

1 Introduced July 13, 2021, by Councilwoman
2 Denham, seconded by Councilman Dunham,
3 (by request of Administration)

4 **Item No. 21-07-3383**

5 **ORDINANCE NO. 4043**

6
7 An ordinance authorizing the City of Slidell, acting through its Mayor, to enter
8 into a Rights-of-Way Use Agreement with Cox Communications, LLC to facilitate Cox's
9 access to and use of the City's public rights-of-way for installation, modification, relocation,
10 repair, operation, and maintenance of Cox's fiber-optic infrastructure.

11 WHEREAS, Cox Communications, LLC is a telecommunications company that
12 desires to expand its fiber-optic infrastructure to areas within the municipal boundaries of
13 the City of Slidell; and
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16 WHEREAS, Cox Communications, LLC desires to access and utilize the
17 City's public rights-of-way to accomplish said expansion by way of the installation,
18 modification, relocation, repair, operation, and maintenance of its fiber-optic infrastructure
19 within said rights-of-way, and the City is agreeable to same under the general terms set
20 forth in the attached Exhibit A; and
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22
23 WHEREAS, Article VII, Section 14(C) of the Constitution of the State of
24 Louisiana provides that "[f]or a public purpose, the state and its political subdivisions . . .
25 may engage in cooperative endeavors . . . with any public or private association,
26 corporation, or individual"; and
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28
29 WHEREAS, the parties agree that the expansion of Cox Communications,
30 LLC's fiber-optic infrastructure to areas within the municipal boundaries of the City will
31 provide a public benefit and assist in the economic development of the area, and the
32 parties have a reasonable expectation of receiving benefits which are commensurate to
33 the benefits respectively conferred.
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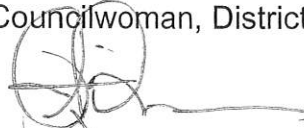
1 **ORDINANCE NO. 4043**
2 **ITEM NO. 21-07-3383**
3 **PAGE 2**

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6 NOW THEREFORE BE IT ORDAINED by the Slidell City Council that it does
7 hereby authorize the City of Slidell, acting through its Mayor, to enter into a Rights-of-Way
8 Use Agreement with Cox Communications, LLC, under terms and conditions substantially
9 similar to those set forth in of the attached Exhibit A. This Ordinance shall take effect
10 immediately upon adoption.
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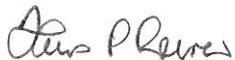
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14 **ADOPTED** this 10th day of August, 2021.

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17 Leslie Denham
18 President of the Council
19 Councilwoman, District A

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22 Greg Cromer
23 Mayor

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26 Thomas P. Reeves
27 Council Administrator

DELIVERED	8/12/21
8:50 am	to the Mayor
RECEIVED	8/10/21
2:45 pm	from the Mayor

RIGHTS-OF-WAY USE AGREEMENT

This **RIGHTS-OF-WAY USE AGREEMENT** (this “Agreement”) is made and entered into effective this 20th day of August, 2021 (the “Effective Date”) by and between:

The **CITY OF SLIDELL, LOUISIANA**, a municipality and political subdivision of the State of Louisiana, whose mailing address, is P.O. Box 828, Slidell, LA 70459, appearing herein through its duly authorized Mayor, George G. Cromer, and hereinafter referred to as "**Grantor**";

AND

COX COMMUNICATIONS, LLC, a Delaware limited liability company, with its principal address at 6205-B Peachtree Dunwoody Road, Atlanta, GA 30328, and local office at 7401 Florida Blvd, Baton Rouge, LA 70806, appearing herein through its duly authorized representative, Anthony Pope, and hereinafter referred to as "**Grantee**".

WHEREAS, Grantee or its affiliate is a telecommunications company that desires to expand its fiber-optic infrastructure to areas within the municipal boundaries of Grantor; and

WHEREAS, Grantee desires to access and utilize Grantor’s public rights-of-way to accomplish said expansion by way of the installation, modification, relocation, repair, operation, and maintenance of its fiber-optic infrastructure within said rights-of-way and Grantor is agreeable to same under the terms and conditions set forth below; and

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that “[f]or a public purpose, the state and its political subdivisions . . . may engage in cooperative endeavors . . . with any public or private association, corporation, or individual”; and

WHEREAS, the parties agree that the expansion of Grantee’s fiber-optic infrastructure to areas within the municipal boundaries of Grantor will provide a public benefit and assist in the economic development of the area, and the parties have a reasonable expectation of receiving benefits which are commensurate to the benefits respectively conferred; and

WHEREAS, the fiber-optic infrastructure contemplated by this Agreement is intended for the transmission of broadband internet access services, including voice over internet protocol, and not for cable services or video services, as those latter terms are defined and used in La. R.S. 45:1361, *et seq.*

NOW THEREFORE, premises considered, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and for cause, the parties agree as follows:

- I. **TERM.** The initial term for this Agreement shall run for five (5) years from its Effective Date (the “Initial Term”). This Agreement shall automatically renew thereafter for up to three (3) consecutive five (5) year terms (each a “Renewal Term”)

unless one party provides written notice of termination to the other at least ninety (90) days prior to the end of the then current term, in which case the Agreement shall terminate at the end of the then current term.

