee, or limit the liability of the franchisee to the city.

Sec. 22-164. Maps, reports and records.

- (a) A franchisee shall maintain up-to-date copies of the franchisee's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the franchisee's policy in connection with its subscribers, and shall provide such information to the City upon request.
- (b) The franchisee shall at all times maintain records sufficient to demonstrate the proper payment of the franchise fee required by Section 22-156 of this chapter.
- (c) A franchisee shall maintain a full and complete set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the City streets, exclusive of subscriber service drops. Plans, records and "as built" maps will be available for inspection by the City Manager or his designee during normal business hours. Copies of maps shall be provided upon request in a mutually agreeable format .
- (d) The city shall have the right to inspect the books and records specified in this section and such other records as may be reasonably required by the city to perform its regulatory responsibilities under this article and the cable act. The city agrees to carry out any such inspection at reasonable hours and upon reasonable notice. Access by the city to the franchisee's books and records shall not be denied on grounds that such books and records contain proprietary or confidential information, provided, the city agrees to maintain the confidentiality of any such information.

Secs. 22-165—22-180. - Reserved.

SECTION 4. That Sections 22-181 through 22-197 of Chapter 22, Article IV, Division 3, of the Mustang Municipal Code are hereby deleted in their entirety, and new Sections 22-181 through 22-192 are adopted to read as follows:

Sec. 22-181. Minimum facility and service.

- (a) The following are minimum requirements for facilities and service for all cable franchises granted by the city. The city may establish in the franchise agreement additional requirements, where the city and franchisee determine that additional requirements are necessary to meet public needs.
  - (1) The system shall be capable of both one-way and two-way transmission and shall consist of a fiber optic trunk system consisting of a series of nodes and a coaxial cable distribution system. The system must be capable of delivering, at a minimum, 110 6MHZ analog channels (750 MHZ) with converters or digital/high definition signals.
  - (2) The franchisee shall provide one outlet consisting of all non-pay-per-view or premium channels cable service without charge to all facilities and/or buildings owned or occupied by the city or by an educational institution.
  - (3) Cable service shall be available to every dwelling and business within the city, unless residents reside in a remote or relatively inaccessible area or in annexed areas already served by another cable operator. The franchisee will build to these remote and inaccessible areas and extend service inside the city limits as long as such extension meets the return on investment as established by the franchisee. However, at a minimum, the franchisee will build to these remote and inaccessible areas and extend service inside the city limits on the following schedule: For every one-fourth mile of cable plant required to serve a particular section of the city, ten or more customers must have placed orders for service. Expenses associated with the provision of service to businesses beyond 125 feet from an existing subscriber tap shall be shared equally between the franchisee and such businesses.
- (b) The franchisee shall provide two access channels for non-commercial educational and/or governmental access programming. The City may delegate the responsibility for programming the educational channel to a public educational institution.
- (c) A Franchisee shall provide leased access channels as required by federal law.

- (d) The Franchisee shall comply with the federal Emergency Alert System regulations, 47 C.F.R. Part 11.
- (e) The system will provide standby power to be installed at locations as determined by the franchisee, but shall include backup power at the headend. The power system shall be capable of self activation at any time there is a loss of commercial power and shall be capable of continuous generation for an undetermined amount of time and perform self diagnostics.
- (f) When constructing or reconstructing the system, the franchisee shall place its facilities in accordance with the following requirements:
  - (1) The franchisee shall place its cable, appurtenances and transmission facilities underground in those areas where the transmission and distribution facilities of the telephone company and electric company are both located underground.
  - (2) The franchisee shall, remove, relocate, or rearrange its cable, appurtenances and transmission facilities underground in any area where, during the term of a franchise, and upon reasonable notice by the City, the transmission and distribution facilities of the telephone company and electric company are moved underground. A Franchisee shall have access, on a non-discriminatory basis, to any public funds under the control or direction of the City, used to reimburse the costs of removing, relocating, or rearranging facilities located in the Public Ways.
  - (3) Where aerial cable is allowed, the franchisee shall not erect any new poles along any public way except as may be reasonably necessary to fill small gaps in the existing aerial utility systems and only then with approval of the city, which shall not be unreasonably withheld..
- (g) The franchisee shall make no pavement cuts in the installation, maintenance or removal of its system, except upon compliance with this Code.

