

ORDINANCE NO. 99-1024

AN ORDINANCE GRANTING TO BEAVER CREEK COOPERATIVE TELEPHONE COMPANY, INC. A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE SERVICES WITHIN THE CITY OF OREGON CITY

OREGON CITY MAKES THE FOLLOWING FINDINGS:

WHEREAS, Beaver Creek Cooperative Telephone Company, Inc., and Oregon cooperative corporation, hereinafter referred to as "Grantee", has requested a franchise to provide cable services within the City of Oregon City; and

WHEREAS, the City previously granted a nonexclusive cable franchise to TCI Cablevision which franchise contains certain material terms and conditions, and includes a requirement that subsequent cable franchises be granted on comparable terms and conditions; and

WHEREAS, the City has evaluated the technical, legal and financial capability of the proposed grantee to operate a cable system within the City; and

WHEREAS, the Commission finds that the proposed nonexclusive franchise agreement attached hereto as "Exhibit A" meets the community needs of the citizens of Oregon City, and that therefore it is in the best interest of the City and its citizens to grant the proposed franchise.

NOW, therefore,

OREGON CITY ORDAINS AS FOLLOWS:

Section 1: Grant of Franchise. The City of Oregon City ("City") hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the City to provide cable services, on the terms and conditions in the attached Exhibit "A".

Section 2: Term. The term of this franchise shall be twelve (12) years, commencing with the effective date of this Ordinance.

Section 3: Franchise Area. The portions of the City subject to this franchise grant are as depicted on the map attached as "Exhibit B" hereto. Should the Grantee wish to expand its facilities to areas not depicted on Exhibit "B", Grantee shall be required to obtain additional franchise authority from the City.

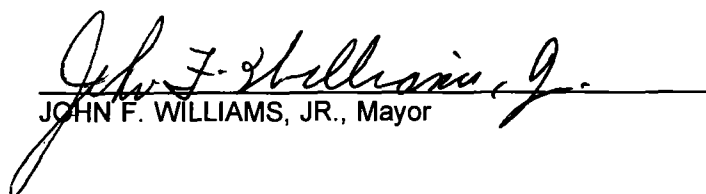
Section 4: Acceptance, Insurance and Financial Requirements. The grant of franchise contained herein is conditioned upon the filing of an acceptance in the form included in the attached franchise document, upon the filing of all required financial and insurance documentation required by the franchise, and upon payment of the initial franchise fee due to the City for operations predating the effective date of this ordinance.

The initial payment to the City for the period in which Grantee has been operating within City rights of way prior to enactment of this franchise ordinance shall be paid to the City along with Grantee's acceptance of this franchise and other required documents, no later than thirty (30) days following passage of this ordinance by the City Commission.

Read the first time at a regular meeting of the City Commission held on the 15th day of September, 1999, and the foregoing ordinance was finally enacted by the City Commission on the 15th day of September, 1999.


JEAN K. ELLIOTT, City Recorder

ATTESTED to this 15th day of September, 1999.


JOHN F. WILLIAMS, JR., Mayor

ORDINANCE NO. 99-1024

Effective Date: October 16, 1999

**CABLE TELEVISION
FRANCHISE AGREEMENT
between
OREGON CITY, OREGON
and
BEAVERCREEK COOPERATIVE TELEPHONE COMPANY, INC.**

July, 1999

Final Draft

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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 BeaverCreek Cooperative Telephone Company (hereafter Grantee) a non-exclusive 12-year Franchise, revocable as provided herein, to construct, operate and maintain a cable in the City.
- 1.2 The purpose of this Franchise agreement is to create a binding, enforceable contract between Grantor and Grantee.

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2. DEFINITIONS

For the purposes of this Franchise agreement, 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 are 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 City and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.
- 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.

"Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.

"Government Access Channel" means any channel or portion of a channel available for programming by government agencies.

"Public Access Channel" means any channel or portion of a channel where any member of the general public may be a programmer on a non-discriminatory basis.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment.

- c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the system and the point at which the drop connects to the

subscriber's television receiver shall not be considered a major system upgrade

- d. "Affiliate" when used in connection with Grantee, means any corporation, Person, or entity that owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.
- e. "Availability of Service" means the ability of a subscriber to obtain a service within 60 days by requesting the service and paying applicable installation and/or usage charges.
- f. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels.
- g. "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.
- h. "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.
- i. "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.
- j. "Cablecast Signal" means a non-broadcast signal that originates within the facilities of the cable communications system.
- k. "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. 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 Oregon City under this Franchise.
- l. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a video signal whether in an analog or digital format.
- m. "City" means the City of Oregon City, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

