



CITY OF MILWAUKIE  
COUNCIL **ORDINANCE No. 2142**

Notice of Clerical or Typographical Error

**On April 6, 2017, the City Recorder noted clerical or typographical errors within the text of Ordinance No. 2142, which was originally adopted by the Milwaukie City Council on March 21, 2017, as signed by Mayor Mark Gamba.**

The authority to make the corrections noted below is found in Milwaukie Municipal Code (MMC) 1.01.080 Editing the Code:

In preparing adopted ordinances for codification and distribution, the City Recorder shall not alter the sense, meaning, effect, or substance of any ordinance, but, with such limitations, may correct manifest clerical or typographical errors. (Ordinance No. 1902 § 2, 2002)

These corrections are as follows:

1. Correcting the legal name of the franchisee from "Comcast of Oregon, II" to "Comcast of California/Colorado/Florida/Oregon, Inc."

  
 \_\_\_\_\_  
 Scott S. Stauffer, City Recorder

4-6-17  
 \_\_\_\_\_  
 Date

**Attachments:**

- Ordinance 2142 – Original, as adopted on March 21, 2017
- Ordinance 2142 – Redline, showing corrections
- Ordinance 2142 – Revised, clean copy as corrected



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No. 2142**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING COMCAST OF OREGON II, INC., A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A CABLE SYSTEM PROVIDER WITHIN THE CITY OF MILWAUKIE, AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH COMCAST OF OREGON II, INC; AND DELCARING AN EMERGENCY.**

**WHEREAS**, Comcast of Oregon II, Inc., has been providing cable services within the City of Milwaukie pursuant to a franchise agreement that expired in January 2017; and

**WHEREAS**, the City has the authority to regulate the use of the rights-of-way within the City and to charge for the use of those rights-of-way; and

**WHEREAS**, the City and Comcast both desire Comcast to continue to provide cable services within the City of Milwaukie and to establish the terms by which Comcast shall use the rights-of-way within the City; and

**Now, Therefore, the City of Milwaukie does ordain as follows:**

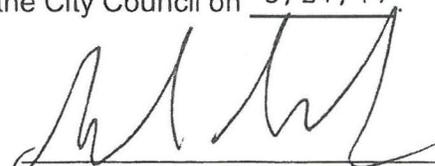
Section 1. The City hereby grants to Comcast or Oregon II, Inc., a non-exclusive franchise on the terms and conditions in the attached Exhibit "A", for a period of ten years from the effective date of this ordinance, to provide cable service within the City of Milwaukie and authorizes the City Manager to sign a franchise agreement with Comcast of Oregon II, Inc.

Section 2. Emergency. With the current franchise expired and the desire of the city and Comcast to have the new franchise effective on April 1, 2017; an emergency is declared to exist and this ordinance shall become effective on April 1, 2017.

Read the first time on 3/21/17, and moved to second reading by 5:0 vote of the City Council.

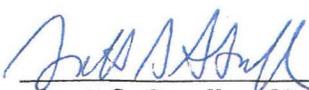
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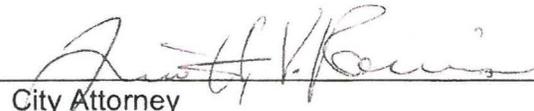
Signed by the Mayor on 3/21/17.

  
\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder

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



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No. 2142**

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Read the first time on **March 21, 2017**, and moved to second reading by **5:0** vote of the City Council.

Read the second time and adopted by the City Council on **March 21, 2017**.

Signed by the Mayor on **March 21, 2017**.

ATTEST:

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Mark Gamba, Mayor

APPROVED AS TO FORM:  
Jordan Ramis PC

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Scott S. Stauffer, City Recorder

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City Attorney



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*"Dogwood City of the West"*

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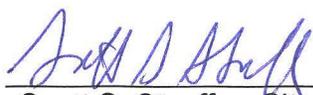
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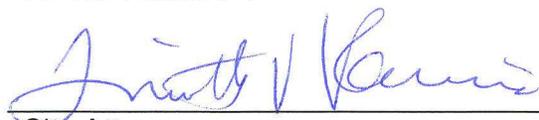
Signed by the Mayor on **March 21, 2017**.

  
\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder

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

**CABLE TELEVISION FRANCHISE AGREEMENT**  
**Between**  
**THE CITY OF MILWAUKIE**  
**And**  
**COMCAST OF CALIFORNIA/COLORADO/OREGON**  
**INC.**

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## 1. PURPOSE AND INTENT

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

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

## 2. DEFINITIONS

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

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

users having editorial control over their Programming.

- iv. "PEG Access" means Public Access Channels, Educational Access Channels and Government Access Channels collectively.
- c. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. "Basic Cable Service" means any service of tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise, and is made available to all Cable Services Subscribers.
- e. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.
- f. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- g. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operations of such a Cable System.
- h. "Cable Service" shall have the meaning provided under Federal law and regulations.
- i. "Cable System" or "Cable Communications 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/or operated by the Grantee in the City under this Franchise.
- j. "Channel" shall have the meaning specified in the definition of "Channel" in Section 602 of the Cable Act (47 U.S.C. 522 (4)).
- k. "City" means the City of Milwaukie, a municipal corporation, and all the territory within its boundaries, as such may change from time to time.
- l. "FCC" means the Federal Communications Commission.
- m. "Fiscal Year" means the period from July 1 to June 30.

- n. “Franchise” or “Franchise Agreement” means the authorization granted by this document for the construction or operation of a cable system.
- o. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.
- p. “Grantee” means Comcast of California/Colorado/Florida/Oregon, Inc., and its lawful successors, transferees, or assignees thereof.
- q. “Grantor” means the City, a municipal corporation in the State of Oregon.
- r. “Gross Revenues” means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross revenues include, by way of illustration and not limitation:
- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
  - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service within the Franchise Area;
  - Fees paid to Grantee for channels designated for commercial/leased access use, which shall be allocated on a pro rata basis using total Cable Service Subscribers;
  - Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
  - Payments for pre-paid Cable Services and/or equipment;
  - Advertising Revenues as defined herein;
  - Fees including, but not limited to:
    - a. late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
    - b. Franchise fees;
    - c. The FCC User Fee;
    - d. PEG fees if included on Subscriber billing statements;
  - Revenue from programing guides; and
  - Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise area

“Gross Revenues” shall not be net of: 1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; 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 an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. 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 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.

(A) "Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Comcast Spotlight or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

(B) "Gross Revenues" shall **not** include:

- Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise Fee, the FCC User Fee shall not be regarded as such a tax or fee;
- Launch fees and marketing co-op fees; and,
- Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.