Sec. 22-182. Signal quality requirements.

The Franchisee shall comply with all applicable laws and regulations of the FCC with regard to the operation of a Cable System, including but not limited to technical requirements, Subscriber notices and closed captioning obligations.:

Sec. 22-183. Carriage of broadcast video signals.

The franchisee shall receive and distribute all broadcast television signals as required by the cable act and FCC rules and regulations.

Sec. 22-184. Erection, removal and common use of poles.

- (a) No poles or other wire-holding structures shall be erected by the franchisee without prior approval of the city. The franchisee shall have no vested interest in the location of any pole or wire-holding structure. Such poles or structures shall be removed or modified by the franchisee at its own expense whenever the city determines that public convenience would be enhanced thereby.
- (b) If poles or other wire-holding structures are already existing for use in serving the city and are available for use by the franchisee, and the franchisee does not make arrangements for such use, the city may require the franchisee to use such poles or structures, upon reasonable terms and conditions, if the city determines that the public convenience would be enhanced thereby, and the terms of the use available to the franchisee are just and reasonable.
- (c) Where a public utility serving the city desires to make use of the poles or other wire-holding structures of the franchisee, but an agreement therefor with the franchisee cannot be reached, the city may require the franchisee to permit such use for such consideration and on such terms as the city shall determine to be just and reasonable, taking into account pole rates charged the franchisee by the public utility, if the city determines that the use would enhance the public convenience and would not unduly interfere with operations of the franchisee.

Sec. 22-185. Safety requirements.

- (a) The franchisee shall at all times employ 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.
- (b) The franchisee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the National Electrical Safety Code and the National Electrical Code, as adopted by the city, and as such codes may respectively be amended or replaced, and all applicable state and local laws, codes and ordinances.

- (c) All structures and lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good repair.

Sec. 22-186. Removal of facilities upon request.

- (a) Upon termination of service by any subscriber, the franchisee shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his request.
- (b) The question of ownership of wiring installed inside the residence or business of a subscriber shall be determined by the rules promulgated by the FCC.

Sec. 22-187. Customer service requirements.

- (a) The franchisee shall render efficient service, promptly make repairs and interrupt service only for good cause and for the shortest time possible. The requirements established in this section shall be deemed minimum service standards and may be supplemented by terms of the franchise agreement or mutually agreed upon amendments to this article.
- (b) If required by the franchise agreement, a franchisee shall maintain an office within the city. The office shall be adequately staffed during normal business hours and capable of providing at all times all services the franchisee offers at its district office and other offices.
- (c) All employees of the franchisee who are involved in field work which require the employee to enter onto private property shall wear, on the outside of clothing, a photograph identification badge.
- (d) Telephone availability requirements may be provided by equipment and personnel located at the city office or other offices of the franchisee.
- (e) The franchisee shall provide a listed local, toll free or collect call telephone access telephone number which will be available to subscribers and members of the public 24 hours a day, seven days a week.
- (f) The franchisee shall comply with the customer service standards established by the FCC.

Sec. 22-188. Facility placement; regulations.

- (a) All transmission and distribution structures and equipment, including utility poles, erected by the franchisee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to the extent feasible, to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places, while allowing the franchisee to adequately perform its requirements under the franchise.
- (b) It shall be the responsibility of the franchisee to obtain the necessary pole attachment agreements from the city and/or private utility companies using poles within the city. All pole attachment agreements with the city shall be negotiated and approved by the council.
- (c) If, at any time during the period of a franchise, the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the franchisee, upon reasonable notice by the city, shall remove or relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (d) Any poles or other fixtures placed in any public way by the franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.
- (e) The franchisee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its facilities to permit the moving of buildings. The expense of such temporary removal or raising or lowering of facilities to permit the moving of buildings shall be paid by the person requesting such removal or raising or lowering of facilities, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than 48 hours' advance notice to arrange for such temporary facility changes.
- (f) A franchisee shall not place its facilities, equipment or fixtures where they will interfere with public utility facilities or equipment, nor obstruct or hinder the service of such utilities to the residents.
- (g) The city may issue such rules and regulations concerning the installation and maintenance of the system as may be consistent with this article and the franchise agreement.

