

ORDINANCE NO. 13-1015

**AN ORDINANCE OF THE CITY OF OREGON CITY GRANTING A NON-EXCLUSIVE FRANCHISE TO COMCAST OF OREGON II, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM WITHIN THE CITY OF OREGON CITY**

**WHEREAS**, the City of Oregon City (the "City") has the authority to regulate and franchise cable television services pursuant to federal law; and

**WHEREAS**, under federal law, a cable operator must have a franchise to provide cable services within the City; and

**WHEREAS**, Comcast of Oregon II, Inc. ("Comcast") had a cable franchise agreement with the City that, after multiple extensions, expired on June 30, 2013; and

**WHEREAS**, Comcast desires to continue to operate and maintain its cable system in the City and to provide cable services in the City; and

**WHEREAS**, the City finds that the terms and conditions in the proposed franchise are reasonable to meet the future cable-related community needs and interest and are in the best interest of the City.

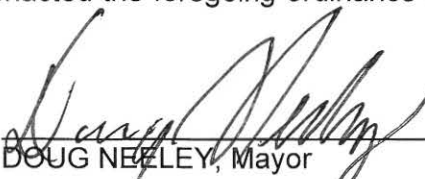
**NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** The City hereby grants Comcast of Oregon II, Inc. a non-exclusive franchise as provided in the attached Exhibit "A" to construct, operate and maintain a cable system in the City.

**Section 2.** The franchise granted in Ordinance No. 97-1013 has expired and Ordinance No. 97-1013 is repealed upon the effective date of the franchise granted pursuant to this Ordinance.

**Section 3.** In accordance with the terms of Section 3.7 of the proposed franchise, this Ordinance shall be null and void in the event Comcast of Oregon II, Inc. fails to file in the office of the City Manager a written acceptance in the form attached to the proposed franchise within sixty days after tender of the franchise by the City.

Read for the first time at a regular meeting of the City Commission held on the 16<sup>th</sup> day of October 2013, and the City Commission finally enacted the foregoing ordinance this 6th day of November 2013.

  
\_\_\_\_\_  
DOUG NEELEY, Mayor

Attested to this 6th day of November 2013:

  
\_\_\_\_\_  
Nancy Ide, City Recorder

Approved as to legal sufficiency:

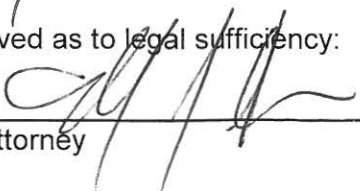
  
\_\_\_\_\_  
City Attorney



EXHIBIT A

**CABLE TELEVISION FRANCHISE AGREEMENT**  
**between**  
**OREGON CITY**  
**and**  
**COMCAST OF OREGON II, INC.**

**Final City Proposal**

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## 1. PURPOSE AND INTENT

1.1 The City of Oregon City, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Comcast of Oregon II, Inc. (hereafter Grantee) a non-exclusive ten (10) year franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the City.

1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.

## 2. DEFINITIONS

For the purposes of this Franchise Agreement and all attachments included hereto, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this Franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 ("Cable Act") shall have the meaning specified in the Cable Act definition.

- a. "Access" or "Community Access" or "Public, Educational and Government (PEG) Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the Grantor and its designees, of designated Channels on the Cable System to acquire, create, and distribute non-commercial programming.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a Programmer, without charge by the Grantee, on a non-discriminatory basis.
  - i. "Educational Access Channel" means any Access channel or portion of an Access channel available for educational programming by individuals or institutions.
  - ii. "Government Access Channel" means any Access channel or portion of an Access channel available for programming by government agencies.
  - iii. "Public Access Channel" means any Access channel or portion of an Access channel where any member of the general public or any non-commercial organization may be an Access Programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules shall not be designed to control the content of public access programming.

- c. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. “Basic Cable Service” means any service of tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.
- e. “Broadcast Signal” means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- f. “Cable Act” means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- g. “Cable Operator” means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operations of such a Cable System.
- h. “Cable Service” means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- i. “Cable System” shall have the meaning specified in the definition of “Cable System” in the Cable Act (47 U.S.C. 522 (7)). In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the cable system constructed and operated by the Grantee in the City under this Franchise.
- j. “Channel” shall have the meaning specified in the definition of “Channel” in Section 602 of the Cable Act (47 U.S.C. 522 (4)).
- k. “City” means the City of Oregon City, a municipal corporation, and all the territory within its boundaries, as such may change from time to time.
- l. “FCC” means the Federal Communications Commission.
- m. “Franchise” or “Franchise Agreement” means the authorization granted by this document for the construction or operation of a cable system.
- n. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other

legal means.

- o. “Grantee” means Comcast of Oregon II, Inc., and its lawful successors, transferees, or assignees thereof.
- p. “Grantor” means the City, a municipal corporation in the State of Oregon.

“Gross Revenues” means all amounts, in whatever form and from all sources, derived from the operation of the Cable System to provide Cable Services within the Franchise Area by the Grantee or any Affiliate. “Gross Revenues” shall include, without limitation, amounts for all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services); installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels; converter, remote control, and other Cable Service equipment rentals, leases, or sales; advertising sales (allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising); commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks) (allocated on a *pro rata* basis using total Cable Service subscribers within the Franchise Area); commercial/leased access (allocated on a *pro rata* basis using total Cable Service subscribers within the Franchise Area); and all other revenues derived from the operation of Grantee’s Cable System to provide Cable Service within the Franchise Area, regardless of whether initially recorded to another entity and however characterized.

“Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment.

“Gross Revenues” shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute “Gross Revenues” of both the Grantee and the Affiliate, shall be counted only once for purposes of determining “Gross Revenues.”

The definition of “Gross Revenues” also includes those revenues collected as franchise fees and paid to the City. “Gross Revenues” shall exclude (i) revenues from high speed cable modem service unless it is determined to be a Cable Service under federal law or regulation, (ii) any amounts received for managed I-Net services from the Grantor or Institutional subscriber; (iii) bad debt written off by Grantee in the normal course of business, provided, however, that bad debt recoveries shall be included in Gross Revenues during the period collected; and (iv) and any taxes and/or fees of general applicability collected from Subscribers and paid to a governmental entity.

- q. “Institutional Network” or “I-Net” shall have the meaning specified in the

definition of “Institutional Network” in Section 611(f) of the Cable Act (47 U.S.C. 531(f)).

- r. “Leased Channel” means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- s. “Person” means any corporation, partnership, proprietorship, individual, organization, or other entity authorized to do business in the State of Oregon, or any natural person.
- t. “Programmer” means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to Subscribers, by means of the Cable System.
- u. “Programming” means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.
- v. “Record” means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.
- w. “Resident” means any natural person residing within the Franchise Area.
- x. “School” means any public or accredited private primary or secondary schools and all similarly situated private and parochial educational institutions that have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies..
- y. “Section” means any section, subsection or provision of this Franchise Agreement.
- z. “Streets and Public Ways” means the surface of and the space above and below any public street, road, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.
- aa. “Subscriber” means any person who lawfully receives Cable Service over the

Cable System within the Franchise Area with Grantee's express permission.

- bb. "Tap" or "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- cc. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

### **3. GRANT OF FRANCHISE**

#### **3.1 Grant.**

Grantor hereby grants to the Grantee a non-exclusive and revocable franchise from and after the Effective Date hereof, revocable as provided herein, to construct, operate and maintain a Cable System within the Franchise area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the facilities of the Cable Communications System as required and conditioned by the provisions of this Franchise Agreement.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general codes of the City enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. The Grantor shall make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations.

Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

#### **3.2 Use of Public Streets and Rights of Way.**

For the purpose of constructing, operating and maintaining a Cable System in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration within City Streets and Public Ways, the Grantee shall in each case request all required permits, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this Section shall relieve the



Grantee of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

### **3.3 Duration and Effective Date of Franchise/Franchise Review.**

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this Agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be December 6, 2013, ("Effective Date") unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

### **3.4 Franchise Not Exclusive.**

The franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets and Public Ways by franchise, permit, or otherwise subject to the provisions of Section 3.5 herein.

### **3.5 Competitive Equity**

The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by the Grantor to provide Cable Service in the Grantee's Franchise Area pursuant to the Cable Act, which franchise contains material terms and conditions that are more favorable or less burdensome terms or conditions than this Franchise Agreement, then, except to the extent that state or federal laws or regulations permit or require more favorable or less burdensome terms or conditions, the Grantor agrees that, after written request by Grantee, it shall amend this Franchise to ensure that, considering all the circumstances including any limitations on its regulatory authority, the material provisions of such other franchises and this Franchise are taken together, materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

In the event Grantor does not amend the Franchise as provided above, Grantee may elect at any time prior to the commencement of the Grantee's thirty-six (36) month renewal



window provided by 47 USC §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Grantee's Franchise shall, ninety (90) days from the Grantee's written notice, be shortened so that the Franchise shall be deemed to expire on the date thirty-six (36) months from the first day of the month following Grantee's ninety (90) day notice period. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Grantor required. The Grantor and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Grantor and Grantee shall have all rights and obligations provided under said Section 626.

### **3.6 Franchise Non-Transferable.**

Subject to Section 617 of the Cable Act (47 U.S.C. Section 537), no transfer of the Franchise or change in control of Grantee shall occur without the prior written consent of Grantor, provided that such consent shall not be unreasonably withheld.

No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness, and no such consent shall be required for a change in control or transfer of an ownership interest or other interest in Grantee to the parent of Grantee or transfer of an interest in the Franchise to the parent of Grantee, or any action which is the result of a merger of the parent of Grantee or any action which is the result of a merger of another Affiliate of Grantee. Grantee shall provide written notice to Grantor of any transaction as described in this paragraph within sixty (60) days of such transaction.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. Grantee shall furnish all information required by law and/or reasonably requested by Grantor with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. The Grantee shall assist Grantor in any such inquiry.

In cases where the Grantor finds it inappropriate to give unconditional consent to the proposed transfer, the Grantor may condition its consent upon terms and conditions related to the legal, financial and technical qualifications of the proposed transferee and to the resolution of outstanding and unresolved issues of Grantee's noncompliance with material terms and conditions of this Franchise. Grantee reserves the right to challenge Grantor's conditional consent as outside the scope of its authority under this Franchise or federal law. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation, provided that any such consent shall not be unreasonably withheld. The Grantor shall have one hundred twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by

such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within one hundred twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described shall be deemed void and of no effect unless Grantee shall, within sixty (60) days after the same shall have been made, file such certified copy as is required.