(C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the

bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than 50% of the price of the bundled service total.

(D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with Generally Accepted Accounting Principles (GAAP) where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any franchise-required document at the time of submittal, identifying each revised section or line item.

(E) Grantor agrees and acknowledges that Grantee shall maintain its books and records in accordance with GAAP.

- s. "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.
- t. "Person" means any corporation, partnership, proprietorship, individual, organization, association, or other entity authorized to do business in the State of Oregon, or any natural person.
- u. "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.
- v. "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.
- w. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.

- x. “Resident” means any natural person residing within the Franchise Area.
- y. “School” means any public or accredited private primary or secondary schools and all similarly situated private and parochial educational institutions that have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.
- z. “Section” means any section, subsection or provision of this Franchise Agreement.
- aa. “Streets and Public Ways” means the surface of and the space above and below any public street, road, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them, and except the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.
- bb. “Subscriber” means any person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of or in connection with, with the Cable System.
- cc. “Tap” or “Tapping” means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- dd. “Year” means a full twelve-month calendar year, unless designated otherwise, such as a “fiscal year.”

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

#### **3.1 Grant.**

Grantor hereby grants to the Grantee a non-exclusive and revocable franchise Effective on April 1, 2017, revocable as provided herein, to construct, operate and maintain a Cable System within the Franchise area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the facilities of the Cable Communications System as required and conditioned by the provisions of this Franchise Agreement.

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

Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture partner of the Grantee directly involved in

the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

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

For the purpose of constructing, operating and maintaining a Cable System in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration within City Streets and Public Ways, the Grantee shall in each case request all required permits, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this Section shall relieve the Grantee of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

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

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be Ten (10) years from the Effective Date of this Agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be April 1, 2017, ("Effective Date") unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

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

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

### **3.5 Grant of Other Franchises.**

(A) The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 3.5 will apply.

(B) As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise to a wireline competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access

Channels, customer service obligations, and complimentary services (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors.

- (C) Within one (1) year of the adoption of a wireline competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the wireline competitor's Franchise or similar authorization. The Grantor shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC§ 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
- (D) Nothing in this Section 3.5 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- (E) This provision does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon one hundred eighty (180) days' notice to Grantee.
- (F) This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to Systems that serve less than 5% (five percent) of the geographic area of the Grantor; or to Systems that only provide video services via the public Internet.

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

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

No such consent shall be required, however, for a transfer in trust, by mortgage, by other

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

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rule makings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. Grantee shall furnish all information required by law and/or reasonably requested by Grantor, at no cost to Grantor, with respect to the consideration of the transfer. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the legal, financial and technical qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. The Grantee shall assist Grantor in any such inquiry.

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

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

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

### **3.7 Franchise Acceptance.**

The Grantee, within forty-five (45) 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 Recorder a written acceptance executed by the Grantee, in the form attached hereto as Exhibit A. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall

be null and void.

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

##### **4.1 General.**

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

Prior to beginning any construction, Grantee must provide Grantor with a construction schedule for work in the Streets. All construction in the Streets and Public Ways shall be performed in compliance with this Agreement and all applicable Grantor ordinances, codes, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. When obtaining a permit, Grantee shall inquire about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of cuts in the Street and Public Ways.

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

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

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

(A) It is the Grantor's general policy that all potential residential Subscribers in the Grantee's Franchise Area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any potential residential Subscriber within the Franchise Area. Except as otherwise provided in Section 10.1(e), Grantee shall provide Cable Service to every residential dwelling unit within the Franchise Area where the average density is equal to or greater than ten (10) dwelling units per one thousand twenty feet (1,020) cable mile:

- I. With no line extension charge; and
- II. At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting from the nearest point on Grantee's Cable System to an outside wall for residential Subscribers with additional charges for non-standard installations computed on a time plus material basis to be calculated on that portion of the installation that exceeds the standard one hundred twenty-five (125) foot drop.

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

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

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

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

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

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

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

Whenever the Grantee disturbs the surface or otherwise damages any Streets and Public

Ways for any purpose mentioned herein, Grantee shall promptly restore the Street to at least the prior condition or the legally required standard. If the Grantee fails to promptly repair and restore any Streets and Public Ways, the Grantor may do so, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. If Grantee fails to promptly make repairs and repairs are required to protect the health or safety of the public, Grantor may make immediate repairs at the sole cost of the Grantee. All excavations made by the Grantee in the Streets and Public Ways shall be properly safeguarded for the prevention of accidents.

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

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

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

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sanitary or stormwater sewers, grading, paving, repairing and/or altering any Streets and Public Ways, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sanitary or stormwater sewer or water main, the improvement of a street or any other public improvement, then upon reasonable written notice from the Grantor, all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

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

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

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall immediately remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall, at no cost to Grantor, 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 and/or the new controlling jurisdiction. In the event of failure, neglect or refusal of the Grantee to remove its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. The cost incurred by Grantor, including but not limited to the cost of inspection, supervision and administration, shall be paid by the Grantee.

Within twelve (12) months of Grantee's permanent cessation of use of Grantor's Streets and Public Ways, or any portion thereof, Grantee shall remove the affected facilities or make other arrangements reasonably acceptable to Grantor, as provided in Section 9.6.

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

(A) Temporary Movement. In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal or relocation such of its facilities as may be required to facilitate such movements.

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

(B) Permanent Relocation. Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Streets and Public Ways when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid

by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay, provided that Grantor first notifies and provides Grantee fifteen (15) days to cure unless additional time is granted in writing by the Grantor. If Grantor requires Grantee to relocate its facilities located within the Streets and Public Ways, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets and Public Ways belonging to the Grantor.

Grantor shall bear no responsibility to assist Grantee with alternate locations not in the Grantors rights-of-way.

#### **4.11 Undergrounding.**

- (A) Cable must be installed underground where:
- I. All existing utilities are placed underground, other than high voltage electric facilities;
  - II. Statute, ordinance, policy or other regulation of Grantor lawfully requires utilities to be placed underground;
  - III. All overhead utility lines are placed underground, other than high voltage electric facilities (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise);
  - IV. Underground easements are obtained from developers of new residential areas;  
or
  - V. Utilities are overhead but Residents prefer underground (undergrounding to be provided at Residents' cost).

Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from poles, pedestals or vaults to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with utility companies or providers, common trenches for underground construction wherever available.

Nothing in this Section shall be construed to prohibit Grantee from constructing, operating, or maintaining aboveground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment provided that these are placed in a manner consistent with applicable laws, codes, rules and regulations.