II. TERMINATION. In addition to any other grounds for termination provided for in this Agreement, this Agreement may be terminated:

- a. by Grantor, if Grantee fails to timely make any undisputed payment due hereunder within thirty (30) days of written demand for same;
- b. by Grantor, if Grantee fails to fulfill any additional material obligation required of it under this Agreement, and has failed to become compliant with such obligation within thirty (30) days after written notice by Grantor of default; provided, however that if the nature of the obligation is such that more than thirty (30) days are reasonably required to come into compliance and Grantee commences reasonable cure efforts within the thirty (30) days period, termination hereunder shall not be effective unless Grantee fails to diligently pursue such efforts and complete same within a commercially reasonable time;
- c. by Grantor, if Grantee accesses and/or utilizes Grantor's public rights-of-way in a manner inconsistent with the permissions granted in this Agreement and Grantee fails to cease such operations within thirty (30) days after written notice by Grantor of default;
- d. by Grantor, if Grantee's use of the public rights-of-way herein shall encompass the provision of cable services or video services, as those terms are defined and used in La. R.S. 45:1361, *et seq.*; or
- e. by Grantor or Grantee, if Grantee obtains a valid Louisiana franchise agreement (or similarly valid franchise) that otherwise authorizes Grantee's use of Grantor's public rights-of-way for Grantee's telecommunications infrastructure without respect to this Agreement.

In the event of termination of this Agreement, Grantee shall not be entitled to any pro rata refund of any payment already made or other consideration provided.

III. OBLIGATIONS OF THE PARTIES.

- a. Grantor shall
 - i. allow Grantee a non-exclusive right to access and utilize Grantor's public rights-of-way for the installation, modification, relocation, repair, operation, and maintenance of Grantee's fiber-optic infrastructure, subject to advance permitting approval by Grantor's engineer for all new installations in accord with section III.b.vi below, which approval shall not be unreasonably withheld. For purposes of this Agreement, the term "public

rights-of-way” shall mean the area on, below, or above a Grantor-owned public roadway, sidewalk, alley, or waterway within the municipal boundaries of Grantor. The term shall not include any right-of-way within the municipal boundaries of Grantor that is owned by the United States, the State of Louisiana, another political subdivision, or a private party, or the use of any infrastructure of any third party on, below, or above Grantor’s public rights-of-way.

b. Grantee shall

- i. on or before the Effective Date, or, if such day is a Saturday, Sunday, or legal holiday, the first business day thereafter, pay to Grantor the sum of Twenty-Five Hundred and No Dollars (\$2,500.00) as a permitting review fee for the access and use rights granted herein for the first contract year. Annually thereafter, on or before the anniversary of the Effective Date, or, if such day is a Saturday, Sunday, or legal holiday, the first business day thereafter, Grantee shall also pay to Grantor the sum of Five Hundred and No Dollars (\$500.00) as a permitting renewal fee for the access and use rights granted herein for the following contract year. In the event of termination of this Agreement, there shall be no prorated refund for unused days of the payment year;**
- ii. provide a fifty (50%) percent discount to Grantor for “COX Business Services” for Internet, Wifi, Metro E and other data services that Grantor purchases from Grantee;**
- iii. run its fiber-optic infrastructure to Grantor’s 1010 Gause Boulevard building and provide and install WiFi Network Equipment (\$10,000 value) sufficient to provide WiFi coverage to the entire building via COX fiber-optic infrastructure;**
- iv. provide Grantor with assistance in marketing Grantor’s 1010 Gause Boulevard building as a Regional Data Center and Business Incubator;**
- v. provide City with consultation services on a Smart City Growth Plan;**
- vi. obtain permitting approval from Grantor’s engineer (which shall be at no additional charge to Grantee) prior to any new installations within Grantor’s public rights-of-way, and provide to Grantor’s engineer all relevant information concerning such proposed installations in conjunction therewith, including but not limited to:**
 - 1. updated contact information for Grantee, including the contact information for a representative who can be contacted in the event of an emergency;**

2. a description of the proposed installation;
3. a map drawn to scale showing the location of placement of the proposed installation;
4. an inventory of all equipment, structures, and facilities to be contained in the proposed installation;
5. a description of all anticipated maintenance for the proposed installation; and
6. the name and appropriate contact information for any contractor who shall perform the proposed installation on behalf of Grantee.