### **3.7 Franchise Acceptance.**

The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor, shall file in the office of the City Manager a written acceptance executed by the Grantee, in the form attached hereto as Exhibit A. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

## **4. CONSTRUCTION AND SERVICE REQUIREMENTS**

### **4.1 General.**

In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

All construction in the Streets and Public Ways shall be performed in compliance with this Agreement and all applicable Grantor ordinances and codes. When obtaining a permit, Grantee shall inquire about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of cuts in the Street and Public Ways.

### **4.2 Right of Inspection of Construction.**

Grantor shall have the right to inspect all construction or installation work performed in the Streets and Public Ways within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise Agreement and other pertinent provisions of law.

#### **4.3 Provision of Service**

- a. It is the City's general policy that all potential residential Subscribers in the Grantee's Franchise Area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any potential residential Subscriber within the Franchise Area. Except as otherwise provided in Section 10.1(e), Grantee shall provide Cable Service to every residential dwelling unit within the Franchise Area where the average density is equal to or greater than twenty-five (25) dwelling units per cable mile:
  - i. With no line extension charge; and
  - ii. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting from the nearest point on Grantee's Cable System to an outside wall for residential Subscribers with additional charges for non-standard installations computed on a time plus material basis to be calculated on that portion of the installation that exceeds the standard one hundred twenty-five (125) foot drop;

Grantee shall provide Cable Service to potential Subscribers that do not meet the density requirement set forth in Section 4.3(a) under the following circumstances, through agreement between the Grantee and the person requesting service for payment of line extension construction costs:

- i. Grantee shall provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.
  - ii. The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over one hundred twenty-five (125) feet but less than five hundred (500) feet.
  - iii. The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
- b. Notwithstanding Section 4.3(a), Grantee may establish different and non-discriminatory rates and charges and classes of services for non-residential Subscribers, as well as different and non-discriminatory monthly rates for classes of non-residential Subscribers.
- c. Nothing in this Section shall be construed so as to require Grantee to extend and provide Cable Service to areas within the Franchise Area serviced by another Cable Operator to whom a cable franchise was issued by Grantor.

#### **4.4 Erection of Poles.**

If additional poles in an existing aerial utility system route are required, Grantee shall

negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any Streets and Public Way in an existing aerial utility system unless approved by the Grantor. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

#### **4.5 Trimming of Trees or other Vegetation.**

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming shall be done only in accordance with the codes and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this Franchise Agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

#### **4.6 Repair and Restoration of Streets, Public Ways and Grounds.**

Whenever the Grantee disturbs the surface or otherwise damages any Streets and Public Ways for any purpose mentioned herein, it shall repair and restore the same to as good as condition as existed prior to the work and consistent with generally applicable rules, regulations and codes of Grantor as now or hereafter in effect. If the Grantee fails to promptly repair and restore any Streets and Public Ways, the Grantor may do so, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee. All excavations made by the Grantee in the Streets and Public Ways shall be properly safeguarded for the prevention of accidents.

#### **4.7 Construction Codes.**

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes of Grantor in effect at the time of Grantee's work. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question at the expense of the Grantee.

#### **4.8 Reservations of Street Rights.**

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sanitary or stormwater sewers, grading, paving, repairing and/or altering any Streets and Public Ways, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other

public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sanitary or stormwater sewer or water main, the improvement of a street or any other public improvement, then upon reasonable written notice from the Grantor, all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

If public funds, other than the funds of Grantor or fees collected from Subscribers and paid to Grantor, are available to any franchised entity using such street or public right-of-way for the purpose of defraying the cost of any of the relocation of facilities as provided under Sections 4.9, 4.10 and 4.11 hereof, upon written request of the Grantee, Grantor shall use reasonable efforts to make application for such funds on behalf of the Grantee. Grantee's request to Grantor shall include a detailed statement of eligibility of such funds. Notwithstanding the foregoing, nothing in this paragraph shall require the Grantor to make application for funds the Grantee may request directly from the funding source or that are not available for use by Grantee.

#### **4.9 Street Vacation and Abandonment.**

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall immediately remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee to remove its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

#### **4.10 Movement of Facilities.**

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense,



paid in advance, of the person requesting the temporary removal or relocation such of its facilities as may be required to facilitate such movements.

If the Grantor is the party requesting the temporary removal or relocation of Grantee's facilities for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The reasonable cost incurred by Grantor including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

#### **4.11 Undergrounding.**

- a. Cable must be installed underground where (1) all existing utilities are placed underground, other than high voltage electric facilities; (2) statute, ordinance, policy or other regulation of Grantor lawfully requires utilities to be placed underground; (3) all overhead utility lines are placed underground, other than high voltage electric facilities (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise); (4) underground easements are obtained from developers of new residential areas; or (5) utilities are overhead but Residents prefer underground (undergrounding to be provided at Residents' cost).
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.
- c. Nothing in this Section shall be construed to prohibit Grantee from constructing, operating, or maintaining aboveground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment provided that these are placed in a manner consistent with applicable laws, codes, rules and regulations.

#### **4.12 Strand Maps.**

Grantee shall maintain strand map drawings of the Cable System, and make them available to the Grantor for inspection upon request. Strand drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall provide to the Grantor, upon request, a copy of strand maps showing the location of the

Grantee's facilities in the Streets and Public Ways within the Franchise Area.

#### **4.13 Emergency.**

In the event of emergency situation or circumstance that creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's Cable System without prior notice. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.13.