- (h) Upon completion of any work, the franchisee shall restore all property to its former condition.

Sec. 22-189. Reservation of rights.

- (a) The right is reserved to the council to adopt, in addition to the provisions contained in this section and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its lawful police powers or powers granted to the city by federal or state law. However, such regulation, by ordinance or otherwise, shall be reasonable, of general applicability and not in conflict with the material rights granted in this article.
- (b) The city shall have the right to inspect the books, records, maps, plans and other like materials of the franchisee reasonably necessary to enforce the franchise granted under this article, at any time upon reasonable notice and during normal business hours.
- (c) The city shall have the right, during the life of a franchise, to install and maintain for a fee, upon the poles owned by the franchisee, any wire and pole fixtures that do not interfere with the system of the franchisee.
- (d) The city shall have the right to inspect all construction or installation work performed within public ways subject to the provisions of this nonexclusive franchise and other pertinent provisions of the state and local law. If city inspections reveal that the franchisee has failed, in the city's reasonable judgment, to fulfill its obligation under the terms of this nonexclusive franchise, or is otherwise impeding the public ways in an unauthorized manner, or performing in a manner contrary to federal, state or local law, the city shall notify the franchisee in writing of its specific deficiencies. Absent commencement of corrective action or filing of a request for review before the city council by the franchisee within 48 hours of receipt of such notification, the city may undertake the necessary repairs or restoration at the franchisee's sole expense.
- (e) At the expiration of the term for which a franchise is granted, or upon its termination or cancellation, as provided in this article, and absent a franchise renewal, the council may require the franchisee to continue operations for a period not to exceed six months from the date of the council's decision. In the event of nonrenewal of the franchise, the franchisee shall have 180 days from the date it ceases operations to remove, at its own expense, all portions of its system from all public ways

within the city and to restore such public ways to a condition reasonably satisfactory to the city, taking into account normal wear and tear.

Sec. 22-190. Subscriber privacy.

A franchisee shall comply with all provisions of applicable Federal and State law as it related to subscriber privacy.

Sec. 22-191. Compliance with applicable laws and ordinances.

- (a) A franchise granted under this article shall be subject to all applicable provisions of the laws of the United States, the state and city ordinances, and any amendments thereto.
- (b) The franchisee shall, at all times during the life of a franchise, be subject to all lawful powers of the state and the city, and to such reasonable regulations of general applicability as the state and city shall provide.
- (c) The franchisee shall conform to all zoning and platting requirements of the city prior to the commencement of any and all construction work.
- (d) The franchisee shall obtain building permits for all buildings constructed, pay all building permit fees, tap charge fees and all other fees as required by the ordinances of the city, and at the rates that are in full force and effect at the time of application for building permits.

SECTION 5. REPEALER

All former ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. EMERGENCY AND EFFECTIVE DATE

It being immediately necessary for the preservation of the public health, peace and safety of the City of Mustang and the inhabitants thereof, an emergency is hereby declared to exist by reason whereof, this Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

PASSED AND APPROVED and the Emergency Clause voted upon separately and passed and approved this 17<sup>th</sup> day of November, 2015.

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Mayor

ATTEST:

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City Clerk

APPROVED as to form this 17<sup>th</sup> day of November, 2015.

