



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, September 6, 2016

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

**5:30 pm Executive Session
(ORS 192.660(2)(f), Exempt Public Records)**

6:00 pm City Council Work Session

7:00 pm City Council Regular Meeting

City Council Work Session-Continued



Home of the Tualatin River National Wildlife Refuge

5:30 PM EXECUTIVE SESSION

1. ORS 192.660(2)(f), Exempt Public Records (J. Soper)

6:00 PM WORK SESSION

1. Pride Disposal 2015 Rate Review (Joe Gall)

REGULAR SESSION

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

5. CONSENT AGENDA

- A. Approval of August 16, 2016 City Council Meeting Minutes
- B. Resolution 2016-053 Adopting protocol and an evaluation document containing criteria for the review and evaluation of the City Manager's job performance and describing process for obtaining staff assessment of Manager's performance (Josh Soper)
- C. Resolution 2016-054 Authorizing the City Manager to renew the franchise agreement for cable services with Comcast of Oregon II, Inc. (Brad Crawford)

6. PRESENTATIONS

- A. Proclamation, Constitution Week September 17-23, 2016
- B. Proclamation, WCCLS 40th Anniversary
- C. Employee Spotlight

7. CITIZEN COMMENTS

8. NEW BUSINESS

- A. Resolution 2016-055 Setting Forth Sherwood's Commitment to put Healthy Options within Reach of all Residents (Joe Gall, City Manager)

AGENDA

SHERWOOD CITY COUNCIL September 6, 2016

5:30 pm Executive Session

6:00 pm Work Session

7:00 pm Regular Meeting

Work Session-Continued

**Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140**

9. PUBLIC HEARINGS

- A. Ordinance 2016-012 Amending multiple sections of the Zoning and Community Development Code including Divisions I, II, and III as it relates to the regulation of Recreational Marijuana Facilities** (Michelle Miller, Sr. Planner) (*Second Reading*)

10. CITY MANAGER REPORT

11. COUNCIL ANNOUNCEMENTS

12. ADJOURN TO WORK SESSION

- **Washington County Sheriff Proposal (Tom Pessemier)**

How to Find Out What's on the Council Schedule:

City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Thursday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the Sherwood YMCA, the Senior Center, and the Sherwood Post Office. Council meeting materials are available at the Sherwood Public Library. **To Schedule a Presentation before Council:** If you would like to schedule a presentation before the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or murphys@sherwoodoregon.gov



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
August 16, 2016

WORK SESSION

- 1. CALL TO ORDER:** Mayor Krisanna Clark called the meeting to order at 5:37 pm.
- 2. COUNCIL PRESENT:** Mayor Krisanna Clark, Councilors Linda Henderson, Jennifer Kuiper and Renee Brouse. Councilor Dan King arrived at 5:40 pm. Council President Jennifer Harris and Councilor Sally Robinson were absent.
- 3. STAFF PRESENT:** Assistant City Manager Tom Pessemier, City Attorney Josh Soper, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, City Engineer Bob Galati, Interim Finance Director Cathy Brucker, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.
- 4. TOPICS:**

A. City Manager Evaluation Process Review

City Attorney Josh Soper provided the Council with a handout (see record, Exhibit A) and explained the changes discussed at the prior work session. He asked if the Council would like to make further changes. Council asked for a timeline of the actual City Manager review. Mr. Soper said the Council is required to formally approve the criteria and the process by resolution and then staff will send the Council the survey and start the process. He said there is an executive session scheduled for October 17 to discuss the evaluation.

Councilor Henderson asked about feedback from senior management staff. Mr. Soper said there will be language in the resolution indicating that the same survey will be sent to staff which is the same process as last year. With no further questions from Council, Mr. Soper said the resolution will be prepared and presented at the September 6, 2016 meeting.

B. Transportation SDC Update

City Engineer Bob Galati provided the Council with a handout (see record, Exhibit B) and reminded the Council of the 2005 Transportation System Plan (TSP) which was updated in 2012 (*later Mr. Galati clarified that it was updated in 2014*) and stated the methodology report and SDC rate has to be updated so the rates reflect the projects in the TSP. He introduced FCS Group consultants John Ghilarducci and

Doug Gabbard and asked them to explain their analysis. Mr. Ghilarducci provided background and stated the SDCs are a one-time development charge and are for capital only. He discussed the difference between a reimbursement fee and an improvement fee and explained SDC Credits. He said they developed two options for Council consideration and noted the first option is the recommended option. He stated option 1 calculates the SDCs to apply uniformly to all development throughout the City which means there is no variation by geographic area and said it is the easiest to administer. He noted option 2 provides for Citywide SDCs with overlays for Tonquin Employment Area and Brookman.

