



Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, VA 22042

March 15, 2023

Sent via email: Chris.Sweatt@cox.com

Cox Virginia Telcom, LLC
Attn: Chris Sweat, Senior Account Executive
13900 Lincoln Park Drive, Suite 500
Herndon, VA. 20171

Subject: Memorandum of Negotiations

Reference: RFP 2000003581 – Telecommunications and Internet Services

Dear Mr. Sweatt:

Thank you for responding to the above referenced Request for Proposal. Enclosed with this letter is the Memorandum of Negotiations, which defines the final agreement between your firm and Fairfax County Public Schools.

Please review the Memorandum of Negotiation, execute it, and return it to my office within five (5) days of the date of this letter. After I receive the signed Memorandum, I will return an executed copy to you along with the Acceptance Agreement which signifies award of this contract to your firm.

If you have any questions or need additional information, don't hesitate to contact me at 571-423-3596 or via email. cmbeinhacker@fcps.edu Thank you for your interest in Fairfax County Public Schools' requirements and we hope that you will bid on future requirements.

Sincerely,

Christine Beinhacker

Christine Beinhacker
Senior Contract Specialist

Attached: Memorandum of Negotiations

DISTRIBUTION:

Jean Welsh, jwelsh@fcps.edu; Tom Vandenburg, tvandenburg@fcps.edu; Michael Palacios, mike.palacios@fairfaxcounty.gov; Athena Baker, athena.baker@fairfaxcounty.gov; Adam Eldert, adam.eldert@fairfaxcounty.gov

MEMORANDUM OF NEGOTIATIONS

RFP 2000003581 – Telecommunications and Internet Services

The County of Fairfax, Fairfax County School Board (hereinafter called the County, FCPS, or Customer) and Cox Virginia Telcom, LLC (hereinafter called the Contractor or Cox) hereby agree to the following in the execution of Contract #4400011828. The final contract (hereinafter called the Contract or the Agreement) consists of the following items:

- Fairfax County School Board's Request for Proposal 2000003581 and all Addenda;
- This Memorandum of Negotiations;
- Cox's response to the Security Architecture Checklist, dated March 9, 2023 (incorporated by reference only);
- Cox's Technical and Business proposal dated November 3, 2022, as amended by this Memorandum of Negotiations;
- Attachment A. Cox Service Level Agreements, dated March 9, 2023;
- Form: Attachment B. Service Order Form, dated March 9, 2023;
- Attachment C. Cox Service Terms, dated March 9, 2023;
 - Exhibit A to Attachment C Cox General Terms, dated March 9, 2023;
- Attachment D. Cox's Services and Service Pricing, dated March 15, 2023;
- Form: Attachment E. Letter of Agency Form, dated March 9, 2023;
- Form: Attachment F. Toll Free Agency Letter Form, dated March 9, 2023;
- Attachment G. Final Cox Clarifications to RFP, dated March 15, 2023;
- All subsequent amendments to the Contract.

The following provisions were negotiated by the parties and are incorporated into the Contract:

General

1. Cox agrees that no early termination fees will be charged to the County in the event of an early termination of Services or of the Contract. As agreed by the parties, the County shall have the right to terminate any or all of the Services and the Contract for convenience, and without an early termination penalty, by providing at least thirty (30) days prior written notice of such termination, and shall be liable for payment to Cox of only the following items, and only to the extent applicable to the specific Services being terminated: (i) the then unamortized construction or equipment costs, and (ii) any 3rd party service provider costs, either of which were incurred and documented by Cox in connection with such termination.
2. Consolidated billing will include SD-WAN, will be available starting April 1, 2023.
3. Cox hereby acknowledges and agrees that, with respect to any indemnity obligation of Customer in the Agreement, such indemnity obligations shall apply to Customer ONLY if and to the extent expressly permitted or provided for under applicable law. Nothing contained herein shall be deemed to effect a waiver of Customer's sovereign immunity under Virginia law.