- n. "City Commission" means the Commission of the City of Oregon City.
- o. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.
- p. "Converter" means an electronic device for changing the frequency of a television signal. A set-top converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune.
- q. "FCC" means the Federal Communications Commission.
- r. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- s. "Franchise Area" means all territory within the City of Oregon City, as depicted on the boundary map identifying Grantee's service area, which map is attached as Exhibit A to this Franchise Agreement. Exhibit A may be modified from time to time as provided in Section 4.3.f of this Agreement.
- t. "Grantee" or "Franchisee" means BeaverCreek Cooperative Telephone Company, Inc., an Oregon Corporation, and the lawful successors, transferees, or assignees thereof.
- u. "Grantor" means Oregon City, a municipal corporation in the State of Oregon.
- v. "Gross Receipts" means gross revenues less any bad debts related to the operation of the System authorized by this Franchise.
- w. "Gross Revenues" means all amounts, in whatever form and from all sources, earned either by the Grantee from the operation of Grantee's Cable System to provide Cable Services within the Franchise area, or by any Affiliate only to the extent such amounts are earned from the operation of Grantee's Cable System to provide Cable Services within the Franchise area. "Gross Revenues" shall include, without limitation, amounts for Basic Service, tiers of service and premium services, audio services, Subscriber installations and transactions, leased access, advertising equipment rentals, and all other revenues derived

from the operation of Grantee's Cable System to provide Cable Services. Revenues that are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period.

"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", however, shall not be double counted. Revenues of both Grantee and 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. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales or other taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

- x. "Institutional Service" means video, audio, data and other services provided to institutional subscribers on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio or digital signals among institutions, or between institutions and residential subscribers.
- y. "Institutional Network" means that part of a cable communications network designed principally for the provision of non-entertainment, interactive services to businesses, schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.
- z. "Institutional Subscriber" means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.
- aa. "Interactive Services" means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits

signals to any other location for any purpose.

- bb. "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.
- cc. "Local Origination Channel" means any channel or portion of a channel where the Grantee is the only designated programmer, or has delegated programming to a third party, and which is used to provide television programs to subscribers.
- dd. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- ee. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.
- ff. "Open Channel" means any channel that can be received by all subscribers having cable-ready television sets, without the necessity of special descrambling equipment.
- gg. "Pay Channel" or "Premium Channel" means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.
- hh. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity, or any natural person.
- ii. "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.
- jj. "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.
- kk. "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, magnetic and laser disk files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies,

appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.

- ll. "Resident" means any natural person residing within the Franchise Area.
- mm. "Residential Service" means services delivered on the residential subscriber network.
- nn. "Residential Subscriber" means a subscriber who receives services on the residential subscriber network.
- oo. "Residential Network" means a cable network designed principally for the delivery of entertainment, community access or interactive services to individual dwelling units.
- pp. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.
- qq. "Section" means any section, subsection or provision of this Franchise agreement.
- rr. "Streets and Public Ways" means the surface of and the space above and below any public street, 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.
- ss. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable system whether or not a fee is paid for such service.
- tt. "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.
- uu. "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, revocable Franchise for a 12-year period 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 System as required 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 ordinances of the Grantor, 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.

3.2 Use of Streets and Public Ways.

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 public streets and 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, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantor of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

3.3 Duration and Effective Date of Franchise.

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 12 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 _____, 1999, 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 or public places by franchise, permit or otherwise, subject to the provisions of Section 13.11 herein.

3.5 Franchise Non-Transferable.

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and 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 said 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, whether voluntary or involuntary, 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.

The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a cable communications system of the Grantee or any affiliate of the Grantee. However, the cable system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.6 Change in Control.

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee. If ownership of 25% percent of the stock of the Grantee, or of the majority of the stock of any parent company of the Grantee immediate or otherwise, or of any entity now owning or later acquiring such an interest is acquired by a single entity or by several entities under common control, if such entity or agent of common control is other than an organization with a majority of its ownership held by the Grantee or a parent of the Grantee, then a change in control will be deemed to have taken place unless the Grantor, upon request of the Grantee, finds otherwise. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the Franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have one hundred and twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance with FCC regulations, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within said one hundred and twenty (120) days, the

request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

3.7 Franchise Acceptance.

- a.** 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 Grantee, in the form attached hereto as Exhibit B.

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.

The Grantee shall maintain on its cable system a minimum practical capacity of 72 activated Channels, defined under the Cable Act of 1992 as those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided. 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.