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City Attorney

**ORDINANCE NO. 1133**

**AN ORDINANCE ENACTING THE "CABLE FRANCHISE AGREEMENT" (FRANCHISE AGREEMENT); GRANTING TO COXCOM, LLC, AND ITS SUCCESSORS AND ASSIGNS ("COMPANY"), THE RIGHT AND PRIVILEGE, FOR A TERM OF TEN (10) 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 MUSTANG ("CITY") SUCH FACILITIES AS ARE 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 MUSTANG CABLE ORDINANCE (CHAPTER 22, ARTICLE IV. OF THE MUSTANG MUNICIPAL CODE) AND THE PROVISIONS OF THE FRANCHISE AGREEMENT ENTERED INTO BY AND BETWEEN THE CITY AND COMPANY; INCORPORATING THE MUSTANG CABLE ORDINANCE AND THE FRANCHISE AGREEMENT BY REFERENCE; REQUIRING THE COMPANY TO STRICTLY COMPLY WITH THE MUSTANG CABLE ORDINANCE AND THE FRANCHISE AGREEMENT; PROVIDING THAT THIS FRANCHISE ORDINANCE SHALL BECOME EFFECTIVE ON NOVEMBER 17, 2015, SO LONG AS THE CONDITIONS OF SECTION 22-155 OF THE CABLE ORDINANCE HAVE BEEN MET; PROVIDING THAT A VOTE OF THE PEOPLE IS NOT REQUIRED AND HAS BEEN PREEMPTED BY FEDERAL LAW; PROVIDING A REPEALER OF ORDINANCE NOS. 712 AND 713; 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; PROVIDING FOR SEVERABILITY; DECLARING A REPEALER; AND PROVIDING FOR AN EMERGENCY.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MUSTANG, OKLAHOMA;**

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 June 15, 1999. The franchise was extended through November 17, 2015. Pursuant to this franchise, the Company has continuously used its authority granted by the franchise 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 Mustang, Oklahoma, 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 involves 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 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. 1133 shall be in force and effect on November 17, 2015, so long as the requirements of Section 22-155 of the Mustang Cable Ordinance have been met.

SECTION 10. Ordinance Nos. 712 and 713 of The City of Mustang are hereby repealed effective November 17, 2015.

SECTION 11. REPEALER

All former ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 12. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 13. EMERGENCY

It being immediately necessary for the preservation of the public health, peace and safety of the City of Mustang and the inhabitants thereof, an emergency is hereby declared to exist by reason whereof, this ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

[Remainder of page intentionally blank.]

PASSED AND APPROVED and the Emergency Clause voted upon separately and passed and approved this 17<sup>th</sup> day of November, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED as to form this 17<sup>th</sup> day of November, 2015.

\_\_\_\_\_  
City Attorney

## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (the "Agreement" or "Franchise") is made and entered into this \_\_\_\_ day of November, 2015, by and between The City of Mustang, 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 operator for the right to use the public streets, and other public ways, for the purpose of maintaining and operating a cable system 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 Multimedia Cablevision, Inc. ("Multimedia") pursuant to Ordinance Nos. 712 and 713 (the "Franchise") 19,654, as approved by the qualified electors of the City on September 14, 1999, which ordinances are incorporated by reference as if fully set forth therein.

**WHEREAS**, by Ordinance No. 718 adopted by the City on September 7, 1999, the City consented and approved of the transfer of the Franchise from Multimedia to CoxCom, Inc. CoxCom, LLC (the "Company") is the successor-in-interest to CoxCom, Inc.; and

**WHEREAS**, on the Company requested the renewal of its current nonexclusive franchise with the City, which was set to expire on September 14, 2014, but has been extended by the City and the Company until November 17, 2015; 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 Council has determined that, subject to the provisions of the Mustang Cable, Chapter 22, Article IV (hereinafter, 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 Cable Ordinance, 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 City and the Company 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 Franchise."

**SECTION 2. Definitions.** The word "City" as used herein shall mean The City of Mustang, 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 22-102 of the Cable Ordinance, 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 System and to provide Cable 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. This franchise does not grant the authority to Company to provide telecommunications information services, nor may such services, if provided by Company, be regulated pursuant to this franchise. Any requirement, duty, obligation, or privilege arising from the Cable Ordinance not specifically mentioned herein, is incorporated into this Franchise Agreement just as if it had been fully set forth.

**SECTION 4. Franchise Area.** This Franchise is granted for the entire corporate boundaries of the City as of the Effective Date of November 17, 2015, and shall also include any additions thereto, by annexation or other legal means, during the term of the Franchise. The Company shall provide Cable Service to the entire franchise area pursuant to Section 22-181 of the Cable Ordinance.

**SECTION 5. Service Discrimination Prohibited.** The Company shall not deny 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 comply with all applicable local, state and federal nondiscrimination statutes and regulations.

**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 ten (10) years, commencing on November 17, 2015, 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 System within the City.