4. Cox further acknowledges and agrees that, with respect to: (a) any limitation on, or disclaimer of, Cox's liability in the Agreement and (b) any assumption of responsibility on Customer's part hereunder, such limitation, disclaimer, and/or assumption will be enforceable if and to the extent permitted by applicable law.
5. As set forth in Article 3, Section 4(E) of the Fairfax County Purchasing Resolution, Cox acknowledges and agrees with respect to any limitation of liability on the part of Cox and/or the Cox Related Parties (as such term is defined in Par. A.19. of the General Terms) that is set forth in the Agreement, no such limitation of liability shall be deemed to apply to the following claims (referred to herein as the "Excluded Claims"): any third party claims, liabilities, damages, demands, costs, fees, or expenses to the extent arising from or caused by either (i) the intentional or willful misconduct, fraud, or recklessness of Cox or a Cox Related Party; or (ii) claims for bodily injury, including death, or damage to real property or tangible personal property resulting from the negligence or intentional misconduct of Cox or a Cox Related Party.
6. Notwithstanding any provision to the contrary, Cox agrees to provide Customer with prompt notice and a reasonable opportunity to cure any purported violation of the Acceptable Use Policy (AUP) before exercising any right it may have thereunder to suspend or terminate any Service to Customer (including Customer's end-users), except in those circumstances where an immediate suspension is necessary in order to protect Cox from network or system damage, or from legal liability. Any provision in the AUP imposing liability obligations upon Customer for violations of the AUP will be enforceable if and to the extent permitted by applicable law, without waiver of Customer's sovereign immunity.
7. Cox will not make any changes to the AUP, the Privacy Policy, or any other policy, terms, and conditions referenced by URL link in the General Terms (collectively, the "Cox Policies") during the term of the Agreement that will, individually or in the aggregate, materially and adversely impact Customer's use of the Services, or materially and adversely diminish Cox's obligations to Customer and Customer's end-users, except to the extent expressly required under any laws, rules, or regulations applicable to the Services provided hereunder. In the event of a conflict between the Agreement and any term or provision in a Cox Policy, the Agreement will in all events govern and control.
8. Cox covenants and agrees that it will (a) comply with all laws, rules, and regulations applicable to the Services provided hereunder; and (b) will maintain throughout the term of this Agreement the same or functionally-equivalent or substantially similar (or more stringent) practices, procedures, methodologies, and certifications as are described in its completed Security Architecture Checklist (the "Cox Security Practices") which is incorporated herein by reference, except if required by law or reasonable business need. Cox will not make any changes to the Cox Security Practices that will, individually or in the aggregate, result in a material breach of Cox's obligations under (b) immediately above. Subject to the limitations of liability set forth in the Agreement, Cox will indemnify, defend, and hold harmless Customer and Customer's Board members, officers, and employees (collectively, the "Customer Indemnitees") from and against any and all third party claims, liabilities, damages, demands, costs, fees, and expenses (including reasonable fees and expenses of attorneys) arising from or in connection with a material breach or violation by Cox or a Cox Related Party of the obligations set forth in clauses (a) and (b) of this Paragraph with respect

to Cox's provision of those Services expressly outlined in Attachment D to the Agreement (Cox Services and Service Pricing) (the "Pricing Attachment"), except to the extent any such claims, liabilities, damages, demands, costs, fees, or expenses are caused by or arise from the negligence or intentional misconduct of any Customer Indemnitee, or from Customer's acts or omissions, including without limitation, Customer's failure to install and maintain appropriate and reasonable information security and privacy processes and procedures for the protection of Customer's network, equipment, system and data. The indemnity contained in this paragraph will not apply to or extend to any new Service that is added to the Agreement after the date of execution of this Agreement. The indemnity contained in this paragraph shall apply only to benefit Fairfax County Public Schools and Fairfax County when such parties are purchasing any of the Cox Services set forth in the Pricing Attachment, and it shall not apply to any other party utilizing the Agreement or any portion thereof for the purposes of a cooperative purchasing vehicle or similar.

9. Currently FCPS has requested additional changes to the Cox Service Level Agreements (the "SLAs"), however Cox is not able to process these proposed changes in accordance with required internal Cox procedures in time for contract execution with FCPS. While Cox cannot promise that the requested additional SLA changes can be agreed to, Cox agrees to cooperate in good faith with FCPS to ensure such requested changes are presented to the necessary internal parties, and will use commercially reasonable efforts to ensure a good faith review and consideration of FCPS's proposed SLA changes. Once the SLAs changes are agreed to, if any, the parties will enter into a written amendment to the executed contract to memorialize those SLA changes.