Doug Gabbard discussed how growth affects the SDC rate and explained how they measure growth. He said the current trend is to measure average daily person trips (ADPTs) which include walking, biking and driving trips. He stated the reimbursement fee is based on the cost of capacity available in the existing system less grants and contributions, and the improvement fee cost is based on future projects. He explained the calculations used for determining a citywide uniform SDC and stated it equates to \$101 per ADPT and noted a single family residence has approximately 15 ADPTs, resulting in a total of approximately \$1500.

Mr. Gabbard discussed the option of having specific overlay areas with a surcharge in addition to the citywide SDC and in this case it would be Tonquin and Brookman. He explained the calculations used and said the net result is the citywide SDC is reduced to \$41 per ADPT and the overlay areas equate to \$100 per ADPT in the Tonquin overlay and \$277 per ADPT in the Brookman overlay. He compared the two different options and applied them to four land uses. He stated the analysis calculates for the maximum defensible SDC and there is room for policy making under this.

Assistant City Manager Tom Pessemier reminded the Council that there were adjustments to the SDCs a few years ago but they did not have this data available at the time.

Mr. Gabbard commented on the SDC rate comparison with other cities and said Sherwood is in the middle. He referred to the recently passed Ballot Measure 34-244 which requires all residential rate increases above 2% to go before the voters and said it does not apply to SDCs because they are charged before the property is occupied.

Community Development Director Julia Hajduk said the plan is to share this information with the public and the development community. She stated that staff recommends the citywide uniform option but will be looking for feedback. Discussion followed.

Mr. Pessemier commented on the amount of work involved in this analysis and asked if the Council would like more information. Councilor Kuiper said she would appreciate more context and the pros and cons of the two options.

City Engineer Bob Galati reminded the Council that the current SDC rate is not reflective of the TSP project list and that it needs to be updated.

5. ADJOURN:

Mayor Clark adjourned the work session at 6:35 pm.

REGULAR SESSION

1. **CALL TO ORDER:** Mayor Clark called the meeting to order at 7:00 pm.
2. **COUNCIL PRESENT:** Mayor Krisanna Clark, Councilors Linda Henderson, Renee Brouse, Dan King and Jennifer Kuiper and Council President Jennifer Harris via conference call. Councilor Sally Robinson was absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** Assistant City Manager Tom Pessemier, City Attorney Josh Soper, Police Captain Mark Daniel, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, Senior Planner Michelle Miller, Planning Manager Brad Kilby, Court Administrator/Supervisor Lisa Layne, Municipal Court Judge Jack Morris, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.

Mayor Clark addressed the next agenda item and asked for a motion.

4. APPROVAL OF AGENDA:

MOTION: FROM COUNCILOR KUIPER TO APPROVE THE AGENDA, SECONDED BY COUNCILOR HENDERSON. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR ROBINSON WAS ABSENT).

City Recorder Sylvia Murphy informed the Council that the City Council Meeting Minutes from July 19, 2016 included in the paper packet is missing page 13 which was accidentally omitted in the print process. She noted that the electronic version of the packet which is on the City website is complete and accurate. She provided each member with a copy of page 13 of the minutes for their consideration of approval. Mayor Clark asked the Council to review the page.

Mayor Clark addressed the next item on the agenda and asked for a motion.

5. CONSENT AGENDA:

- A. Approval of June 14, 2016 City Council Meeting Minutes
- B. Approval of July 19, 2016 City Council Meeting Minutes
- C. Resolution 2016-051 Reappointing Rob Rettig to the Planning Commission
- D. Resolution 2016-052 Reappointing Meerta Meyer to the Budget Committee

MOTION: FROM COUNCILOR KING TO APPROVE THE CONSENT AGENDA, SECONDED BY MAYOR CLARK. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR ROBINSON WAS ABSENT).

Mayor Clark addressed the next item on the agenda.

6. PRESENTATIONS:**A. Recognition of Eagle Scout Award Recipients**

Mayor Clark recognized and congratulated Noah LaFave for obtaining the rank of Eagle Scout. He was not present and Mayor Clark indicated the certificate would be mailed.