**SECTION 8. Rights and Privileges.** The rights and privileges granted by this Franchise are expressly made subject to and shall be limited by: (1) the provisions of the Cable Ordinance, 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.

**SECTION 9. Effective Date.** This Franchise Ordinance shall become effective on November 17, 2015. 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 the City of Mustang.

**SECTION 10. 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 franchises. In the event the City grants any other entity a cable 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 consistent with applicable law.

**SECTION 11. 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 Public Rights-of-Way for any facility needed for the maintenance, operation or extension of the Company's Cable System, subject to the terms of this Franchise, the Mustang Municipal Code 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 Public Right-of-Way cuts within the City. The Company may request assistance from the City to facilitate access to joint trenches or shared bores that are approved by 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 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. Obligations of the City.**

- (a) The City agrees not to unreasonably block, restrict, or limit the construction, installation, maintenance or upgrade of Company's Cable system.
- (b) The City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the placement of Company's communications or transmission facilities of any kind in a timely and prompt manner.

**SECTION 6. Right-of-Way Use Conditions.** In addition to complying with the construction and street occupancy standards set forth in the Mustang Municipal Code, 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 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 applicable ordinances.

(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 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 applicable ordinances, 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 applicable ordinances, 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 7. Insurance.** The Company shall maintain insurance in the amounts and pursuant to the conditions set forth in Section 22-161 of the Cable Ordinance. Further, the Company shall indemnify and hold the City harmless in compliance with, and to the extent as set forth in, Section 22-162 of the Cable Ordinance.

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

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

(a) In consideration for the franchise grant of authority contained herein, the Company shall pay to the City a franchise fee of five percent (5%) of the annual gross revenues derived from operation of the Cable System by the Company as provided in section 22-156 of the Cable Ordinance to provide Cable Service. 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 the Mustang Municipal Code.

**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 Sections 22-156 and 22-164 of the Cable Ordinance.

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

The Company shall comply with all applicable 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. To the extent such standards are in conflict with those set forth in Section 22-187 of the Cable Ordinance, the parties agree that the federal standards shall prevail.

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

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

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

**SECTION 1. Public, Educational and Governmental Access Channels.** The Company shall provide two (2) Public, Educational and Governmental Access Channels to Subscribers on the basic service tier within the Franchise Area throughout the term of this Franchise for non-commercial access programming. 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 locate the Access Channels on the Basic Service Tier, and shall provide Access Channels to all subscribers, regardless of the package of service. 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 Company shall retransmit the Access Channels received from the City or its designee without any material degrading of the signal and shall retransmit any program related material received from the City or its designee as part of the Access channel signals. "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.

**SECTION 5. Return Lines.** The Company shall provide an activated cable or fiber connection to the Company's headend from 1501 North Mustang Road, Mustang, Oklahoma and to the Company's headend from 612 N. Sara Rd. Oklahoma City Ok. 73127, 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 612 N. Sara Rd. Oklahoma City Ok. 73127. 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. Until the third anniversary of the Effective Date of this Agreement, the Company shall continue to provide, at no cost to the City, Basic Service to the number of outlets at the service locations listed on Exhibit A and to all public schools. In the event separate equipment is needed to receive basic service at these outlets, the Company agrees

to provide upon request, and at no cost to the City, the necessary digital converter equipment to receive Cable Service for each complimentary outlet.

(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.** If during the three (3) years commencing on the Effective Date of this Agreement the City or the public schools shall occupy a new building or facility for governmental purposes and such building is located within the service area, the Company shall provide, without charge for installation, one (1) service drop to each occupied municipal building or public school located within one hundred-twenty-five (125) feet of the Company's activated cable network. The Company shall provide its basic service, at no charge, to one (1) service outlet at each new installation location. Such outlets shall not be located in areas of buildings generally available to the public, such as waiting rooms and lobbies.

(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 approval of the Company, which approval shall not be unreasonably withheld. All requests for service connections, or extensions of service within existing locations shall be made by the City Manager or his 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**

**SECTION 1. 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.

**SECTION 2. Informal Resolution.** Following written notice of any alleged violation, the parties shall expeditiously schedule a meeting to discuss the dispute informally. In the event that the dispute is not resolved by the City and the Company's primary staff contact to the City within thirty (30) days of the Company's receipt of the City's written notice, either party may upon written notice to the other initiate formal resolution under Section 3, below.