4.2 Right of Inspection of Construction.

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

4.3 Provision of Residential Service.

- a. In general. It is the City's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability 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 Person within its Franchise Area. Except as otherwise provided in this section, Grantee shall provide Cable Service within 60 days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request. Except as otherwise provided in subsection (e) hereof, Grantee shall provide such service:
 - i. With no line extension charge;
 - ii. At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an outside wall for Residential Subscribers and a 125 foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the City;
 - iii. At non-discriminatory monthly rates for Residential Subscribers;

- iv. Notwithstanding Section (a) hereof, Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers.
- b. Nothing in this section shall be construed so as to require Grantee to extend and provide services to areas already serviced by another provider of cable television services.
- c. Newly Annexed Areas. As areas are annexed to the City, Grantee shall provide Service Availability to all residences within the annexed area on the same terms as provided for in Section 4.3.a unless otherwise authorized by the City.
- d. Transferred Franchising Jurisdiction. In the event that cable franchising jurisdiction is transferred to the City from another jurisdiction, then the terms of this Franchise shall apply within the area in which the transfer of cable franchising jurisdiction applies, so long as the application of this Franchise in that area is acknowledged in the governmental actions which implement the transfer of franchising authority.
- e. New Subdivisions. In new subdivisions, service will be made available no more than 60 days from first occupancy or from the date of completion of final construction grading, whichever comes first.
- f. Expansion of Franchise Area. The Grantee may expand its Franchise Area within the city limits upon providing the City of Oregon City with a new boundary map containing current boundaries, the proposed expansion and its construction timeline.

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 street or 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 ordinances 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 shall disturb the surface or otherwise damage any street, alley, public highway, other public way or ground for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee. The cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

4.7 Construction Codes.

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. 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.

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 sewers, grading, paving, repairing and/or altering any street, alley, or public highway, 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 sewer or water main, the improvement of a street or any other public improvement, then on reasonable 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 repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the 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 forthwith 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 repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor 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 such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, 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.

4.11 Easements.

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

4.12 Undergrounding.

- a. Cable must be installed underground where:
 - i. all existing utilities are placed underground,

- ii. statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground,
 - iii. overhead utility lines are moved underground (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),
 - iv. grantee is unable to get pole clearance,
 - v. underground easements are obtained from developers of new residential areas, or
 - vi. utilities are overhead but residents prefer underground (service to be provided at cost to resident).
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals 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 other utility companies or providers, common trenches for underground construction wherever available.

4.13 As Builts.

Grantee shall maintain strand maps drawings of the system, and make them available to the Grantor for inspection upon request. Strand maps shall be updated as changes occur in the system. The Grantee shall provide the Grantor, on request, a copy of as-builts or CAD maps showing the location and nature of Grantee's facilities in the streets and public ways.

4.14 Emergency.

In the event of an emergency, or when the cable system 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.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 System Configuration.

The cable system shall consist, at a minimum, of a residential network with bidirectional communications capability and addressability in its initial configuration.

Grantee currently has embedded services prior to this agreement that are not bi-directional. Grantee will make a good faith effort to upgrade those areas to current technology when it is considered reasonably feasible based upon customer demand.

5.2 Channel Capacity.

The residential cable system shall be installed with a minimum channel capacity of 72 Channels outbound, and 4 Standard Video channels inbound originating at the Clackamas Community College Media Center.

5.3 Satellite Earth Stations.

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites 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.

5.4 Interconnection.

- a. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise.
- b. Initially, Grantee shall Interconnect the Cable System with all other major, contiguous cable systems that meet at the Clackamas Community College Media Center. At a minimum, the Interconnection shall provide 24 MhZ bandwidth upstream (4 channels) for redistribution downstream to the entire system. This interconnection shall be made available for other government and EdNet channels. Grantee shall make a good faith effort in the future to have significant institutional network capacity or services available as determined by the Grantor through an ascertainment of community needs and interests to warrant interconnection.
- 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 Institutional Network and PEG access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing equipment needed, and performing construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected channels.

5.5 Emergency Alert Capability.

- a. In accordance with the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install when required by the FCC and if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg Section 11.51 and other applicable state and local laws.
- b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS equipment by the Grantor, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, the Grantor shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use

due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other cable system equipment which may be used during a declared emergency.

5.6 Standby Power.

Grantee shall provide standby power generating capacity at the cable system control center and at 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 and have filed with the Grantor throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours.

5.7 Parental Control Lock.

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device that permits inhibiting the viewing of any channel. Any charge for such device shall be consistent with applicable rate regulations.

5.8 Technical Standards.

The Grantee shall install all aerial and underground cables and wires in a manner consistent with City requirements and in compliance with all applicable laws, ordinances, and safety requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electric Code, National Electric Safety Code, National Cable Television Association Standards of Good Engineering Practices. The Cable System shall meet or exceed all applicable technical and performance standards of the Federal Communications Commission or its successor agency, and any and all other applicable technical and performance standards.

5.9 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.

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.