Mayor Clark called forward Michael Wakefield and asked him to describe his Eagle Scout project. Michael shared a story with Council of when he was a student at Archer Glen, he would walk through mud when updating the reader board. He said he paved a path to the reader board at Archer Glen elementary so it would be easier for the students when they make changes. He said he used pavers that were donated by Willamette Graystone and he lead over 20 volunteers. Mayor Clark presented Michael with a certificate of achievement and thanked him for his service.

B. Recognition of Sherwood High School Students-Academic Performance

Mayor Clark welcomed Sherwood High School students and families and the City Council recognized the students that received a 4.0 GPA for the 2015-16 school year. Assistant City Manager Tom Pessemier called forward students and the City Council presented them with Certificates of Achievement.

C. Employee Spotlight

Assistant City Manager Tom Pessemier recognized Municipal Judge Jack Morris and Court Administrator Lisa Layne as employees that do an exemplary job for the City. He stated Court Administrator/Supervisor Lisa Layne has been with the City for 21 years. He said she has been a member of the Oregon Association of Court Administrators for 24 years. He said Lisa has also provided notary service for the City since 1998. He stated that when Lisa began working for the City of Sherwood the population was only 4,722 and she has seen a great deal of change. He introduced Judge Jack Morris who has been with the City since 1996 and provided a brief background of his career. He stated that when Judge Jack began working for the City of Sherwood the population was 5,703. He commended the Municipal Court and said he has never heard a complaint and the City appreciates that.

Mayor Clark said the Municipal Court has many accolades and that speaks volumes for the staff and she congratulated them. Council thanked them for their service.

Councilor Henderson asked what has changed throughout their years of service. Ms. Layne said the Court has had location changes and the volumes have increased as the population has grown. Councilor Henderson commented on the efficiencies of the court.

Mayor Clark addressed the next agenda item.

7. CITIZEN COMMENTS

Tess Kies, Sherwood resident came forward and commented on the upcoming election and asked the Council to consider Town Hall meetings to keep the citizens informed and allow them a chance to meet the candidates.

The City Recorder informed the Council that Rick Rogers with Newberg Area Habitat for Humanity was unable to stay and left information for the Council regarding an upcoming event, the 2016 Elected Officials Build.

With no other citizen comments, Mayor Clark addressed the next item on the agenda.

8. PUBLIC HEARING

A. Ordinance 2016-011 Renaming a Segment of SW Columbia Street to SW Odge Gribble Lane

Community Development Director Julia Hajduk recapped the staff report and reminded the Council that this was the second reading of the ordinance. She stated that on June 7, 2016 the Council voted to initiate the process of renaming the segment of SW Columbia Street, located between SW Pine and SW Washington Street to SW Odge Gribble Lane. She said the City Council approved the proposed ordinance at the first reading on July 19, 2016. She recapped the staff report and stated that this meets the criteria and recommended the Council adopt the ordinance.

Mayor Clark said this is the second reading and there is support for the ordinance. She noted that this does not change any addresses and is honoring a dedicated citizen.

Mayor Clark opened the public hearing. With no public comments received, she closed the public hearing.

With no further questions, the following motion was made.

MOTION: FROM MAYOR CLARK TO READ CAPTION AND ADOPT ORDINANCE 2016-011 RENAMING A SEGMENT OF SW COLUMBIA STREET TO SW ODGE GRIBBLE LANE, SECONDED BY COUNCILOR HENDERSON. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR ROBINSON WAS ABSENT).

Mayor Clark addressed the next agenda item and the City Recorder read the public hearing statement.

B. Ordinance 2016-012 Amending multiple sections of the Zoning and Community Development Code including Divisions I, II, and III as it relates to the regulation of Recreational Marijuana Facilities

Senior Planner Michelle Miller presented information (see record, Exhibit C) for the first reading of an ordinance concerning recreation marijuana facilities. She stated this proposes to add definitions to the development code and add different license types to the different use table and general criteria that is addressed in the special use chapter regulating reasonable time, place and manner restrictions on the different license types. She said in March 2016 staff began public outreach with a survey which received 289 responses. She said there were two public work sessions with the Police Advisory Board and the Planning Commission along with interested citizens and other outreach activities. She said the decision is up to Sherwood voters as to whether to ban recreational marijuana facilities and there is currently a moratorium on the facilities. She stated the proposed regulations are in the event the voters decide to allow recreational marijuana facilities. She said in 2014, Ballot Measure 91 was approved to allow legalization of recreational marijuana and tasked the OLCC with developing special rules and license types. She stated the general State rules indicate that the facilities cannot be located on federal property, at the same location or address as a liquor license or medical marijuana dispensary, growing or processing site registered with the OHA, in areas zoned residential or within 1,000 feet of a school. She stated this ordinance proposes to potentially go beyond the State rules. She referred to a map which illustrates where these facilities could potentially locate considering the proposed buffers. She