### **5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS**

#### **5.1 Equal and Uniform Service**

Reasonable efforts shall be made to provide equal and uniform access, Cable Service and rates to Subscribers and potential Subscribers within the Franchise Area.

#### **5.2 System Configuration.**

The Cable System shall consist, at a minimum, of a network with bidirectional communications capacity for subscriber interaction if any, required for selection or use of Cable Service such as pay-per-view, VOD and other interactive cable services as determined by Grantee.

#### **5.3 Channel Capacity.**

The Grantee shall maintain on its Cable System a minimum capacity of one hundred twenty (120) Channels. The System shall throughout the Franchise term carry reverse signals in the upstream direction. In addition, Grantee and Grantor may enter into arrangements for I-Net services as provided in Section 6.5 (e) hereof. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the Portland Metropolitan area.

#### **5.4 Satellite Earth Stations.**

Grantee shall provide a sufficient number of earth stations or its equivalent to receive signals from enough operational communications satellites or its equivalent that carry cable television services accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.

#### **5.5 PEG Interconnection.**

- a. Grantee shall continue and maintain without limitation all interconnections in effect on the Effective Date of this Franchise unless otherwise authorized in writing by the Grantor. The interconnections shall provide the capacity to transmit PEG Access Programming among the Designated Access Provider (as defined in Section 6.5) and geographically adjacent cable systems.
- b. Upon request by the Grantor, and based on a demonstrated need, Grantee shall work in good faith with the Grantor to interconnect with other cable operators at a designated meet point and not at Grantee's headend or hubs in order to hand off PEG Access Channel signals for the purposes of sharing PEG programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Access Channels without degradation to Grantee's demarcation at the designated meet point of the interconnect. The Grantor shall not require such interconnection without the prior consent of Grantee, which shall not be unreasonably withheld. Grantee shall not be obligated to interconnect with any cable system providing competitive Cable Services within the Franchise Area, except that Grantee shall use reasonable efforts to agree with a competitive Cable Services provider on reasonable terms, conditions and costs of a viable interconnection of the PEG Access Channel signals. Any incremental, direct capital costs incurred by Grantee to interconnect may be paid by the Grantor from the PEG capital fee. This subsection b shall apply only to the extent it is consistent with the Cable Act and applicable FCC rules, regulations and orders.
- c. Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for PEG Access signals.
- d. Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may, after written consent from Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- e. Nothing in this Section alters Grantee's Channel obligations with respect to Access programming or the number of designated Access Channels delivered to residential Subscribers on the System. Unless the Grantor directs otherwise, the interconnection shall allow designated Access Channels to operate without disruption or delay across and within the Franchise Area.
- f. It is Grantee's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation, when compared to the quality of the signals as received from the designated access providers. It is not the Grantee's responsibility to ensure that the signals provided to the interconnect by another interconnecting system meet industry standards.

## **5.6 Emergency Alert Capability.**



- a. Grantee shall provide emergency alert capability in full compliance with applicable FCC requirements. Grantee shall establish procedures to override video and audio on all channels of the Cable System to provide emergency messages consistent with the FCC's directives.
- b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from Grantor's use of the cable system or the EAS including, but not limited to, reasonable attorneys' fees. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.6(b).

#### **5.7 Standby Power.**

Grantee shall provide standby power generating capacity at the Cable System control center and all hubs and any fiber optic nodes. Grantee shall maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term, a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. Upon request, Grantee shall provide a copy of the plan to the Grantor.

#### **5.8 Parental Control Lock.**

Grantee shall provide Subscribers (by sale, lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any channel.

#### **5.9 Technical Standards.**

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply, and may be enforced by the Grantor. The Grantor may establish and enforce higher or additional reasonable technical standards, following consultation with the Grantee, to the extent that applicable law allows the Grantor to do so without the consent of the Grantee.

#### **5.10 Performance Testing.**

Grantee shall perform all system tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise.

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of this

Agreement and applicable FCC technical standards. Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection upon request. Tests may be witnessed by representatives of Grantor.

The Grantor may conduct independent tests of the system for which the Grantee shall give its fullest cooperation. If one or more of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least five (5) additional randomly chosen locations. If results of a second test indicate failure of the system to meet the technical performance requirements of this Franchise, then the Grantor may apply such remedies as it deems appropriate, unless the circumstances of the failure are caused by conditions which are beyond the Grantee's control, as determined, acknowledged and verified by the Grantor.

## **6. SERVICES AND PROGRAMMING.**

### **6.1 Programming Categories.**

To the extent Grantor has regulatory authority under federal law, the Grantee shall provide video programming services in at least the following broad categories:

1. News & Information
2. Sports
3. General Entertainment
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science
7. Travel Information
8. Weather Information
9. Governmental and Educational Programming
10. Movies
11. Religious Programming
12. Foreign language / Ethnic Programming

The identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System, except for PEG Access programming, as further described herein.

### **6.2 Video Programming Services.**

The City reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level and quality of Cable Service.

### **6.3 Leased Channel Service.**

The Grantee shall offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

### **6.4 Obscenity.**

The Grantee agrees that it will not transmit over the Cable System programming which is obscene or otherwise unprotected by applicable law, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including but not limited to, Public, Educational and Governmental Access programming.

### **6.5 Public, Educational and Government Programming.**

#### **a. Designated Access Providers.**

- i. The Grantor may designate Public, Educational and Government Access Providers, including itself, to control and manage the use of any or all Access Channels provided by the Grantee under this Franchise (the "Designated Access Provider") throughout the Franchise Area. The Grantor or its designee may formulate rules for the operation of the Public Access Channels, consistent with this Franchise; such rules shall not be designed to control the content of Public Access programming.