Local Exchange Services (See Special Provisions Section 9.1.a.). The following additional terms and conditions apply to Cox's provision of Local Exchange Services hereunder:

10. Cox does not offer proactive monitoring on its analog service offerings. Cox will provide battery backups for cable modems, EMTA as well as ADTRAN devices. Cox will provide replacement batteries to the County at no charge. Cox will implement a PMP (preventable maintenance plan), at no cost, to ensure batteries maintenance. Cox will schedule and perform yearly battery status checks. All batteries with "failed" status will be scheduled for replacement. When available, Cox will plug batteries into on-site County Uninterruptible Power Supply ("UPS").
11. Cox agrees to offer analog services on both its HFC (Hybrid Fiber Network) as well as its on-fiber network. Cox will also offer analog service via OTT (Over the Top) using an ATA (Analog Telephone Adapter). The ATA will work either on any active internet service. ATA devices will be provided to the County at no additional cost. For analog phone services, the only cost is the analog phone line, there are no County ATA device costs.
12. Cox will provide telecom service in the Reston area, using its (Cox Business) current fiber optical network. Cox will work with the County if additional fiber builds are needed. Due to Franchise limitations, Cox does not offer video services in Reston. Should equipment or construction costs be required, or if 3rd party services are being resold to serve a customer location, an increase in costs may be incurred.

Long Distance, Including International Calling (See Special Provisions Section 9.1.b.) The following additional terms and conditions apply to Cox's provision of Local Distance (including International Calling) Services hereunder:

13. Cox's pool of minutes cannot be applied to International long distance. The County's pool of minutes is automatically applied to both domestic and toll-free calls. Cox offers the following active long-distance plans:
 - a. Unlimited Local and Domestic Long Distance (Outbound) – available for VoiceManager/POTS Lines for an additional MRC and included with IP Centrex Seats and Cloud Voice for MS Teams. Includes intralata / interstate / intrastate calling.
 - b. Minute Packs – available for all Cox voice services including tollfree. Calls to and from Canada are included in Cox minute packs. Includes intralata / interstate / intrastate calling.
14. Cox will not provide carryover in the existing call plans.
15. Customer Specific Tariffs (CST): Cox will work with the County to customize an Extended Local, Domestic Long Distance and Extended Domestic Long Distance outbound calling rate plan. Customization may also be applied to Toll Free (Inbound) usage at the County's request.
 - a. A CST may be considered as part of the Voice solution.
16. Cox agrees to offer analog services on both its HFC (Hybrid Fiber Network) as well as its on-fiber network. Cox will also offer analog service via OTT (Over the Top) using an ATA (Analog Telephone Adapter). The ATA will work either on any active internet service. ATA devices will be provided to the County at no additional cost. For analog phone services, the only cost is the analog phone line, there are no County ATA device costs.
17. Cox will provide long distance services to Cox-provided telephone numbers. Due to Franchise limitations, Cox will not offer Video Services in Reston.
18. Cox will support Cox Business Long Distance for Cox Business Telephone Numbers, no matter where they are located.

Toll-free Inbound (See Special Provisions Section 9.1.d.) The following additional terms and conditions apply to Cox's provision of Toll-free Inbound Services hereunder:

19. Cox will provide the rate of \$0.01 per minute for long distance and toll-free usage. Intralata / interstate / intrastate calls are included.
20. Cox will waive the minimum fee for Toll Free numbers.

Audio Teleconferencing (See Special Provisions Section 9.1.e.) The following additional terms and conditions apply to Cox's provision of Audio Teleconferencing Services hereunder:

21. Cox will provide the following maximum number of simultaneous lines:
 - a. Webex Standard – audio conferencing up to 100 participants.
 - b. Webex Premium – audio conferencing up to 1000 participants.
22. Cox will provide the following monthly flat rate subscription for Webex audio teleconferencing services.
 - c. Webex Standard - \$9.99 / per user / per month
 - d. Webex Premium - \$19.99 / per user / per month