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

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

#### **4.13 Emergency.**

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

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

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

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

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

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

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

The Grantee shall maintain on its Cable System a minimum capacity of one hundred twenty (120) Channels. The System shall throughout the Franchise term carry reverse signals in the upstream direction. The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the Portland Metropolitan area.

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

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

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

(A) Grantee shall continue and maintain without limitation all interconnections in effect on the Effective Date of this Franchise unless otherwise authorized in writing by the Grantor. The interconnections shall provide the capacity to transmit PEG Access Programming among the Designated Access Provider (as defined in Section 6.5) and geographically adjacent cable systems.

- (B) Upon request by the Grantor, and based on a demonstrated need, Grantee shall work in good faith with the Grantor to interconnect with other cable operators at a designated meet point and not at Grantee's headend or hubs in order to hand off PEG Access Channel signals for the purposes of sharing PEG programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Access Channels without degradation to Grantee's demarcation at the designated meet point of the interconnect. The Grantor shall not require such interconnection without the prior consent of Grantee, which shall not be unreasonably withheld. Grantee shall not be obligated to interconnect with any cable system providing competitive Cable Services within the Franchise Area, except that Grantee shall use reasonable efforts to agree with a competitive Cable Services provider on reasonable terms, conditions and costs of a viable interconnection of the PEG Access Channel signals. Any incremental, direct capital costs incurred by Grantee to interconnect may be paid by the Grantor from the PEG capital fee. This subsection 5.5(B) shall apply only to the extent it is consistent with the Cable Act and applicable FCC rules, regulations and orders.
- (C) Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for PEG Access signals.
- (D) Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may, after written consent from Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- (E) Nothing in this Section alters Grantee's Channel obligations with respect to Access programming or the number of designated Access Channels delivered to residential Subscribers on the System. Unless the Grantor directs otherwise, the interconnection shall allow designated Access Channels to operate without disruption or delay across and within the Franchise Area.
- (F) It is Grantee's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation, when compared to the quality of the signals as received from the designated access providers. It is not the Grantee's responsibility to ensure that the signals provided to the interconnect by another interconnecting system meet industry standards.

#### **5.6 Emergency Alert Capability.**

- (A) Grantee shall provide emergency alert capability in full compliance with applicable FCC requirements. Grantee shall establish procedures to override video and audio on all channels of the Cable System to provide emergency messages consistent with the FCC's directives.
- (B) The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, shall indemnify and hold harmless the Grantee, its employees,

officers and assigns from any claims arising from Grantor's use of the cable system or the EAS including, but not limited to, reasonable attorneys' fees. Additionally, subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 5.6(b).

**5.7 Standby Power.**

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

**5.8 Parental Control Lock.**

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

**5.9 Technical Standards.**

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

**5.10 Performance Testing.**

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

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of this Agreement and applicable FCC technical standards. Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection upon request. Tests may be witnessed by representatives of Grantor.

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

acknowledged and verified by the Grantor.

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

### **6.1 Programming Categories.**

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

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

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

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

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

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

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

### **6.4 Obscenity.**

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

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

(A) Designated Access Providers.

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

Grantee shall fully cooperate with Designated Access Provider(s) in the use of the Access Channels for the provision of PEG Access. Nothing in this Franchise shall prevent the Grantor or its Designated Access Provider from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal and state law and regulations, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment. However, Grantee may review such use and if Grantee determines that such use is inconsistent with applicable federal and state law or regulations, Grantor or its Designated Access Provider, upon written notification from Grantee, shall within 15 (fifteen) days cease such use.

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

(B) Channel Capacity

- I. As of the Effective Date of this Franchise, there are six (6) channels currently in the channel line-up used for PEG Access programming that will continue to be available to every Subscriber in the Franchise Area without additional charge throughout the term of this Franchise unless otherwise provided in this Franchise: channel 11 (CAN regional public access); channel 23 (public access – WFTV); channel 27 (educational programming – Clackamas Community College); channel 28 (educational programming – North Clackamas School District); channel 29 (government access – City of Milwaukie) and channel 30 (government access – Clackamas County). Upon at least sixty (60) days advance written notice to Grantee, the Grantor may require Grantee to change the programming offered on these six (6) channels to different PEG Access programming so long as the new programming can be cablecast by Grantee without construction of new interconnections or origination points, provided that Grantor has a Designated Access Provider within the Franchise Area to manage the programming. Grantee shall not be responsible for inserting or managing programming on any of the channels. In the event the new programming requires an origination point pursuant to subsection 6.5(D), the Grantee shall have not more than thirty (30) days after construction is complete to implement the required change. For any programming change requiring construction of an origination point, Grantee shall not be required to make the change unless the Grantor facilitates construction at no cost to Grantee.

In the event Grantor's Designated Access Provider ceases its operation or any provider of PEG access programming for the six (6) channels identified above no longer provides programming for a period of six (6) month or longer, Grantee may use the channel or channels designated for such use for other purposes until such time as the Grantor provides a forty-five (45) day notice of its intent to use the Channel again. The Grantor and Grantee shall work in good faith to transition such channel or channels.

(C) Support for Access Capital Costs

- I. Throughout the term of this Franchise, Grantee shall provide eighty cents (\$0.80) per month, per residential Subscriber, or such lesser amount if authorized in writing by Grantor, due within sixty (60) days of the Effective Date of the Franchise to be used for capital equipment and facilities related to PEG access and distribution. Grantee shall provide notice, approved by the Grantor, to the Grantee's residential Subscribers if Grantee elects to include the PEG support provided under this Section on the bills of residential Subscribers. The Grantee shall make such payments quarterly, following the Effective Date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantee will submit a report to the Grantor, verified by an officer of the Grantee, which shall contain an accurate statement of monthly subscriber counts, in sufficient detail to enable the Grantor to verify the accuracy of payments. Grantee shall provide additional information requested by Grantor within 15 days, if so requested by Grantor, at no cost to Grantor. Payments will be made concurrent with the franchise fee payment pursuant to Section 8.1.
- II. If Grantor enters into a franchise agreement or amends an existing franchise agreement with another cable operator after the Effective Date of this Franchise to provide Cable Service in all or any portion of the Grantee's Franchise Area that includes PEG financial support calculated based on a per month, per residential subscriber basis that is less than eighty cents (\$0.80) per month, per residential Subscriber, then, to the extent required by law, Grantee shall be entitled to reduce the PEG contribution to match that of the other cable operator or operators.
- III. Upon request, the Grantor shall provide a report not more than annually to the Grantee on the use of the funds provided to the Grantor under this Section 6.5(C). The annual report shall be submitted to Grantee within one hundred twenty (120) days after the date the Grantor receives the request. Grantee may review records of the Grantor and its designees regarding the use of funds described in such report. The Grantor agrees that the report shall document the amounts spent or encumbered for operating support for PEG access. Grantee may review records of the Grantor, and any PEG access providers receiving the

funds, regarding the use of funds provided and channels, to verify that the funds have been used for payment of PEG access capital costs. Grantor shall not be required to maintain any records or books for longer than three years.