Grantee shall cooperate with Designated Access Provider(s) in the use of the Access Channels for the provision of PEG Access. Nothing in this Franchise shall prevent the Grantor or its Designated Access Provider from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal and state law and regulations, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment. However, Grantee may review such use and if Grantee determines that such use is inconsistent with applicable federal and state law or regulations, Grantor or its Designated Access Provider, upon written notification from Grantee, shall immediately cease such use.

- ii. Grantee shall enter into such operating agreements with Designated Access Provider(s) as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

#### **b. Channel Capacity**

- i. As of the effective date of this Franchise, there are five (5) channels currently in the channel line-up used for PEG Access programming that will continue to be available to every Subscriber in the Franchise Area without additional charge throughout the term of this Franchise unless otherwise provided in this Franchise: channel 11 (CAN regional public access); channel 23 (public access – WFTV); channel 27 (educational programming

– Clackamas Community College); channel 28 (educational programming – North Clackamas School District); and channel 30 (government access – Clackamas County). Upon at least sixty (60) days advance written notice to Grantee, the Grantor may require Grantee to change the programming offered on these five (5) channels to different PEG Access programming so long as the new programming can be cablecast by Grantee without construction of new interconnections or origination points, provided that Grantor has a Designated Access Provider within the Franchise Area to manage the programming. Grantee shall not be responsible for inserting or managing programming on any of the channels. In the event the new programming requires an origination point pursuant to subsection 6.5.d, the Grantee shall have not more than thirty (30) days after construction is complete to implement the required change. For any programming change requiring construction of an origination point, Grantee shall not be required to make the change unless the Grantor facilitates construction at no cost to Grantee.

In the event Grantor's Designated Access Provider ceases its operation or any provider of PEG access programming for the five (5) channels identified above no longer provides programming for a period of one month or longer, Grantee may use the channel or channels designated for such use for other purposes until such time as the Grantor provides sixty (60) days' notice of its intent to use the Channel again. The Grantor and Grantee shall work in good faith to transition such channel or channels.

- ii. Grantor may require Grantee to provide one (1) additional Access Channel for a particular type of PEG Access under this Section, when a Channel for a particular type of PEG Access programming meets the criteria set forth below. Upon Grantee's request, a public hearing will be conducted regarding the need for the additional PEG Access Channel. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of the required additional Access Channel.
  - a. Public Access Channels: Grantor must show that during any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or
  - b. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM, or

- c. Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM; and,

the applicable PEG Access Channel capacity expansion criteria as set forth in subsections a, b, or c shall have been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 6.5(b)(iii):

“Locally Produced” means programming produced in the Clackamas, Multnomah, or Washington Counties; and

“Original Programming” means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

“Locally Scheduled” means that the scheduling, selection, and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received over the interconnection, the provider transmitting the programming over the interconnection. However, carriage on any Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as part of its Cable Services shall not be considered “Locally Scheduled.”

c. Support for Access Capital Costs

- i. Throughout the term of this Franchise, Grantee shall provide one dollar (\$1.00) per month, per residential Subscriber, or such lesser amount if authorized in writing by Grantor, due within sixty (60) days of the effective date of the Franchise to be used for capital equipment and facilities related to PEG access and distribution. Grantee shall provide notice, approved by the Grantor, to the Grantee's residential Subscribers if Grantee elects to include the PEG support provided under this Section on the bills of residential Subscribers. The Grantee shall make such payments quarterly, following the Effective Date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter, concurrent with the franchise fee payment pursuant to Section 8.1.
- ii. If Grantor enters into a franchise agreement or amends an existing franchise agreement with another cable operator after the effective date of this Franchise

to provide Cable Service in all or any portion of the Grantee's Franchise Area that includes PEG financial support calculated based on a per month, per residential subscriber basis that is less than one dollar (\$1.00) per month, per residential Subscriber, then, to the extent required by law, Grantee shall be entitled to reduce the PEG contribution to match that of the other cable operator or operators.

If there is a change in Grantor's Designated Access Provider or a significant reduction of programming any of the channels listed in Section 6.b. i above, Grantor shall promptly notify Grantee in writing with sufficient detail explaining the change in circumstances. Should the changes necessitate a reduction in the monthly per residential Subscriber PEG fee, as determined by Grantor in its sole discretion, Grantor shall work in good faith with Grantee in implementing such reduction.

- iii. Upon request, the Grantor shall provide a report not more than annually to the Grantee on the use of the funds provided to the Grantor under this Section 6.5(c). The annual report shall be submitted to Grantee within forty-five (45) days after the date the Grantor receives the request. Grantee may review records of the Grantor and its designees regarding the use of funds described in such report. The Grantor agrees that the report shall document the amounts spent or encumbered for operating support for PEG access. Grantee may review records of the Grantor, and any PEG access providers receiving the funds, regarding the use of funds provided and channels, to verify that the funds have been used for payment of PEG access capital costs.
- iv. Grantee agrees that financial support or costs arising from or relating to the obligations set forth in this Section 6.5(c) shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. Grantee agrees that although the sum of franchise fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Franchise. As provided for under federal law, Grantee may pass through to Subscribers and itemize on Subscriber cable bills the PEG Access contribution set forth in subsection 6.5(c)(i).