commented on the five different license types along with the seven different industrial zones and where the Planning Commission has proposed to permit facilities. She said producers would only be allowed in the general or light industrial zones with no outdoor growing, with odor mitigations measures in place and must be at least 100 feet away from a residential zone. She said retailers would only be allowed in the general commercial, light industrial and general industrial with no walk up, drive through or mobile delivery allowed. She stated the retail facilities may not be within 1,000 feet of a school, another retail or medical marijuana facility or public park or plaza and must be at least 100 feet from a residential zone and cannot be larger than 3,000 square feet. She said processors, wholesale and lab and testing facilities would not be allow in Old Town and noted that producers and retailers are also not allowed in Old Town. She stated they need to be 100 feet away from residential zones and no outdoor storage of marijuana is allowed.

Councilor Henderson referred to the OLCC licensing and asked if you could apply for a license as a retailer as well as a laboratory. Ms. Miller said yes and noted the Planning Commission considered this and decided that limiting zoning and having a residential buffer was enough.

She stated the Planning Commission recommends approving the ordinance with an effective date pending the November 8, 2016 election results. She said the second reading is tentatively scheduled for September 6, 2016. She noted that on page 90 of Exhibit 1 there is a Scribner's error and asked that the words "or Production" be added to the last bullet point after "Recreational Marijuana Processing". Ms. Miller said this will be consistent with the commercial uses. She said the changes will be incorporated before the next reading.

Councilor Kuiper referred to the table on page 36 which illustrates that producers are not permitted in the employment industrial zones and asked why. Ms. Miller said that relates to the Tonquin Employment area and in keeping with the idea of using that as some of the new industrial land to limit the large swaths of production for the purposes of marijuana growing.

With no further Council questions, Mayor Clark opened the public hearing. With no public comments received, she closed the public hearing.

With no additional questions from the Council, Mayor Clark asked for a motion.

MOTION: FROM COUNCILOR KUIPER TO APPROVE ORDINANCE 2016-012 AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE INCLUDING DIVISIONS I, II, AND III AS IT RELATES TO THE REGULATION OF RECREATIONAL MARIJUANA FACILITIES AND PLACE IT ON THE NEXT AVAILABLE CITY COUNCIL MEETING AGENDA FOR ADDITIONAL COMMENT AND CONSIDERATION, SECONDED BY COUNCILOR BROUSE. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR ROBINSON WAS ABSENT).

9. CITY MANAGER REPORT:

City Manager Joseph Gall was absent and a report was not given.

Mayor Clark addressed the next item on the agenda.

10. COUNCIL ANNOUNCEMENTS

Mayor Clark announced the passing of Sherwood longtime resident Julian Thornton and sent out condolences to the family. She reminded everyone the School District will have the all district rally on August 29 and encouraged citizens to attend. She reminded drivers that kids will be returning to school and to drive safe in school zones. She reported that the School District has tested for lead and has removed any locations that showed for lead. She said the Elks are collecting items for comfort baskets for a Veterans Affairs program that moves veterans into new homes. She commented on Measure 97 and the request for Council to pass legislation in opposition to the measure and stated that staff cannot take a political stance. She said as individuals that the Council can put together a resolution and said that is currently being discussed. She said a Conflict Resolution 101 class will be held at the Library on October 10 at 10 am. She reported the Sherwood Youth Football carwash is Saturday. She said the City Manager has selected a firm to complete the YMCA feasibility study and the study should be complete by November and presented to Council.

Councilor King reported Sherwood Main Street has two openings on the Board. He commented on the water rates in Hillsboro which were increased by 9% and expected to increase for the next 9 years. Mayor Clark referred to a chart comparing water rates and stated that Hillsboro is currently paying \$22.05 which will increase to \$24 and Sherwood is currently \$40.45. She said Sherwood is still high and noted that other municipalities are facing increases.

Councilor Kuiper offered her condolences to Alice Thornton. She commented on the Sherwood Police Department playing in the Cannery Square fountain this week with the children and thanked them.

Mayor Clark said with the heat advisory this week she reminded citizens to check on seniors and pets.