- IV. Grantee agrees that financial support or costs arising from or relating to the obligations set forth in this Section 6.5(C) shall in no way modify or otherwise affect the Grantee's obligations to pay franchise fees to the Grantor. Grantee agrees that although the sum of franchise fees and the payments set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Franchise. As provided for under federal law, Grantee may pass through to Subscribers and itemize on Subscriber cable bills the PEG Access contribution set forth in subsection 6.5(C)I.

(D) Access Channels on Lowest Available Tier

- I. All Access channels provided to Subscribers under this Franchise shall be included by the Grantee, without limitation, as part of Basic Service offered by the Grantee of its Cable System in accordance with applicable federal law.

(E) Relocation of Access Channels

Grantee shall make reasonable efforts to coordinate the cablecasting of all Programming on the Cable System on the same Channel designations as such Programming is currently cablecast in the Franchise Area as set forth in Section 6.5 herein. If at any time during the duration of this Agreement, Grantee reassigns the location of an Access Channel on its Cable System, Grantee shall provide at least sixty (60) days advance notice to the Grantor and the Designated Access Providers(s) (DAP). Grantee shall make "best efforts" in the event of Channel relocation, to place the Access Channels within reasonable proximity from the Channel location for network affiliate. Grantee shall also make "best efforts" to assign the HD PEG Access Channel a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs Programming Channels if such Channel positions are not already taken, or if not possible, as reasonably close as available Channel numbering will allow. Grantee shall ensure that Subscribers are notified of such reassignment in accordance with the notice requirements in Section 7.6 that include its customer messaging function, for at least fifteen (15) days prior to the change and fifteen (15) days after the change. In conjunction with any reassignment of any SD Access Channels, Grantee shall provide either (1) a reimbursement up to Five Thousand Dollars (\$5,000) to the Grantor for actual costs associated with the change, or (2) Nine Thousand Dollars (\$9,000) of in-kind airtime on advertiser supported Channels to the Grantor for the purpose of airing multiple thirty (30) second public service announcements produced by DAP. The Grantor shall cooperate with the DAP and Grantee for such airing. All reimbursement, whether in cash or in-kind, shall be paid or provided on a per-event basis, regardless of the number of Channels affected by the change

(F) Quality of SD and HD Access Channels Signals

At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all remaining SD Access Channels Signals will also be carried by Grantee in HD, at which time the SD Channels will be discontinued and the maximum number of PEG Access Channels shall be six (6) HD Channels. The Grantee shall not unreasonably discriminate against SD and HD Access Channels with respect to accessibility, functionality and to the application of any applicable FCC Rules and Regulations, including without limitation Subpart K Channel Signal standards. With respect to Signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall distribute the Access Channel Signal without degradation. There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD Signals so long as the requirements of this Agreement are otherwise met. Grantee may implement HD carriage of PEG Access Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a Signal quality for the Subscriber that is reasonably comparable and functionally equivalent to similar commercial HD Channels carried on the Cable System. In the event the Grantor believes and provides evidence that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner. Disputes under this Section 6.5 shall be addressed through the Franchise enforcement procedures set forth in Section 7. Upon reasonable written request by a DAP, Grantee shall verify that Access Channel Signal delivery to Subscribers is consistent with the requirements of this Section 6.5.

(G) Origination Points

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

(H) Cable Service to Public Facilities

As a voluntary initiative, Grantee, upon request, will provide without charge, one (1) Standard Installation and one (1) outlet of Basic Cable, expanded Basic Service, or digital equivalent, and one (1) DTA to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), Library(s), Emergency Operations building(s), and Schools that are within the Franchise Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Such installations shall be provided to the facilities within sixty (60) days of Grantor's request. In the

event a cable franchise is granted to a competitor within Grantee's Franchise Area, Grantee shall not be required to provide the services described in this Section to any buildings that are receiving without charge similar services from the other cable operator. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlet shall not be located in area accessible to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required (defined for purposes of this subsection as a drop not to exceed one-hundred twenty-five (125) feet), unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation.

The Grantor acknowledges that the provision of Basic Cable Services to the locations identified in this section reflects a voluntary initiative on the part of the Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to the applicable law, should Grantee elect to offset governmental complimentary services against franchise fees, Grantee shall first provide the Grantor with ninety (90) days' prior notice.

(I) Change in Technology

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

(J) Technical Quality

- I. Grantee shall carry all Access Channel signals and maintain interconnections of Access Channels in such a manner that signal quality is not degraded and consistent with applicable laws, rules and regulations.
- II. Grantee shall have no responsibility for the technical production quality of all Access Programming distributed on the Access Channels.
- III. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider or Grantor.
- IV. All of the Channels, Cable System capacity, and other costs required for the Grantee to comply with this Section 6.5 shall be at Grantee's sole cost and provided without charge to the Grantor or any Designated Access Provider,

except as expressly set forth in this Section 6.5.

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

### **7.1 Intent.**

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

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

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

- (A) Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (B) Coordination of the operation of Public, Educational and Government Access Channels (PEG).
- (C) Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, Schools and health care institutions.
- (D) Formulating and recommending long-range cable communications policy of Grantor for the City.
- (E) Disbursing and utilizing franchise revenues paid to the Grantor.
- (F) Regulating rates, to the extent permitted by law.
- (G) Customer service, to the extent permitted by law.
- (H) Planning and facilitating development of public, education and government access programming, both within the City and through interconnection with adjacent systems.
- (I) All other areas as provided by the Cable Act.

### **7.3 Administration and Regulation.**

- (A) Authority. Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- (B) Rates and Charges. All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by

applicable federal, state and local laws.