d. Origination Points

Grantee shall, within 120 days of a written request from Grantor or the Designated Access Provider, at Grantor's or its Designated Access Provider cost, install and maintain a hardwired programming origination point for each facility listed in Exhibit B, to the extent such origination points do not already exist. For those origination points that already exist, Grantee shall continue to maintain such origination points throughout the term of this Franchise.



e. Institutional Network

Grantor may enter into a written agreement with Grantee for the provision of I-Net services connecting Grantor's government facilities within the Franchise Area.

f. Cable Service to Public Facilities

As a voluntary initiative, Grantee, upon request, will provide without charge, one (1) Standard Installation and one (1) outlet of Basic Cable, expanded Basic Service, or digital equivalent to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), and Schools that are within the Franchise Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Such installations shall be provided to the facilities within sixty (60) days of Grantor's request. In the event a cable franchise is granted to a competitor within Grantee's Franchise Area, Grantee shall not be required to provide the services described in this Section to any buildings that are receiving without charge similar services from the other cable operator. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlet shall not be located in area accessible to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required (defined for purposes of this subsection as a drop not to exceed one-hundred twenty-five (125) feet), unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation.

g. Change in Technology

In the event Grantee makes any change in the Cable System and related equipment or in Grantee's signal delivery technology in its Cable System that directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment at Grantee's facilities, to ensure that the capabilities of Access Providers or Access Programmers are not diminished or adversely affected by such change.

h. Technical Quality

- i. Grantee shall carry all Access Channel signals and maintain interconnections of Access Channels in such a manner that signal quality is not degraded and consistent with applicable laws, rules and regulations.

- ii. Grantee shall have no responsibility for the technical production quality of all Access Programming distributed on the Access Channels.
- iii. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.
- iv. All of the Channels, Cable System capacity, and other costs required for the Grantee to comply with this Section 6.5 shall be at Grantee's sole cost and provided without charge to the Grantor or any Designated Access Provider, except as expressly set forth in this Section 6.5.

## **7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS**

### **7.1 Intent.**

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. Grantor may lawfully delegate all or a part of its administrative and regulatory authority under this Franchise to an agency designated by the Grantor.

### **7.2 Areas of Regulation and Administration.**

The Grantor (or its designee) has authority for regulation in the following areas:

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b. Coordination of the operation of Public, Government and Educational Access Channels.
- c. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, Schools and health care institutions.
- d. Formulating and recommending long-range cable communications policy of Grantor for the City.
- e. Disbursing and utilizing franchise revenues paid to the Grantor.
- f. Regulating rates, to the extent permitted by law.
- g. Customer service, to the extent permitted by law.
- h. Planning and facilitating development of public, education and government access programming, both within the City and through interconnection with adjacent systems.



- i. All other areas as provided by the Cable Act.

### **7.3 Rate Regulation.**

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. Notice of Changes in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all Subscribers within the Franchise Area at least thirty (30) days' notice of proposed rate changes, as required by FCC. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns.
- c. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- d. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Act), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

### **7.4 Remedies for Franchise Violations.**

- a. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice

to:

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below; or
  - ii. Cure the violation; or
  - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure.
- b. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, determine whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (g) of this section. Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
- c. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (b), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.
- d. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (a)(i) hereof the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what liquidated damages shall be applied.
- e. In the case of any hearing pursuant to Section 7.4, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- f. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
- i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

- ii. Establish the amount of liquidated damages, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
- iii. In the case of a substantial material default of a material provision of this Franchise, revoke this Agreement, and/or
- iv. Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

The determination as to whether a violation of this Franchise has occurred shall be within the sole discretion of the Grantor, and shall be in writing. Grantee may appeal the decision of Grantor to a court of competent jurisdiction as provided by Oregon law.

g. Because the Grantee's failure to comply with provisions of the Franchise will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee agree to the following liquidated damages for the following violations. These damages represent a reasonable estimate of the actual damages resulting from the specified violation. Subject to Grantee's right to cure as provided in this Section 7.4, in the event that Grantor determines that Grantee has violated any material provision of this Franchise as provided herein, instead of requiring proof of actual damages, Grantor may assess as liquidated damages up to \$250.00 per incident and not to exceed \$25,000.00 per year.

The liquidated damages set forth in this Section may be reduced or waived at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- i. Whether the violation was unintentional;
- ii. The nature of any harm which resulted;
- iii. Whether there is a history of overall compliance, and/or;
- iv. Whether the violation was voluntarily disclosed, admitted or cured.

Grantor shall provide Grantee with written notice that it intends to elect liquidated damage remedies set forth herein. If Grantor elects to recover liquidated damages for any item set forth in this Section, Grantor agrees that such recovery shall be its exclusive remedy except for Grantor's right to seek specific performance for the time period in which liquidated damages are assessed, provided, however, once Grantor has ceased to assess liquidated damages as set forth in this Section, Grantor may pursue any other available remedies.

Grantee shall pay any liquidated damages assessed by Grantor within thirty (30) days after they are assessed. If liquidated damages are not paid within that time period, Grantor may pursue any available remedy, including exercising its rights against the bond or other form of financial assurance provided pursuant to Section 8.2.