6. SERVICES AND PROGRAMMING

6.1 Programming Categories.

The Grantee shall provide video programming services in at least the following broad categories:

- a. News & Information
- b. Sports
- c. General Entertainment
- d. Arts, Culture, Performing Arts
- e. Children/Family
- f. Science
- g. Travel Information
- h. Weather Information
- i. Governmental and Educational Programming
- j. Movies
- k. Religious Programming
- l. Foreign language / Ethnic Programming

The Grantor acknowledges that 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.

6.2 Changes in Video Programming Services.

Subject to the provisions of the Cable Act, no category of services as referred to in Section 6.1 may be deleted, or so limited as effectively to be deleted by the Grantee without Grantor approval, which approval shall not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and

conditions.

6.3 Interactive Residential Services.

The Grantee shall make interactive services available to residential subscribers within two and one half years of service initiation. In addition, Grantee will make a good faith effort to upgrade those areas that currently have one way service to interactive technology when it is considered reasonably feasible based upon customer demand.

6.4 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.

6.5 Community Access and Local Programming.

- a. Grantee will make a good faith effort in the future to have significant institutional network capacity for services determined by the grantor through an ascertainment of community needs and interests to warrant interconnection as is referred to in section 5.4.
- b. Grantee shall, commencing on the effective date of the Franchise, and continuing throughout the franchise term, provide to the Grantor \$1.00 per month per residential subscriber to be used for Public, Education and Government Access.

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 delegate all or a part of its administrative and regulatory authority under this Franchise to an entity 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 and communications policy for the Franchise Area;
- 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 uses of the cable system on the residential and institutional networks, both within the City and through interconnection with adjacent systems;

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. 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, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- c. 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 Communications Policy Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor 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. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day or per incident, not to exceed a total of \$50,000, in the event Grantee violates any material provision of this Franchise agreement, subject to Section (c), below.
- b. In determining which remedy or remedies for Grantee's violation are appropriate, the Grantor shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. In the application of remedies for franchise violations, whether committed by the Grantee or any other cable franchisee regulated by the Grantor or its designee, the Grantor shall apply similar remedies for similar violations.
- c. If within thirty (30) days after receipt of written notice of any asserted violation from the Grantor the Grantee corrects the asserted violation, or if correction is not reasonably possible within the thirty (30) day period, the Grantee initiates good faith efforts satisfactory to the Grantor within the thirty (30) day period to cure the asserted violation and the efforts continue in good faith, then no penalty or other remedy shall be imposed.

- d. In the event the Grantor asserts that Grantee has violated a provision of this Franchise, the Grantor shall give the Grantee written notice of the alleged violation. Within thirty (30) days after receipt of the written notice, Grantee may request in writing a hearing before Grantor or its designee on the alleged violation. If the Grantee requests a hearing, then the Grantor or its designee shall provide the Grantee written notice of the time, date, and place of the hearing. Following the hearing, in the event the Grantor finds that a material violation occurred, the Grantor may assess the appropriate remedy against the Grantee, except as otherwise provided by subsection (c) of this Section. Any determination of violation or assessment of a remedy shall be subject to such review in a court of competent jurisdiction as is authorized by law.
- e. Grantee acknowledges that monetary damages may be an inadequate remedy for violations of the Franchise. Grantor's assessment of monetary damages as provided herein is not intended to be an exclusive remedy for any violations of this Franchise, and the Grantor reserves the right to pursue equitable relief. Monetary and equitable relief shall be considered cumulative.
- f. Penalties under this Section shall accrue for a maximum of 180 days and shall be in addition to any other right the City may have under this Franchise, under law or in equity, to enforce the Franchise.

7.5 Remedies Not Exclusive.

The 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 adhere to customer service and consumer protection standards as required by the FCC. 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 the gross receipts generated in any manner through the operation of the cable system to provide cable services under this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of gross receipts 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%).

Any bad debts or other accrued amounts deducted from Gross Revenues in the calculation of Gross Receipts shall be included in Gross Receipts at such time as they are actually collected.

The Grantee shall at all times during the term of this Franchise have filed with the City Manager an up-to-date list of all entities receiving Gross Revenues as such revenues are defined in this Franchise.

- b. **Payment of Franchise Fees.**
- i. Payments due under this provision 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. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts 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.

8.2 Faithful Performance Bond.

- a. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, 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 maintained by the Grantee throughout the term of this Franchise.
- b. Grantee shall pay all premiums charged for any bond required under Section (a) and unless the City Commission 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 City, the removal of all of Grantee's system installed in the City's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the City. The bond shall be subject to the approval of the City Attorney as to its adequacy. During the term of the bond, Grantee shall file with the City 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 30 days prior written notice to the City.
- d. In a form approved by the City, 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 City 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 Oregon City, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, as a result of any actions of the Grantee under this Franchise. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the

Franchise or the construction, operation, maintenance or reconstruction of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

- b. If the Grantee fails to defend as required in Section (a), above, then the Grantee agrees to and shall pay all expenses incurred by the City and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in Section (a) above. 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. Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the City, 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 \$1,000,000 for personal injury to each person, \$1,000,000 aggregate for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. 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 increased 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 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 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.