- (C) Rate Discrimination. All of Grantee's rate and charges shall be published (in the form of a publicly available rate card), and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.
- (D) Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- (E) Filing of Rates and Charges. Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Agreement.
- (F) The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Act), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

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

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

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

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

- I. Respond to Grantor, contesting Grantor's assertion that a violation occurred, and

request a hearing in accordance with subsection (e) below; or

- II. Cure the violation; or
  - III. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure.
- (B) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, determine whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (G) of this section. Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
- (C) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (B), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.
- (D) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection 7.4(A)I hereof the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what liquidated damages shall be applied.
- (E) In the case of any hearing pursuant to Section 7.4, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- (F) If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
- I. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
  - II. Establish the amount of liquidated damages, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
  - III. In the case of a substantial material default of a material provision of this Franchise, revoke this Agreement; and/or

- IV. Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

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

(G) Fines

- I. Because the Grantee's failure to comply with provisions of the Franchise will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantor for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices and holding of a hearing or hearings as provided herein.
- II. For violating aggregate performance telephone answering standards for a Quarterly measurement period:
  - a. \$5,000 for the first such violation;
  - b. \$10,000 for the second such violation, unless the violation has been cured;
  - c. \$15,000 for any and all subsequent violations, unless the violation has been cured;A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods;
- III. For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;
- IV. For any failure to provide data, documents, reports or information as provided in the Agreement: \$250 per day or per violation, up to a total of \$10,000 during any twelve (12) month period.
- V. For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Records submissions): \$250 per day for each violation for each day the violation continues, up to a total of \$25,000 during any twelve (12) month period.
- VI. The fines set forth in this Agreement may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one of more of the following factors:

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

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

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

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

Collection of fines by Grantor shall in no respect affect the compensation owed to any Subscriber.

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

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

#### **7.6 Customer Service Standards.**

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

##### **7.6.1 Customer Service and Telephone Responsiveness**

###### **(A) Definitions**

- I. Normal Business Hours mean those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.
- II. Normal Operating Conditions: Those service conditions that are within the control of the Grantee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those

conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

- III. Respond: The start of Grantee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.
- IV. Service Call: The action taken by Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- V. Service Interruption. The loss of picture or sound on one or more cable Channels.
- VI. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- VII. Standard Installation: Installations where the Subscriber is within one hundred twenty-five (125) feet of trunk or feeder lines.

**(B) Telephone Availability**

- I. Grantee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Grantee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Grantee representatives shall identify themselves by name when answering this number.
- II. Grantee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Agreement by Grantee.
- III. Grantee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

- IV. After the first tier menu (not including a foreign language rollout) has run through three times, if Subscribers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Grantee may reasonably substitute this requirement with another method of handling calls from Subscribers who do not have touch-tone telephones.
- V. Under Normal Operating Conditions, calls received by the Grantee shall be answered within thirty (30) seconds during Normal Business Hours. The Grantee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Franchise Area Subscribers, as measured on a cumulative Quarterly calendar basis. Measurement of this standard shall include all calls received by the Grantee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.
- VI. Under Normal Operating Conditions, callers to the Grantee shall receive a busy signal no more than three (3%) percent of the time during any calendar Quarter.
- VII. Upon request, forty-five (45) days following the end of each Quarter, the Grantee shall report to Grantor, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:
  - a. Percentage of calls answered within thirty (30) seconds as set forth in 7.6.1; and
  - b. Percentage of time Subscribers received a busy signal when calling the Grantee's service center as set forth in Section 7.6.1.
- VIII. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.

**(C) Installations and Service Appointments**

- I. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding/bonding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Grantee-supplied equipment and Cable Service.
- II. The Standard Installation shall be performed within seven (7) business days of Subscriber request. Grantee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the Subscriber outside of the seven (7) day period.

- III. Upon request, Grantee shall provide Grantor with a report forty-five (45) days following the end of the Quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.
- IV. At Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change not less than thirty (30) days in advance.
- V. Grantee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Grantee's discretion, Grantee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.
  - a. Grantee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.
  - b. If Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.
- III. Grantee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Grantee representative go to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited Subscriber, the Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at Subscriber's address or by a satisfactory equivalent.

**(D) Service Interruptions and Outages**

Grantee shall promptly notify Grantor of any Significant Outage of the Cable Service.

- I. Grantee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Grantee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Grantee may perform

modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m., which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

- II. Grantee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.
- III. Under Normal Operating Conditions, Grantee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
  - a. Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.
  - b. Grantee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.
- IV. Under Normal Operating Conditions, Grantee shall complete Service Calls within seventy-two (72) hours of the time Grantee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- V. Grantee shall meet the standard in this Section for ninety percent (90%) of the Service Calls it completes, as measured on a Quarterly basis.
- VI. Upon request, Grantee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period, not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Grantee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. The Grantee shall notify the Grantor of such a change at least thirty (30) days in advance.
- VII. At Grantee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Grantee shall notify Grantor of such a change at least thirty (30) days in advance.
- VIII. Under Normal Operating Conditions, Grantee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more.

The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Grantee to verify the problem if requested by Grantee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

- IX. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Grantee shall issue a credit upon request to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit upon request to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Grantee, provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

**(E) Subscriber Complaints Referred by Grantor**

Under Normal Operating Conditions, Grantee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Grantee shall notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Grantee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Grantee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Grantee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, “resolve” means that Grantee shall perform those actions, which, in the normal course of business, are necessary to investigate the Subscriber’s complaint and advise the Subscriber of the results of that investigation.

**(F) Billing**

- I. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Grantee shall without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, PEG capital fees, and/or other governmental-imposed fees. Grantee shall maintain records of the date and place of mailing of bills.
- II. Every Subscriber with a current account balance sending payment directly to Grantee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

- III. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with this Section.
- IV. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:
  - a. The Subscriber pays all undisputed charges;
  - b. The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and
  - c. The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
  - d. It shall be within Grantee's sole discretion to determine when the dispute has been resolved Under Normal Operating Conditions, Grantee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- V. Grantee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.
- VI. Grantee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.
- VII. Grantee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Grantee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Grantee, the payment alternative may be limited.

**G. Deposits, Refunds and Credits**

- I. Grantee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Grantee, or 3) who rent Subscriber equipment from Grantee, so long as such deposits are applied on a non-discriminatory basis. The deposit Grantee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Grantee may charge for Subscriber equipment is the cost of the equipment which Grantee would need to purchase to replace the equipment rented to the Subscriber.

- II. Grantee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one (1) year and provided the Subscriber has demonstrated good payment history during this period. Grantee shall pay interest on other deposits if required by law.
- III. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- IV. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.
- V. Bills shall be considered paid when appropriate payment is received by Grantee or its authorized agent. Appropriate time considerations shall be included in Grantee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

#### **H. Rates, Fees and Charges**

- I. Grantee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Grantee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Grantee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Grantee's equipment (for example, a dog chew).
- II. Grantee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.
- III. All of Grantee's rates and charges shall comply with applicable law. Grantee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Agreement.