#### **7.5 Remedies Not Exclusive.**

Except as provided in Section 7.4, Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

#### **7.6 Consumer Protection Standards.**

Grantee shall comply with all applicable customer service standards established in the Cable Act or federal rules and regulations, including but not limited to FCC Rules and Regulations, Part 76, Subpart H and Subpart T, and Grantor has the authority to enforce such standards. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

### **8. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

#### **8.1 Compensation.**

##### **a. Franchise Fee.**

As compensation for the Franchise to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Cable System within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

Within thirty (30) days of a request from Grantor, Grantee will make available an up-to-date list of all Affiliates receiving Gross Revenues as such revenues are defined in this Franchise.

##### **b. Bundling.**

If Cable Services subject to the Franchise fee required under this Franchise are provided to Subscribers in conjunction with non-Cable Services, Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise fee obligations to Grantor.

c. Payment of Franchise Fees.

- i. Payments due under this Section shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee shall submit a report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.
- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.
- iii. In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.
- iv. Payment of the franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee in connection with providing Cable Services that may be imposed by Grantor.

**8.2 Faithful Performance Bond.**

- a. Within sixty (60) days after the Effective Date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the penal sum of one hundred thousand dollars (\$100,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond shall be in a form acceptable to the Grantor and maintained by the Grantee throughout the term of this Franchise.

- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a), and unless the Grantor specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
  - i. The remaining term of this Franchise; or
  - ii. If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.
- d. In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the Grantor substantially the same rights and guarantees provided by a faithful performance bond.

### **8.3 Damages and Defense.**

- a. The Grantee shall defend, indemnify and hold harmless the Grantor, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System within the Franchise Area, the provision of Cable Service or otherwise under this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, except to the extent such claims, damages and penalties are caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees. Grantor shall give Grantee prompt written notice of any claim subject to this Section 8.3, and Grantor may retain its own separate counsel at its sole cost and expense.
- b. If the Grantee fails to defend as required in Section 8.3(a), then the Grantee agrees to and shall pay all expenses incurred by Grantor, and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section 8.3(a). These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.



#### **8.4 Liability Insurance and Indemnification.**

- a. The Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows.
- b. The insurance shall provide coverage at all times for not less than \$2,000,000 for personal injury to each person, \$2,000,000 aggregate for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection (b) of this Section shall be subject to change from time to time to the extent necessary to provide coverage at least as great as the limits on the City's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$1,000,000.

Any insurance carrier shall have an A.M. Best rating of A or better, and be authorized to do business in the State of Oregon.

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

- e. Grantee shall maintain on file with the City a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4.

The certificate shall show that the general liability portion of the insurance includes:

- i. Broad form property damage;
  - ii. Products and completed operations;
  - iii. Explosion, collapse, and underground exposures;
  - iv. Contractual liability; and
  - v. Owners and contractors protective coverage.
- f. Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for immediate termination of this Franchise by the City subject to Grantee's right to cure as provided in Section 7.4.
- g. The Grantee shall also indemnify, defend and hold harmless the City and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section arising from operations under this Franchise or in connection therewith, except to the extent caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees.

## **9. RIGHTS RESERVED TO GRANTOR**

### **9.1 Grantor Acquisition of the Cable System**

The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either the Grantor or the Grantee under Section 627 of the Act, and any provision of this Agreement that purports to diminish such rights shall be deemed superseded by the Act.

### **9.2 [RESERVED]**

### **9.3 Right to Perform Franchise Fee Audit.**

The Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise



enforcement effort, the books and records of any parent or Affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee for the provision of Cable Services within the Franchise Area, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of three percent (3%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit up to \$10,000.

The Grantor agrees to require a third party auditor to execute a nondisclosure agreement with Grantee in connection with any such audit if the auditor will have access to Grantee's confidential or proprietary information.

#### **9.4 Right of Inspection of Construction.**

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law.

#### **9.5 Intervention.**

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is a party which may have a direct adverse effect upon the construction, upgrade, maintenance or operation of the Cable System.

#### **9.6 Right to Require Removal of Property.**

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its revocation, as provided for herein, and subject to Grantee's rights under Section 626 of the Cable Act, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all Streets and Public Ways within the Franchise Area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this subsection 9.6, the Grantee, by written notice to the Grantor, may elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

## **9.7 Inspection of Facilities.**

Grantor may inspect upon request any of the Grantee's facilities and equipment to confirm compliance with this Agreement at any time upon at least twenty-four (24) hours' notice, during regular business hours, or, in case of an emergency, upon demand without prior notice.

## **10. RIGHTS OF INDIVIDUALS PROTECTED**

### **10.1 Discriminatory Practices Prohibited.**

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee's services and facilities to all Subscribers, regardless of disability, including the provision of a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- c. For hearing impaired customers, the Grantee, upon request, shall provide information concerning the cost and availability of equipment to facilitate the reception of basic service for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d. Upon request by a Subscriber or potential Subscriber, the Grantee shall make a reasonable effort to provide information required under Section 7.6, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e. Nothing in this subsection 10.1 shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

### **10.2 Unauthorized Monitoring or Cable Tapping Prohibited.**

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to Tap, or arrange for the Tapping, of any cable, line, signal input device, or Subscriber outlet or

receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the Tapping.

Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

### **10.3 Privacy and Other Rights.**

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any Subscriber or person resulting from any device or signal associated with Cable Service. The Grantee shall not utilize two-way communications capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

### **10.4 Permission of Property Owner Required.**

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

### **10.5 Sale of Subscriber Lists and Personalized Data Prohibited.**

The Grantee shall be subject to 47 U.S.C Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

## **11. TERMINATION AND EXPIRATION**

### **11.1 Revocation.**

Should the Grantor seek to revoke this Franchise after following the due process procedures set forth Section 7.4 of this Franchise, including the public hearing described therein, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee,

it may then seek revocation of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing at Grantee's request and expense.