**SECTION 3. Formal Resolution.** If the matter is not resolved informally under Section 2

(Informal Resolution) of this Article, the matter shall be referred to a committee of the City Council (the "Committee"), which Committee shall consist of three (3) members of the City Council to be selected by the City Council. In a meeting before the Committee, the City Manager or his designee shall present information and make a brief oral presentation demonstrating reasonable cause of a franchise violation. The Company may present information and make a brief oral presentation to the Committee. The Committee shall forward its recommendation on whether reasonable cause of a Franchise violation exists to the City Council. If the City Council determines there is reasonable cause that a Franchise violation has occurred, the matter shall be submitted to a mutually-selected mediator. If the Parties cannot agree upon a mutually-selected mediator within thirty (30) days of the end of the informal resolution period contained in Section 2 of this Article, each Party shall within twenty (20) days provide a list of the names of three (3) mediators acceptable to that Party to the Chief Judge of the Canadian County District Court who shall select a mediator for the Parties from the submitted names. If the Parties, with the assistance of the mediator, do not resolve the dispute within 75 days of selection of the mediator, they may enforce their rights solely and exclusively in Canadian County District Court. The court shall have jurisdiction to demand and compel compliance with this Agreement and to impose the remedies contained herein.

**SECTION 4. Remedies for Non-Compliance.** The Canadian County District Court shall, without limitation, have all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise, and the assessment of damages.

(a) Relationship of Remedies.

(1) Non-Exclusivity of Remedies. Subject to applicable law and this Franchise, the remedies provided for in this Franchise, are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity.

(2) No Election of Remedies. Without limitation, the recovery of amounts under the insurance, indemnity, or bonding provisions of this Franchise shall not be construed as a limit on the liability of the Company under the Franchise or an excuse of faithful performance of any obligation of the Company.

(b) Non-Waiver. The Company shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

**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 Canadian 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  
6205-B Peachtree-Dunwoody Rd.  
Atlanta, GA 30328

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

City of Mustang  
City Manager  
1501 North Mustang Road  
Mustang, Oklahoma 73064

(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 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.

**SECTION 10. Modification.** This Agreement may be amended or modified only by a written instrument executed by both parties.

[Signatures on next page.]

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

CoxCom, LLC

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED by the City Council of the City of Mustang, Oklahoma on the 17<sup>th</sup> day of November, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

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

REVIEWED for form.

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

## EXHIBIT A

| <u>Location</u> | <u>Address</u> | <u>Number of Outlets</u> |
|-----------------|----------------|--------------------------|
| City Center     |                | 22                       |
| City Hall       |                | 8                        |
| Fire Station 1  |                | 7                        |
| Animal Control  |                | 1                        |

**TO: THE HONORABLE MAYOR AND COUNCIL  
CITY OF MUSTANG**

**FROM: JUSTIN BATTLES  
ASSISTANT CITY MANAGER**

**RE: DISCUSSION REGARDING SUPPLEMENTING BUDGET  
FOR CURRENT FISCAL YEAR**

**DATE: SEPTEMBER 8, 2015**

**BACKGROUND:**

Park staff has been working towards preparing for the upcoming winter season. There are several issues and needs to address at Town Center, the most significant of which are highlighted below:

- **HVAC repairs:** Aerobic room RTU-1, Senior Center, RTU-5, Conference Center- RTU 12, Library RTU17, and Main Hallway RTU 4 – need to be repaired. Senior Center RTU-3 is a high priority and staff suggests doing it at the same time. Total cost for repairs is \$20,733.11.
- **Fire Sprinkler Repairs:** In order to be in compliance with State Fire Codes, there are several sprinkler heads in the gym that need to be replaced. Total cost is \$2,146.00.

Due to both of the above referenced repairs not being anticipated at the time of budget preparation, staff is requesting a supplemental appropriation for the amount of \$23,000 in order to perform these repairs.

Once completed, the heating of Town Center during winter months will be able to be performed correctly and efficiently and the facility itself will be up-to-date with State Fire Codes. Staff will answer any questions you may have at Monday evening's Work Session.