#### **I. Disconnection/Denial of Service**

- I. Grantee shall not terminate Cable Service for nonpayment of a delinquent account unless Grantee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- II. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period

during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Cable Service Interruption was reported by the Subscriber.

- III. Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, abusive and/or threatening behavior toward Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.
- IV. Charges for Cable Service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Grantee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Grantee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Grantee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another Person or entity.

**J. Communications with Subscribers**

- I. All Grantee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Grantee shall wear a clearly visible identification card bearing their name and photograph. Grantee shall make reasonable efforts to account for all identification cards at all times. In addition, all Grantee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Grantee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Grantee vehicles shall have Grantee's logo plainly visible. The vehicles of those contractors and subcontractors working for Grantee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Grantee.
- II. All contact with a Subscriber or potential Subscriber by a Person representing Grantee shall be conducted in a courteous manner.
- III. Grantee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Grantee may be referred

to Grantor. A copy of the annual notice required under this subsection will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.

- IV. Grantee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).
- V. All notices identified in this Section shall be by either:
  - a. A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
  - b. A separate electronic notification.
- VI. Grantee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Grantee. If the change is not within Grantee's control, Grantee shall provide an explanation to Grantor of the reason and expected length of delay. Grantee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.
- VII. Grantee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to this Section, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:
  - a. Products and Cable Service offered;
  - b. Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Grantee related to Cable Service;
  - c. Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
  - d. Channel positions of Cable Services offered on the Cable System;
  - e. Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Grantee about all complaints and questions;
  - f. Procedures for requesting Cable Service credit;
  - g. The availability of a parental control device;
  - h. Grantee practices and procedures for protecting against invasion of privacy; and
  - i. The address and telephone number of Grantee's office to which complaints may be reported.

- VIII. A copy of notices required in this Section will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Grantee and as soon as possible if not with the control of Grantee.
- IX. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- X. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific Channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- XI. Every notice of termination of Cable Service shall include the following information:
  - a. The name and address of the Subscriber whose account is delinquent;
  - b. The amount of the delinquency for all services billed;
  - c. The date by which payment is required in order to avoid termination of Cable Service; and
  - d. The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.

Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

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

### **8.1 Compensation.**

#### **(A) Franchise Fee.**

As compensation for the Franchise to be granted, and in consideration of permission to use the Streets and Public Ways of the Grantor for the construction, operation, and maintenance of a Cable System within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below or above the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to limit a higher or lower permissible amount, then Grantee shall pay the higher or lower amount up to the maximum allowable by law.

Within thirty (30) days of a request from Grantor, Grantee will make available an

up-to-date list of all Affiliates receiving Gross Revenues as such revenues are defined in this Franchise.

(B) Bundling.

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

(C) Payment of Franchise Fees.

- I. Payments due under this Section shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee shall submit a report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments. Grantee shall provide additional information request by Grantor within 15 days, if so requested by Grantor, at no cost to Grantor.
- 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 re-computation by Grantor.
- III. In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to nine percent (9%) per annum, or current maximum rate allowed by state law, computed based on the actual number of days elapsed from the due date until payment.
- IV. Payment of the franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee in connection with providing Cable Services that may be imposed by Grantor.

**8.2 Faithful Performance Bond.**

- (A) Within sixty (60) days after the Effective Date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor in the penal sum of one

hundred thousand dollars (\$100,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond shall be in a form acceptable to the Grantor and maintained by the Grantee throughout the term of this Franchise.

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

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

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

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

- (A) The Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows.
- (B) The insurance shall provide coverage at all times for not less than \$3,000,000 for personal injury to each person, \$3,000,000 aggregate for each occurrence, and \$3,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$3,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

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

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

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

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

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

- I. Broad form property damage;
- II. Products and completed operations;
- III. Explosion, collapse, and underground exposures;
- IV. Contractual liability; and
- V. Owners and contractors protective coverage.

- (F) Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for immediate termination of this Franchise by the City subject to Grantee's right to cure as provided in Section 7.4.
- (G) The Grantee shall also indemnify, defend and hold harmless the City and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section arising from operations under this Franchise or in connection therewith, except to the extent caused by the negligent or grossly negligent acts or omissions of the Grantor, its officers, agents and employees.

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

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

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

### **9.2 Right to Perform Franchise Audit.**

The Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise enforcement effort, the books and records of any parent or Affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as franchise and PEG fees to the Grantor by the Grantee for the provision of Cable Services within the Franchise Area, provided that any audit must be commenced not later than three (3) years after the date on which fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of three percent (3%) or more in 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 reasonable and actual expenses of performing the audit, to a maximum of \$15,000 (fifteen thousand dollars).

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

**9.3 Right of Inspection of Construction.**

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

**9.4 Intervention.**

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

**9.5 Right to Require Removal of Property.**

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its revocation, as provided for herein, and subject to Grantee's rights under Section 626 of the Cable Act, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all Streets and Public Ways within the Franchise Area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this subsection 9.6, the Grantee, by written notice to the Grantor, may request that Grantor allow the Cable System to remain in place. Grantor may deny Grantee's request and require Grantee to remove the Cable System from the Streets and Public Ways or modify the Cable System to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest.

**9.6 Inspection of Facilities.**

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

**10. RIGHTS OF INDIVIDUALS PROTECTED**

**10.1 Discriminatory Practices Prohibited.**

(A) The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sexual orientation, sex, age, disability, income, or, except as otherwise provided

herein, the area in which such person lives. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.

- (B) The Grantee shall use best efforts to assure maximum practical availability of Grantee's services and facilities to all Subscribers, regardless of disability, including the provision of a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- (C) For hearing impaired customers, the Grantee, upon request, shall provide information concerning the cost and availability of equipment to facilitate the reception of basic service for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- (D) Upon request by a Subscriber or potential Subscriber, the Grantee shall make a reasonable effort to provide information required under Section 7.6, or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- (E) Nothing in this subsection 10.1 shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

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

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to Tap, or arrange for the Tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the Tapping.

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

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

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

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

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

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

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

### **11. TERMINATION AND EXPIRATION**

#### **11.1 Revocation.**

Should the Grantor seek to revoke this Franchise after following the due process procedures set forth Section 7.4 of this Franchise, including the public hearing described therein, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

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

Within thirty (30) days following the public hearing, Grantor shall provide to Grantee its proposed written findings and conclusions and Grantee shall have thirty (30) days to submit its written objections to Grantor. Thereafter the Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor

shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to affect any cure. If the Grantor determines that the Franchise shall be revoked, the Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the Grantor to an appropriate court, which shall have the power to review the decision in accordance with Oregon law.