Additional service feature information:	Standard	Premium
Call anyone with a phone number (audio or video)	✓	✓
Conference calling	✓	✓
Visual voicemail and voicemail-to-email	✓	✓
Call history	✓	✓
Contact lists	✓	✓
Hold/Resume	✓	✓
Transfer	✓	✓
Forward your calls	✓	✓
Single number reach	✓	✓
Share screen or application	✓	✓
Call Pull	✓	✓
Group Call Park and Retrieve	✓	✓
Call Pickup	✓	✓
Record your calls	✓	✓
Call queue management	✓	✓
Executive Assistant	✓	✓
Unlimited one-on-one and group messaging	✓	✓
File sharing	✓	✓
Desktop and Application screen sharing	✓	✓
Availability status	✓	✓
Find People, Spaces, Messages, and Files	✓	✓
Message threads and quoting	✓	✓
Share emojis	✓	✓
Add reactions	✓	✓
Share animated GIFs	✓	✓
Do not Disturb	✓	✓
Message notification options	✓	✓
Message external guests	✓	✓
Space moderator controls	✓	✓
Announcement only options	✓	✓
How many people can join a Personal Room meeting?	Up to 100 people	Up to 1000 people
How many people can join a Space meeting?	Up to 100 people	Up to 300 people
Meeting length	Up to 24 hours	Unlimited
Share content - screen, application, files, whiteboard	✓	✓
Virtual and blurred background	✓	✓

Additional service feature information:	Standard	Premium
Remove background noise	✓	✓
Animated meeting reactions and gestures	✓	✓
Interactive whiteboarding	✓	✓
Polling	✓	✓
Breakout sessions	✓	✓
Schedule meetings from your Google or Microsoft Outlook Calendar	✓	✓
Schedule meetings from Microsoft Office Suite 365	✓	✓
Meeting recording	✓	✓
Meeting recording transcriptions		✓
Add an alternative meeting host		✓
Host can let others manage your meetings		✓
Remote Desktop Control		✓
Webex Assistant		✓

23. Audio and Video are part of the Webex solution. Cox does not offer a standalone audio-conferencing solution.

- a. Cox's voice solution and WebEx will provide a range of security measures which protect customer data via audio encryption, Meeting IDs, passwords and other data privacy and protection components depending on the specific solution and product components selected.
- b. Further, from a network and systems control perspective, Cox is highly committed to protecting the security and privacy of customer data and employs internal and external security controls that are monitored across the Cox Enterprise to ensure conformance with industry-recognized information security guidelines, standards, and best practices.
- c. Cox will continually review and enhance our security measures that mitigate against known threats and rely on both internal and external resources to scan for vulnerabilities in platforms, systems, and applications necessary for delivering our products and services, and generally will require the same for our third-party providers.

SD-WAN (See Special Provisions Section 9.2.b.) The following additional terms and conditions apply to Cox's provision of SD-WAN Services hereunder:

24. Cox will provide an alternative network option with an SD-WAN solution through RapidScale.

- a. This fully managed SD-WAN service incorporates the newest, proven-effective technologies. RapidScale SD-WAN solutions will improve performance, visibility, and security throughout the County's network and simplify the complexities of delivering SD-WAN services across multiple states and networks.
 - i. Cox SD-WAN Vision RapidScale, a Cox Business Company, will provide a managed and hybrid-managed cloud services RapidScale experts will work with the County to understand the environment and support the applications specific to each individual facility based on the type of facility, level of care provided, criticality of network access, availability and redundancy needs, bandwidth

requirements, and any other factors at play (guest networks, etc.). All designs will leverage RapidScale's fully managed SD-WAN solution based on industry-leading VMware SDWAN (formerly known as Velocloud). Designs will be carrier agnostic and may incorporate a customized mixture of dedicated private line (Multiprotocol Label Switching (MPLS)/Metro Ethernet), Dedicated Fiber Internet, Broadband Internet, digital subscriber line (DSL), and Long-Term Evolution (LTE) backup. Each location will be designed to include the appropriate mix of services to achieve optimal availability, performance, and cost.

- b. Cox agrees that no early termination fees will be charged to the County in the event of an early termination of RapidScale Services or of the Contract. As agreed by the parties, the County shall have the right to terminate any or all of the Services and the Contract for convenience, and without an early termination penalty, by providing at least thirty (30) days prior written notice of such termination, and shall be liable for payment to Cox of only the following items, and only to the extent applicable to the specific Services being terminated: (i) the then unamortized construction or equipment costs, and (ii) any 3rd party service provider costs, either of which were incurred and documented by Cox in connection with such termination.