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 herein shall be cause for immediate termination of this Franchise by the City.
 - 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.

9. RIGHTS RESERVED TO GRANTOR

9.1 Right to Purchase the System.

- a.** In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement as provided herein, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise agreement and as required herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor pending the purchase of the whole or part of the system by Grantor or its designee. Within 90 days following the date of forfeiture or revocation or expiration of the initial term, the Grantor may notify the Grantee that it or its designee desires to acquire by purchase all or a portion of the system used by the Grantee in its operation, exclusive of parts of the system essential to Grantee's operation of parts of the system, or of other systems, not acquired, for its fair value. Such notice shall be by resolution or other appropriate writing of the Grantor and shall state a date upon which Grantee shall cease its operations and receive payment as described below.

The fair value of the system for purpose of this subsection shall be determined by mutual agreement between Grantor and the Grantee. If such mutual agreement cannot be reached within sixty (60) days following notification by the Grantor of its desire to purchase the system, then Grantor and Grantee shall submit to a mandatory mediation procedure, as provided for in Section (b), below.

For purposes of revocation or forfeiture under this subsection, the fair value of all or part of the system shall be an equitable price for the system or part of the system being acquired, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

For any other purpose under this Section, the fair value of all or part of this system shall be its fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the Franchise itself, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

During any period of continued operation under this Section, except as provided in Section 3.5 of this Franchise, the Grantee shall not sell, assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

In the event of the Grantor's acquisition of all or portions of Grantee's cable system, as provided herein, Grantee shall use all best efforts to obtain any needed consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's cable system or any facilities to be acquired require any consent to assignment by third parties; and Grantee shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's cable system or any facilities to be acquired.

- b. If mandatory mediation is initiated pursuant to Section (a), both the Grantor and the Grantee shall participate in good faith in the mediation, in a manner determined by the mediator chosen for the process. The mediator shall be chosen from a list of five (5) qualified persons obtained from the American Arbitration Association. The choice of a mediator shall if possible be made by mutual agreement by the Grantor and Grantee; however, if such agreement is not possible, then the mediator shall be chosen by having the Grantor and Grantee alternately eliminate one member of the list of qualified mediators until only one name is left, with the party to be first to eliminate a name determined by a coin toss. The cost of mediation under this Section shall be shared equally by the Grantor and the Grantee.

If agreement regarding the valuation of the system cannot be reached through the mediation process described in this Section, then either the Grantor or the Grantee may file such proceeding as is appropriate in an Oregon court of competent jurisdiction to exercise any rights it may have.

Any final determination of system valuation for the purposes of a proposed purchase of the system by the Grantor, whether proceeding pursuant to subsection 9.1(a) or by any other lawful process, shall be subject to: 1) the Grantor's right within sixty (60) days of final determination of valuation to decide by appropriate resolution or other writing not to acquire all or any part of the system subject to the valuation proceeding; and 2) the Grantor's right to decide to acquire through use of proceeds from the sale of bonds, but subject to and conditioned upon any necessary voter approval of the bond funding and, if applicable, the successful sale of the bonds.

- c. In the event Grantor purchases, acquires, takes over, or holds all or parts of the system pursuant to subsection (a) or through any other lawful process, Grantor shall have the right without limitation to assign, sell, lease, or otherwise transfer its interest in all or parts of the system to any other persons, including any other grantee of a cable franchise, on whatever terms Grantor deems appropriate.
- d. The provisions of this section shall be subject to the provisions 47 U.S.C. §627 (Section 547 of the Cable Act), as amended from time to time. It is not intended that this section diminish the rights of either the Grantor or the Grantee under the Act, and any provision of this Section that purports to diminish such rights shall be deemed superseded by the Act.

9.2 Condemnation.

To the extent authorized by law, the City may condemn all or any portion of Grantee's Cable System, including real property. Nothing in this Franchise is intended to expand or restrict the City's lawful condemnation authority.

9.3 Right of Inspection of Records.

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this Franchise, the Grantee shall provide the following information in such form as may be required by the Grantor for its records:

- a. With respect to the cable system and its operation to provide cable service, authorized under this Franchise, and to the extent deemed necessary by the Grantor for the enforcement of this Franchise, information pertaining to the operations of the Grantee and, for the specific purpose of a bona fide Franchise enforcement effort the operations of any parent company, and any affiliate or cable operator, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise, and of the maintenance, administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; interest on debt; wear and tear or depreciation; and all amounts and sources of income.
- b. The amount collected by the Grantee or any parent or affiliate of the Grantee from users of services of the Grantee's cable system under this Franchise and the character and extent of the service rendered therefor to them.