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

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

### **11.2 Expiration.**

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

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

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

## **12. OPERATION AND MAINTENANCE**

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

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

The Grantee shall also provide, upon request and reasonable notice, in the manner set forth in this Section the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction,

upgrade and replacement of plant and equipment for the cable system authorized under this franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services within the Franchise Area; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and other information necessary to verify compliance with this Franchise.

The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years after the date on which fees for any period were due to Grantor.

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

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

## **12.3 Reports.**

- (A) Quarterly Reports. Upon request by the Grantor, within thirty (30) days after the end of each fiscal quarter, Grantee shall provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Grantee shall not be required to maintain any reports, regarding this section 12.3 (A), for a period longer than 24 months.
- (B) Annual Report. No later than ninety (90) days following the end of the Grantee's fiscal year each year, Grantee shall present, upon request, a written report to the Grantor which shall include:
  - I. Financial reports that are normally prepared for the Grantee for the previous fiscal year, including gross revenues from all sources, gross Subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet.
  - II. A summary of the previous year's activities including, but not limited to, monthly Subscriber totals in each category and new services.

All financial reports required under this subsection shall be presented to the Grantor accompanied by such notes and explanations as are required or requested by Grantor to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues for the calculation of franchise fees to be paid to the Grantor.

- (C) Monitoring and Compliance Reports. Upon request, the Grantee shall provide a written report of technical performance tests for the Cable System required by applicable FCC rules and regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this Franchise Agreement, Grantee shall not be required to maintain any reports, regarding this section 12.3 (C), for a period longer than twenty-four (24) months.
- (D) All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to develop or create reports that are not part of its normal business procedures.

#### **12.4 Safety.**

- (A) The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- (B) The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise, in accordance with the requirements of the National Electrical Safety Code, and in such manner that they shall not interfere with the installations of any public utility.
- (C) All lines, equipment and connections in, over, under, and upon either the Streets and Public Ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

### **13. MISCELLANEOUS PROVISIONS**

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

The Grantee shall comply with all federal and state laws and regulations, including regulations, rules and orders of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise. If, any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established be in conflict or interfere with the existing rights of the Grantee under this Franchise, Grantee and Grantor shall work together and find a mutually acceptable resolution. Grantor shall make all

reasonable efforts to inform Grantee of any such actions by Grantor.

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

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

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

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted only to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this Section as a result of such provision being preempted shall no longer be of any force or effect.

### **13.3 Captions.**

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

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

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

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

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

### **13.6 Force Majeure.**

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

### **13.7 Entire Agreement.**

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

### **13.8 Consent.**

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

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

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

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

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

### **13.11 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



**EXHIBIT A: ACCEPTANCE**

City Manager  
City of Milwaukie

This is to advise the City of Milwaukie, Oregon (the "Grantor") that Comcast of California/Colorado/Florida/Oregon, Inc. (the "Grantee") hereby accepts the terms and provisions of Ordinance No.2142, passed by the City Council on March 21, 2017 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

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

COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.

BY: 

TITLE: Matthew Chambers  
VP - Finance and Accounting

DATE: 5/5/17

**EXHIBIT B: ORIGINATION POINTS**

Milwaukie City Hall, Milwaukie Police Department, Milwaukie Johnson Creek Building, Milwaukie Operations Building, and Milwaukie Ledding Library

RIGHTS OF WAY BOND

BOND 39BSBHN3716

Know all men by these presents,

That COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC. as Principal, and HARTFORD FIRE INSURANCE COMPANY having its executive office in One Hartford Plaza Hartford CT 06155 as Surety, are held and firmly bound unto CITY OF MILWAUKIE, OR

hereinafter referred to as Obligee in the penal sum of One Hundred Thousand and 00/100 Dollars (\$ 100,000.00 ) for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, the liability of the Surety being limited to said penal sum regardless of the number of years this bond remains in force or is renewed, of the number of premiums that shall be payable or paid, the number of Subscribers to the system and/or legal fees which may be required and incurred.

WHEREAS, the obligee has granted a Rights-of-Way Agreement to Principal to use the public streets and places within the Municipality for the installation, operation, and maintenance of a fiber optic network located within said CITY OF MILWAUKIE, OR

NOW THEREFORE, the condition of this obligation is such, that if the above bound principal shall faithfully perform, well and truly observe and fulfill the terms and conditions of the agreement, then this obligation shall be null and void; otherwise, it shall remain in full force and effect until terminated or cancelled.

PROVIDED, HOWEVER, it shall be a condition precedent to any right of recovery hereunder, that in event of any default on the part of the Principal, a written statement of the particular facts showing the date and nature of such default shall be immediately delivered to the Surety by certified mail at One Hartford Plaza Hartford CT 06155

AND PROVIDED FURTHER that no action, suit or proceeding shall be had or maintained against the Surety on this instrument unless the same be brought or instituted and process served upon the Surety within twelve months after an act of breach or cancellation of this bond or termination of said franchise, whichever occurs first.

This Bond may be terminated or cancelled by Surety by giving thirty (30) days prior notice in writing to Principal and said Obligee, such notice to be given by certified mail. Such termination or cancellation shall not affect any liability incurred or accrued under this Bond prior to the effective date of such termination or cancellation.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 12th day of April, 2017.

WITNESS:

Signature of Principal: Lou G. Klunagiz

COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC. (Seal) (Principal)

By: DEREK H. SQUIRE (Title)

Approved and Accepted by:

Obligee

HARTFORD FIRE INSURANCE COMPANY (Surety)

By: Wayne G. McVaugh (Attorney-in-Fact)

Title



# POWER OF ATTORNEY

Direct Inquiries/Claims to:  
**THE HARTFORD**  
BOND, T-12  
One Hartford Plaza  
Hartford, Connecticut 06155  
[Bond.Claims@thehartford.com](mailto:Bond.Claims@thehartford.com)  
call: 888-266-3488 or fax: 860-757-5835

Agency Name: AON RISK SERVICES CENTRAL INC  
Agency Code: 39-421678

**KNOW ALL PERSONS BY THESE PRESENTS THAT:**

- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of Unlimited** :

Colleen A. Locher, Elizabeth Marrero, Jaquanda Martin, Maureen McNeill, Wayne G. McVaugh, Sara Owens, Patricia A. Rambo, Kimberly Sherrod, Marina Tapia, Doug Wheeler of PHILADELPHIA, Pennsylvania

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof**, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*John Gray*

John Gray, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT }  
  } ss. Hartford  
COUNTY OF HARTFORD }

On this 11th day of January, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Nora M. Stranko*

Nora M. Stranko  
Notary Public  
My Commission Expires March 31, 2018

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *12<sup>th</sup> April, 2017*  
Signed and sealed at the City of Hartford.