Grantee understands and agrees that reasonable changes to its plans may be required by Grantor's engineer for permitting approval and that certain plans may be rejected if inconsistent with Grantor's current or contemplated operations or the operations of third parties validly utilizing the Grantor's public rights-of-way. Grantee shall further provide Grantor with a copy of all "as-built" plans upon substantial completion of new installations within Grantor's public rights-of-way;

- vii. obtain, at its cost, all third party approvals necessary for the installation, modification, relocation, repair, operation, and maintenance of Grantee's fiber-optic infrastructure within Grantor's public rights-of-way, including by way of any required pole attachment agreements;
- viii. conduct its operations on Grantor's public rights-of-way in a business reasonable manner so as to cause minimum interference to public passage and existing infrastructure. By way of example only, Grantee shall not generally be permitted to conduct any operations which require substantial disruption to Grantor's existing roads or sidewalks or the traffic thereon;
- ix. provide necessary and appropriate safety and traffic personnel in conjunction with all installation and repair operations affecting Grantor's rights-of-way and coordinate with Grantor, as appropriate, regarding same;
- x. be responsible, to the exclusion of Grantor, for all costs associated with Grantee's installation, modification, relocation, repair, operation, and maintenance of Grantee's fiber-optic infrastructure in Grantor's public rights-of-way, and for any recordation costs associated with this Agreement;
- xi. be responsible for the timely repair and restoration and, when required, replacement of any property of Grantor or any third party which is

disrupted, damaged, or destroyed as a result of Grantee's activities in connection with this Agreement;

- xii. conduct its operations on Grantor's public rights-of-way in accord with applicable law, including environmental laws, "call before you dig" requirements, and Grantor's Code of Ordinances;
- xiii. unless otherwise maintaining a valid authorization to maintain its infrastructure in Grantor's public rights-of-way, upon termination of this Agreement, including by way of expiration, remove, at Grantor's request and within the timeframe required by it, Grantee's installations, equipment, and improvements from Grantor's public rights-of-way, failing which, at Grantor's option, (i) such installations, equipment, and improvements shall become the property of Grantor, without any compensation therefore; or (ii) Grantor may remove such installations, equipment, and improvements on its own and pursue Grantee for the costs and expenses incurred in connection therewith;
- xiv. obtain and maintain an occurrence policy of commercial general liability insurance, in an amount of at least 1 million per occurrence/3 million annual aggregate, covering its operations during the term of this Agreement which lists Grantor as an additional insured, evidence of which shall be provided to Grantor at its request, and which insurance shall be considered primary to any insurance Grantor maintains for any covered claim; and
- xv. prior to any new installation within Grantor's public rights-of-way, provide Grantor a with performance and maintenance bond in the amount of \$100,000.00, payable to Grantor, to ensure the appropriate and timely performance by Grantee in the construction and maintenance of Grantee's infrastructure located in Grantor's public rights-of-way and to ensure Grantee's repair and restoration of any damage to Grantor's facilities or its public rights-of-way. The required performance and maintenance bond must be with a good and sufficient surety, issued by a surety company authorized to transact business in the State of Louisiana, and satisfactory to the Grantor's attorney in form and substance.

IV. OWNERSHIP AND PLACEMENT. Except as may be otherwise set forth in this Agreement, Grantee shall maintain ownership of all infrastructure it places in Grantor's public rights-of-way and Grantor shall have no rights therein. In the event future development or repair within Grantor's municipal boundaries requires or counsels in favor of relocation of Grantee's infrastructure, the parties agree to meet in good faith to discuss a plan for same in an effort to minimize inconvenience and costs and to discuss any possible alternatives to relocation. Grantee shall abide by the final decision of Grantor with respect to same and shall relocate its infrastructure as Grantor requires (except to the extent similarly-situated users of the relevant right-of-way area are not required to relocate). Required relocations must occur within an industry reasonable

time based on the project, subject to Force Majeure. Any relocations required by Grantor shall be at Grantee's sole cost, unless Grantor is providing cost reimbursement to any other similarly-situated user of the right-of-way impacted by the required relocation, in which case Grantor shall provide Grantee equal treatment and reimbursement for Grantee's relocation cost as any other receiving cost reimbursement from Grantor.