Other Services (See Special Provisions Section 9.2.c.) The following additional terms and conditions apply to Cox's provision of Other Services hereunder:

25. Cox will provide a fully-managed turnkey WiFi solution. The WiFi services will be delivered over its HFC and fiber optical network.
26. Cox will also deliver private managed wireless networks.
27. Cox will provide a CloudPort connection to both Amazon Web Services (AWS) and Azure.

Dedicated Internet Access (E-Rate Eligible) (See Special Provisions Section 9.3.a.) The following additional terms and conditions apply to Cox's provision of Dedicated Internet Access Services hereunder:

28. Cox will not charge NRC for upgrades to existing services. NRC is applicable to new services only.

Monitoring Requirements/Managed Services (See Special Provisions Section 9.3.d. - e.) The following additional terms and conditions apply to Cox's provision of Managed Services hereunder:

29. Cox will provide the following:
 - a. Cox Business DDoS Mitigation Essential Service: The Cox Business DDoS Mitigation Essential Service utilizes network components on the Cox IP backbone to decipher between legitimate and malicious DDoS traffic, and continuously monitors customer traffic and categorizes such traffic as legitimate or malicious (DDoS) using pre-defined digital signatures. Traffic that is categorized as DDoS traffic is intercepted and discarded or rate-shaped while traffic categorized as legitimate is allowed to pass. In order to receive the DDoS Mitigation Essential Service from Cox, the customer must, at its sole cost, maintain an acceptable Cox Internet Service, and Static IP address that routes exclusively to Cox at all times. DDoS Mitigation Essential is a non-managed service that is provided and supports auto detecting with auto mitigation with layer 3 & 4 support.

- b. Cox Business DDoS Mitigation Managed Service: Cox Business DDoS Mitigation Managed Service: The Cox Business DDoS Mitigation Managed Service is more enhanced and sophisticated than the Essential Service DDoS service, and the configuration for this managed service is custom for each customer. The pricing for Cox Business DDoS Mitigation Essential Service is on a ICB basis and determined after evaluation of the customer's needs, requirements and specific requests, which will include but is not limited to, the amount of clean bandwidth needed, the number of IP addresses Cox will mitigating, and whether the customer supports a GRE tunnel or if the customer can support BGP peering.

30. **Order of Precedence.** In the event of a conflict or ambiguity between or among the documents comprising the Contract, and except as otherwise expressly provided, the documents will be accorded the following order of precedence:

- All amendments to the Contract entered into after the date of this Memorandum of Negotiations;
- This Memorandum of Negotiations;
- Attachment G. Final Cox Clarifications to RFP, dated March 15, 2023;
- Cox's response to the Security Architecture Checklist, dated March 9, 2023 (incorporated by reference only);
- Attachments A through F to this Memorandum of Negotiations;
- All Addenda to Fairfax County's Request for Proposal 2000003581;
- Fairfax County's Request for Proposal 2000003581; and
- Cox's Technical and Business proposal dated November 3, 2022, as amended by this Memorandum of Negotiations.

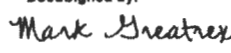
28. **Billing.**

- a. Cox agrees not to charge credit card fees to the County.
- b. Cox agrees not charge the County for EDI fees.
- c. Cox will not charge the County late fees for undisputed invoices not paid within 45 days from date of invoice.
- d. All billing disputes will be settled and credited within 30 days of billing inquiry.

All other prices, terms, and conditions remain the same.

Executed and agreed by the undersigned duly-authorized representatives of the parties on the dates set forth next to their signatures below.

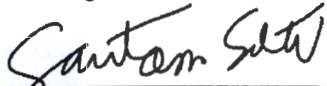
ACCEPTED BY:

DocuSigned by:

ER1A0A44ER7EAE?

Mark J. Greatrex, President
Cox Virginia Telcom, LLC

3/17/2023

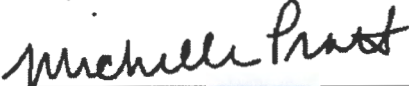
Date



Gautam Sethi, Chief Information Technology Officer
Department of Information Technology

3/17/23

Date



Michelle R. Pratt, Director
Office of Procurement Services

3/22/2023

Date