The information, along with any further data which may be required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

9.4 Right to Perform Franchise Fee Audit.

In addition to all rights granted under Section 9.3, 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 receipts 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, provided that any audit must be commenced not later than five (5) 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 two percent (2%) 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.

9.5 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.

9.6 Intervention.

The Grantee shall not object to the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

9.7 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 forfeiture or revocation, as provided for herein, 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 section, 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.

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, programmers, 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 strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to non-discrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee 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 shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services 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 in both English and the primary language of the requester.
- e. Nothing in this Section 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 permitting the tapping.

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, programmer, or person resulting from any device or signal associated with the cable communications system. The Grantee shall not place in the building, structure or any facility of any subscriber any equipment capable of two-way communications without the written consent of the subscriber, revocable at the discretion of the subscriber, and shall not utilize the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

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 631 (Section 551 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.

10.6 Landlord - Tenant.

Grantee shall provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the Franchise Area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

- a. To Grantee's providing of the services to units of the facility;

- b. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
- e. However, Grantee shall have no obligation to provide service if the cost of installation exceeds \$223.00 per unit. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

The \$223.00 cost is expressed in 1999 dollars. This figure shall be adjusted each year on July 1 to reflect the annual change in the Consumer Price Index for the Portland Metropolitan Region.

11. TERMINATION AND EXPIRATION.

11.1 Revocation.

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

- a. the Grantee is in violation of any material provision of the Franchise agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this Franchise agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;
- b. the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
- c. the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers;
- d. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or
- e. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this Franchise.

Upon the occurrence of one of the events set out above, following 10 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In such hearing, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the Grantor properly has declared a forfeiture. If a forfeiture is lawfully declared, all rights of the Grantee shall immediately be divested without a further act upon the part of the Grantor.

11.2 Receivership.

In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- a. Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a City Commission resolution; and
- b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.3 Expiration.

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

11.4 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 overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise.

In the event of purchase, lease-purchase, condemnation, acquisition, taking over and holding of plant and equipment, sale, lease or other transfer to any other person, including any other grantee of a cable franchise, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise agreement following the date of the transfer, if such continuation of operations is ordered by the Grantor with a view to maintaining continuity of service to all subscribers.

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records.

The Grantee shall maintain a business office within the metropolitan area which includes the Franchise Area, for managing the cable system, and, subject to the provisions of Section 10 of this Franchise and, to such privileges as may be established under Oregon law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon reasonable notice, all records of the Grantee and also of any parent company, affiliate or any cable operator, which relate to the operation of the Franchise. 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.

Upon ten (10) days written notice from the City, Grantee shall provide the Grantor access to computer files specifically requested by name, approximate date or content, and related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable subscriber information, as referenced in Section 631 of the Cable Act, and shall exclude access to computer files containing no information related to Grantee's Franchise obligations. Computer record access shall be provided in the following manner:

- a. Grantee's employee shall access requested computer file from file server or hard drive storage for City to view.
- b. Once accessed, Grantee's employee shall move slowly through the file while the City views it on the computer monitor.
- c. Grantee's employee shall facilitate the printing of requested file to paper.

12.2 Communications with Regulatory Agencies.

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any affiliate or any cable operator of the system authorized by this Franchise, 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 communications operations authorized pursuant to this Franchise

agreement, shall be submitted to the Grantor each year with Grantee's annual report, and copies of any such documents and their replies from respective agencies shall also be made available to the Grantor. 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 operations 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 or cable operator of the cable system authorized by this Franchise.

12.3 Reports.

- a. Quarterly Reports. Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, make available to the Grantor at Grantee's office a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the name, address, and telephone number of the complaining party, the specific nature of the complaint, remedial action taken if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also 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.

Within forty-five (45) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all gross revenues earned and gross receipts collected by the Grantee or any cable operator, related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

- b. Annual Report. No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:
 - i. Audited financial reports 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 for the franchise area. In the event any audited financial report has not been published by the date due under this section, then the audited financial report shall be deemed presented on time if presented within thirty (30) days after publication.

All financial reports required under this section 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 in order to arrive at 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. No later than April 15 of each year, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall 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.
- d. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this Franchise.

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 in accordance with the requirements of the National Electric 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 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. The Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise.

13.2 Severability and Preemption.

Except as otherwise provided otherwise herein, if any section, subsection, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held 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 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 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.

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 mean 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; 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 City by the Grantee referred to in this Franchise shall be made through the Office of the City Manager of Oregon City, 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 Communications Policy Act of 1984, as amended in 1992 and 1996.