- V. **INDEMNITY.** Grantee shall indemnify, defend, and hold harmless Grantor, and Grantor's officers, agents, and employees, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury, including accidental death, to the extent proximately caused by the Grantee's installation, modification, relocation, repair, operation, or maintenance of infrastructure within any of Grantor's public rights-of-way, including Grantee's operations incident thereto, except to the extent such liability is arising from or caused by the gross negligence or willful misconduct of the Grantor, its agents, representatives, officers, officials, employees or contractors. This provision shall survive termination of this Agreement, including by way of expiration.

VI. **GENERAL PROVISIONS.**

- a. **Notice.** All notices required under this Agreement shall be in writing and deemed properly given or made upon receipt if delivered by nationally recognized overnight courier, or registered or certified mail, postage prepaid to the addresses listed below:

To Grantee:

Cox Communications, Inc.
Attn: Erin Monroe Wesley
Vice President Public & Government Affairs
7401 Florida Blvd
Baton Rouge, LA 70806

With a copy to:

Cox Communications, Inc.
Attn: Vice President Government Affairs
6205-B Peachtree Dunwoody Road
Atlanta, GA 30328

To Grantor:

City of Slidell
Attn: Mayor
P.O. Box 828
Slidell, LA 70459

With a copy to:

City of Slidell
Attn: City Attorney
P.O. Box 828
Slidell, LA 70459

or such other address as either party may designate in writing from time to time.

- b. **Legal Provisions.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be amended to make such insertion or correction. The parties agree not to discriminate in their respective employment and services practices, and shall fulfill their obligations under this Agreement without regard to race, color, age, religion, sex, national origin, veteran status, genetic information, political affiliation, or disability.
- c. **Independent Contractors.** The relationship between the parties hereto shall be that of independent contractors.
- d. **Third Party Beneficiaries.** Except as may be expressly stated in this Agreement, nothing herein shall be construed or interpreted to give any person other than Grantor and Grantee any legal or equitable right, remedy, claim, or defense under or in respect of this Agreement. There are no intended third party beneficiaries of this Agreement, except as may be expressly stated in this Agreement.
- e. **Waiver.** A waiver by either party of a default by the other party and/or the performance of the other party's obligations contained in this Agreement shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Agreement.
- f. **Entire Understanding.** This Agreement embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and replaces and supersedes any and all other agreements, whether in writing or otherwise, governing the subject matter herein. This Agreement may be amended or modified

only by written documents duly authorized, executed, and delivered by Grantor and Grantee.

- g. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. A scanned or electronically reproduced copy of this fully executed Agreement shall have the same legal effect as an original signed version of this Agreement.
- h. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by any of the parties without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.
- i. **Force Majeure:** Any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, public health emergencies, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to payments by Grantee to Grantor hereunder (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Agreement, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.
- j. **Governing Law; Venue.** This Agreement shall be governed and interpreted by the laws of the State of Louisiana, without regard to conflicts of law principles. The obligations and undertakings of both parties hereto shall be performed in the City of Slidell, Louisiana. In the event that any legal proceeding is brought to enforce the terms of this Agreement, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for St. Tammany Parish, Louisiana.
- k. **Authority.** Each person signing this Agreement represents and warrants that he/she has full authority to do so and hereby bind the entity on whose behalf he/she is signing.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.
SIGNATURES ON NEXT PAGE]**

**RIGHTS-OF-WAY USE AGREEMENT
[SIGNATURE PAGE]**

Thus done and signed by the authorized representative of Cox Communications, LLC in front of me, notary public, and the undersigned competent witnesses, on the 23rd day of August, 2021, effective as of the Effective Date.

WITNESSES

Lu O. Kij
Brad Benty

COX COMMUNICATIONS, LLC
By: [Signature]
Anthony Pope
Senior Vice President
and Regional Manager

Erin Monroe Wesley
Notary Public
La. Bar/Notary Number: 28157
My Commission At Death

**Erin Monroe Wesley
Notary Public
Bar Roll No. 28157
State of Louisiana
Commission Expires at Death**

Thus done and signed by the authorized representative of the City of Slidell, Louisiana in front of me, notary public, and the undersigned competent witnesses, on the 7th day of September, 2021, effective as of the Effective Date.

WITNESSES

[Signature]
John G. Melborn
Michael Noto MICHAEL NOTO
Thomas S. Schneidau
Notary Public
La. Bar/Notary Number: _____
My Commission _____

CITY OF SLIDELL, LOUISIANA
By: [Signature]
George G. Cromer
Mayor

**Thomas S. Schneidau
Notary Public
State of Louisiana
Roll No. 33359/Notary ID No. 91626
My Commission is for life.**