*Kevin Heckman*

Kevin Heckman, Assistant Vice President



CITY OF MILWAUKIE  
COUNCIL **ORDINANCE No. 2142**

Notice of Clerical or Typographical Error

**On April 6, 2017, the City Recorder noted clerical or typographical errors within the text of Ordinance No. 2142, which was originally adopted by the Milwaukie City Council on March 21, 2017, as signed by Mayor Mark Gamba.**

The authority to make the corrections noted below is found in Milwaukie Municipal Code (MMC) 1.01.080 Editing the Code:

In preparing adopted ordinances for codification and distribution, the City Recorder shall not alter the sense, meaning, effect, or substance of any ordinance, but, with such limitations, may correct manifest clerical or typographical errors. (Ordinance No. 1902 § 2, 2002)

These corrections are as follows:

1. Correcting the legal name of the franchisee from “Comcast of Oregon, II” to “Comcast of California/Colorado/Florida/Oregon, Inc.”

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder

4-6-17  
\_\_\_\_\_  
Date

**Attachments:**

- Ordinance 2142 – Original, as adopted on March 21, 2017
- Ordinance 2142 – Redline, showing corrections
- Ordinance 2142 – Revised, clean copy as corrected



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No. 2142**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING COMCAST OF OREGON II, INC., A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A CABLE SYSTEM PROVIDER WITHIN THE CITY OF MILWAUKIE, AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH COMCAST OF OREGON II, INC; AND DELCARING AN EMERGENCY.**

**WHEREAS**, Comcast of Oregon II, Inc., has been providing cable services within the City of Milwaukie pursuant to a franchise agreement that expired in January 2017; and

**WHEREAS**, the City has the authority to regulate the use of the rights-of-way within the City and to charge for the use of those rights-of-way; and

**WHEREAS**, the City and Comcast both desire Comcast to continue to provide cable services within the City of Milwaukie and to establish the terms by which Comcast shall use the rights-of-way within the City; and

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The City hereby grants to Comcast or Oregon II, Inc., a non-exclusive franchise on the terms and conditions in the attached Exhibit "A", for a period of ten years from the effective date of this ordinance, to provide cable service within the City of Milwaukie and authorizes the City Manager to sign a franchise agreement with Comcast of Oregon II, Inc.

Section 2. Emergency. With the current franchise expired and the desire of the city and Comcast to have the new franchise effective on April 1, 2017; an emergency is declared to exist and this ordinance shall become effective on April 1, 2017.

Read the first time on 3/21/17, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 3/21/17.

Signed by the Mayor on 3/21/17.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No. 2142**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON-II, INC., A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A CABLE SYSTEM PROVIDER WITHIN THE CITY OF MILWAUKIE, AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH COMCAST OF OREGON II, INC; AND DELCARING AN EMERGENCY.**

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Read the first time on **March 21, 2017**, and moved to second reading by **5:0** vote of the City Council.

Read the second time and adopted by the City Council on **March 21, 2017**.

Signed by the Mayor on **March 21, 2017**.

ATTEST:

---

Mark Gamba, Mayor

APPROVED AS TO FORM:  
Jordan Ramis PC

---

Scott S. Stauffer, City Recorder

---

City Attorney



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Ordinance No. 2142**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC., A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A CABLE SYSTEM PROVIDER WITHIN THE CITY OF MILWAUKIE, AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH COMCAST OF OREGON II, INC; AND DELCARING AN EMERGENCY.**

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Read the first time on **March 21, 2017**, and moved to second reading by **5:0** vote of the City Council.

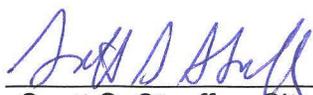
Read the second time and adopted by the City Council on **March 21, 2017**.

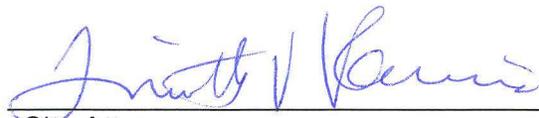
Signed by the Mayor on **March 21, 2017**.

  
\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder

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



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/13/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA INC. 1717 Arch Street Philadelphia, PA 19103-2797 Attn: Comcast.Certs@marsh.com Fax: 212-948-0360	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b>		<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> COMCAST OF CALIFORNIA/COLORADO/FLORIDA/ OREGON, INC. 9605 SW NIMBUS AVENUE BEAVERTON, OR 97008	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A :</b> ACE American Insurance Company		22667
	<b>INSURER B :</b> Indemnity Ins Co Of North America		43575
	<b>INSURER C :</b> ACE Property And Casualty Ins Co		20699
	<b>INSURER D :</b> ACE Fire Underwriters Co		20702
	<b>INSURER E :</b> Agri General Insurance Company		42757
<b>INSURER F :</b>			

**COVERAGES**                      **CERTIFICATE NUMBER:** CLE-005322496-01                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> SIR: \$100,000  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			XSLG27859264	12/01/2016	12/01/2017	EACH OCCURRENCE	\$ 4,900,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 4,900,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 4,900,000
							GENERAL AGGREGATE	\$ 25,000,000
							PRODUCTS - COMP/OP AGG	\$ 6,000,000
								\$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			ISAH09051569	12/01/2016	12/01/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 5,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$			XOO G27924840 002	12/01/2016	12/01/2017	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$ 10,000,000
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below			WLRC49105071 (AOS)	12/01/2016	12/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
A				WLRC49105083 (CA, MA)	12/01/2016	12/01/2017	E.L. EACH ACCIDENT	\$ 2,000,000
D				SCFC49105095 (WI)	12/01/2016	12/01/2017	E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
E				WLRC49105101 (TN)	12/01/2016	12/01/2017	E.L. DISEASE - POLICY LIMIT	\$ 2,000,000
A	Excess Workers Compensation			WCUC49105113 (WA)	12/01/2016	12/01/2017	Ea Acc/Dis Employee/Dis Policy	2,000,000
							SIR	5,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
City of Milwaukie is included as Additional Insured with respect to General Liability policy and Automobile Liability Policy where required by written contract with the Named Insured.

<b>CERTIFICATE HOLDER</b> City of Milwaukie Right of Way Contractor Coordinator 10722 SE Main St. Milwaukie, OR 97222	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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