13.11 Comparability of Other Cable Franchises.

- a. If the Grantor issues a franchise to a cable operator to enter upon the streets and public rights of way for the purpose of operating a Cable System to provide Cable Service to any part of the Franchise Area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise; providing, however, that the Grantor shall not be prohibited from granting any franchise containing requirements which are, taken together, greater than those of this Franchise, nor from granting any franchise containing individual requirements which are greater or lesser than the requirements of this Franchise.
- b. The Grantee agrees that its sole remedy under this provision, other than testimony before the City Commission, is to seek injunctive relief to prevent the issuance of a franchise which would violate the first paragraph.
- c. No provisions of this section shall be enforceable unless all are enforceable.

13.12 Franchise Review.

At any time during the seventh year of this Franchise, either the Grantor or the Grantee may request the other party to participate in good faith negotiations, for a period not to exceed six (6) months, to consider adoption of amendments to the Franchise. There shall be no obligation for either party to enter negotiations.

If the parties enter negotiations, the subjects of consideration, or areas in which the Franchise may be subject to amendment, shall be limited to the following:

- a. Technology;
- b. Parity with neighboring systems;
- c. PEG Access support by the Grantee; and
- d. Franchise term.

Following negotiations, amendments to the Franchise may be presented to the City Commission for adoption. Nothing in this section requires either the Grantor or the Grantee to agree to any amendment to the Franchise, and any amendment to the Franchise must be formally accepted by both parties.

13.13 Notice.

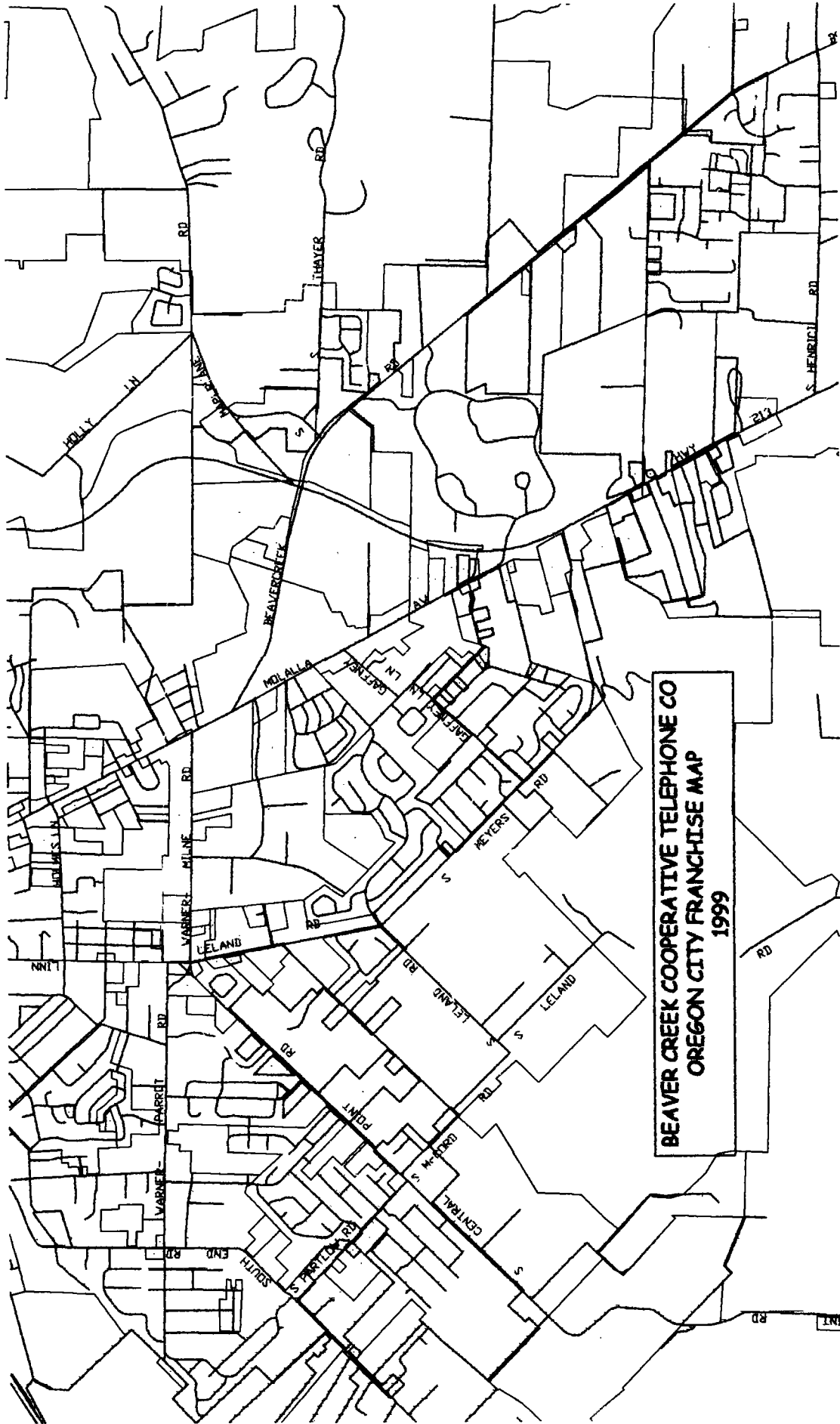
Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the City: City Manager
 City of Oregon City
 320 Warner-Milne Rd.
 Oregon City, OR 97045