Within thirty (30) days following the public hearing, Grantor shall provide to Grantee its proposed written findings and conclusions and Grantee shall have thirty (30) days to submit its written objections to Grantor. Thereafter the Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to affect any cure. If the Grantor determines that the Franchise shall be revoked, the Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the Grantor to an appropriate court, which shall have the power to review the decision in accordance with Oregon law.

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a, as may be amended, is applicable to this Agreement.

## **11.2 Expiration.**

Upon expiration of this Franchise, the parties shall abide by the renewal provisions of the Cable Act, as amended from time to time.

## **11.3 Continuity of Service Mandatory.**

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the Cable System the Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

## **12. OPERATION AND MAINTENANCE**

### **12.1 Open Books and Records.**

The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time upon reasonable notice all records of the Grantee which relate to the operation of the Cable System or the provision of Cable Service under this Franchise. Access to such records shall be maintained or made available at no cost to the Grantor within the Franchise Area or the metropolitan area which includes the Franchise Area during normal business hours if maintained locally, or, if not available locally, provided within ten (10) days of notice from the Grantor requesting such records at an agreed upon location within the Franchise Area or the metropolitan area which includes the Franchise Area. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information," nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure.

The Grantee shall also provide, upon request and reasonable notice, in the manner set forth in this Section the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services within the Franchise Area; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and other information necessary to verify compliance with this Franchise.

The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years.

## **12.2 Communication with Regulatory Agencies.**

A list and copies of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Services or the Cable System in the Franchise Area pursuant to this Franchise Agreement, shall be submitted to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting Cable Services or the Cable System within the Franchise Area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate.

### 12.3 Reports.

- a. Quarterly Reports. Upon request by the Grantor, within thirty (30) days after the end of each fiscal quarter, Grantee shall provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Grantee shall not be required to maintain any reports for a period longer than 24 months.
- b. Annual Report. No later than three and one-half (3½) months following the end of the Grantee's fiscal year each year, Grantee shall present, upon request, a written report to the Grantor which shall include:
  - i. Financial reports that are normally prepared for the Grantee for the previous fiscal year, including gross revenues from all sources, gross Subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet.

All financial reports required under this subsection shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues for the calculation of franchise fees to be paid to the Grantor.
  - ii. A summary of the previous year's activities including, but not limited to, Subscriber totals in each category and new services.
- c. Monitoring and Compliance Reports. Upon request, the Grantee shall provide a written report of technical performance tests for the Cable System required by applicable FCC rules and regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests. Grantee shall not be required to maintain any reports for a period longer than twenty-four (24) months.
- d. All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to develop or create reports that are not part of its normal business procedures.

### 12.4 Safety.

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.



- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, and upon either the Streets and Public Ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

### **13. MISCELLANEOUS PROVISIONS**

#### **13.1 Compliance with Laws.**

The Grantee shall comply with all federal and state laws and regulations, including regulations, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

#### **13.2 Severability and Preemption.**

Notwithstanding the provisions of Section 13.7 below, if any section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Franchise Agreement is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted only to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such



provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this Section as a result of such provision being preempted shall no longer be of any force or effect.

### **13.3 Captions.**

The captions to Sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the Sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

### **13.4 No Recourse Against the Grantor.**

Except as provided under applicable law, the Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

### **13.5 Nonenforcement by Grantor.**

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

### **13.6 Force Majeure.**

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall include the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

### **13.7 Entire Agreement.**

This Franchise Agreement contains the entire agreement between the parties, supersedes all

prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

**13.8 Consent.**

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this Agreement, such consent or approval shall not be unreasonably withheld.

**13.9 Notices and Time Limit for Grantee Communications.**

All communications with the Grantor by the Grantee referred to in this Franchise shall be made through the Office of the City Manager, unless otherwise specified in this Franchise. Grantee shall provide any written communication required by this Franchise within sixty (60) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise.

**13.10 Consistency of Franchise with Cable Act.**

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Act.

**13.11 [RESERVED]**

**13.12 Notice.**

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 address as the receiving party specifies in writing:

If to the City:	City Recorder City of Oregon City 625 Center Street Oregon City, OR 97045
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If to the Grantee:	Comcast Cable Attention: Government Affairs 9605 SW Nimbus Avenue Beaverton, OR 97008-7198
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**13.13 Public Disclosure.**

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered confidential and/or proprietary by the

Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's written consent, provided that each page of such report or information is clearly marked as confidential and/or proprietary.

#### **13.14 Time is of the Essence**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence.

#### **13.15 Reservation of Rights**

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

## EXHIBIT A: ACCEPTANCE

City Manager  
City of Oregon City

This is to advise the City of Oregon City (the "City") that Comcast of Oregon II, Inc. (the "Grantee") hereby accepts the terms and provisions of Ordinance No. \_\_\_\_\_, passed by the City Commission on \_\_\_\_\_, 2013 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

By executing and returning this acceptance form, the Grantee also attests that there are no parent corporations of Grantee apart from Comcast of Oregon II, Inc.

COMCAST OF OREGON II, INC.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## **EXHIBIT B: ORIGINATION POINTS**

Oregon City Police Department, Oregon City Library, South Fork Water Board