If to the Grantee: BeaverCreek Cooperative Telephone Company, Inc.
 16680 S. Spangler Road
 P.O. Box 69
 Beavercreek, OR 97004

13.14 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 proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.



Copy

EXHIBIT B

ACCEPTANCE

City Manager

This is to advise the City of Oregon City, Oregon (the "City") that BeaverCreek Cooperative Telephone Company, Inc. (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 99-1024 passed by the City Commission on 9-15, 1999 (the Franchise) granting a Franchise for twelve (12) years to BeaverCreek Cooperative Telephone Company, Inc. The Grantee agrees to abide by each and every term of the Franchise.

BEAVERCREEK COOPERATIVE TELEPHONE COMPANY, INC.

BY: _____
Title

DATE:



CITY OF OREGON CITY

INCORPORATED 1844

COMMISSION REPORT

TO THE HONORABLE MAYOR AND COMMISSIONERS

FOR AGENDA

DATED

September 15, 1999

1 of 1

Page

Subject: Proposed Ordinance No. 99-1024, An
Ordinance Granting to Beavercreek Cooperative
Telephone Company, Inc., A Nonexclusive Franchise for
The Provision of Cable Services within the
City of Oregon City

Report No. 99-175

On the September 15, 1999 agenda is proposed Ordinance No. 99-1024 (copy attached) which contains and grants to Beavercreek Cooperative Telephone, Inc., a non-exclusive franchise to provide cable services in Oregon City.

The cable franchise is consistent with the franchise granted to TCI Cablevision in all material respects. Beavercreek has been operating in the area and holding franchise fees pending completion of negotiations for the franchise. Currently, there are 2,600 City residents as customers with 7,000 expected at buildout. The City will receive franchise fees of approximately \$4,800 upon execution of the franchise together with \$1.00 per month per subscriber beginning about 60 days after the franchise for Public, Educational and Government (PEG) access.

Notice of proposed Ordinance No. 99-1024 has been posted at City Hall, Municipal Elevator and Pioneer Community Center by direction of the City Recorder. It is recommended that first and second readings be approved for final enactment to become effective October 16, 1999.


CHRIS JORDAN
Interim City Manager

jke
Attach.
cc:

Beery & Elsner, Attorneys
Beavercreek Cooperative Telephone Company, Inc.

*approved
1st/2nd
reading.*

BEERY & ELSNER LLP
ATTORNEYS AT LAW

SUITE 250
1750 SW HARBOR WAY
PORTLAND, OREGON 97201-5164

TELEPHONE (503) 226-7191
FACSIMILE (503) 226-2348

To: Oregon City Commission

From: Pamela J. Beery, Special Legal Counsel

Through: Chris Jordan, Interim City Manager

Subject: Franchises for Telephone and Cable Service:
Beaver Creek Cooperative Telephone Company, Inc.

Date: August 26, 1999

Attached for your consideration please find the following two franchise agreements, which if you approve will be adopted by Ordinance:

1. Telephone franchise;
2. Cable franchise.

Both franchises will be granted to Beaver Creek Cooperative Telephone Company for a limited service area within the City as shown on the Exhibit which is attached.

The **telephone franchise** is adopted under the authority of the City's newly enacted Master Telecommunications Ordinance, and provides for a franchise fee of 7% of gross revenues earned within the City, consistent with state law. There are currently only about 100 City residents who are telephone customers, but Beaver Creek projects roughly 8,000 homes could be served at buildout.

The **cable franchise** is consistent with the franchise granted to TCI in all material respects. Beaver Creek has been operating in the area and holding franchise fees pending completion of negotiations for the franchise. They currently have roughly 2,600 City residents as customers, with 7,000 expected at buildout. The City will receive franchise fees of approximately \$4,800 upon signing of the franchise, together with \$1.00 per month per subscriber beginning about 60 days after the franchise, for Public, Educational and Government access.

Please let me know of any questions or concerns with the two proposed franchises, which I recommend for adoption.

cc: Ed Sullivan, Esq., City Attorney