Councilor Brouse thanked the Police for the National Night Out and she thanked the sponsors. She congratulated Dr. Adam Francois at Sherwood Dental for being in business 20 years in Sherwood. She announced the opening of Legacy Go for urgent care needs. She said Sherwood Main Street will meet on Thursday at 8 am. She reported the School Board approved a bond measure to be placed on the November ballot. She announced a new organization led by Lisa McGuigan called Sherwood Advocating for Seniors and the next meeting is Monday. She said the Relay for Life was successful and raised over \$26,000.

Councilor Henderson thanked the Police Department for their spontaneity and the National Night Out. She said the Police Advisory Board meets this week. She reported the YMCA Family Triathlon is August 20 from 10 am to 1 pm. She said Bowmen cards are available through Sherwood High School football and encouraged the public to support the program by purchasing Bowmen cards. She commented on the success of the Missoula Children's Theatre. She announced that the Sherwood Foundation for the Arts is doing a play in January 2017. She said she attended a Community Development Block Grant (CDBG) meeting and said Hillsboro is now going to have their own CDBG program and said this may be a difficult and challenging transition. She encouraged the City to apply for a CDBG in the future for our senior community. Mr. Pessemier said the City is planning on applying in October.

Council President Harris congratulated the Library and the Art Walk for the grants they received. She announced the last Music on the Green is tomorrow and Movies in the Park is on Friday. She said there will be a goodbye party on August 31 at 5 pm. for Theresa who hosts Storytime.

With no further announcements, Mayor Clark adjourned the meeting.

11. ADJOURN:

Meeting adjourned at 8:15 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Krisanna Clark, Mayor

TO: Sherwood City Council

FROM: Josh Soper, City Attorney

SUBJECT: Resolution 2016-053, Adopting Protocol and an Evaluation Document Containing Criteria for the Review and Evaluation of the City Manager's Job Performance and Describing Process for Obtaining Staff Assessment of Manager's Performance

Issue:

Shall the City Council approve a resolution adopting the protocol and an evaluation document containing criteria for the review and evaluation of the City Manager's job performance and describing the process for obtaining staff assessment of the City Manager's performance?

Background:

The attached resolution will adopt the protocol and an evaluation document containing criteria for the review and evaluation of the City Manager's job performance and describes the process for obtaining staff assessment of the City Manager's performance.

The resolution, protocol, and evaluation document are based on the documents adopted by the City Council for the same purpose in 2015. The City Council held a work session on August 16, 2016, at which a small number of adjustments to the 2015 documents were discussed. Staff has made the requested changes and now presents these documents for approval by the City Council so the evaluation process can begin sufficiently in advance of the October 18, 2016 deadline to conduct the evaluation pursuant to the City Manager's contract.

If the Council approves this resolution, staff will begin the process of circulating the evaluation document, compiling responses, and scheduling an evaluation meeting, as outlined in the resolution and attachment.

Previous Council Actions:

In 2013, the City Council adopted by resolution the documents that form the basis of the attached documents.

Financial Implications:

No direct financial implications.

Recommendation and Proposed Motion:

Staff respectfully recommends that the City Council adopt Resolution 2016-053 adopting the protocol and an evaluation document containing criteria for the review and evaluation of the City Manager's job performance and describing the process for obtaining staff assessment of the City Manager's performance.

**RESOLUTION 2016-053****ADOPTING PROTOCOL AND AN EVALUATION DOCUMENT CONTAINING CRITERIA FOR
THE REVIEW AND EVALUATION OF THE CITY MANAGER'S JOB PERFORMANCE
AND DESCRIBING PROCESS FOR OBTAINING STAFF
ASSESSMENT OF MANAGER'S PERFORMANCE**

WHEREAS, the Sherwood City Council wishes to adopt a set of criteria to assist it and the City Manager in evaluating the City Manager's job performance;

WHEREAS, Exhibit "A" attached to this Resolution is a document which contains the criteria the Council wishes to use in performing its evaluation; and

WHEREAS, Council believes it necessary and appropriate for review and evaluation of the City Manager to obtain input from senior staff concerning their perceptions of the City Manager's performance.

NOW THEREFORE BASED ON THE FOREGOING, the City of Sherwood hereby resolves as follows:

Section 1. Exhibit "A" is hereby established as the City's Evaluative device for assessing the City Manager's job performance. The Mayor and Council President may, if they choose, delegate their duties described in Exhibit "A" to the City Attorney's Office.

Section 2. The terms of this resolution shall be and are effective as of the date of the adoption of this resolution by City Council.

Duly passed by the City Council this 6th day of September 2016.

Krisanna Clark, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder



CITY OF SHERWOOD PERFORMANCE EVALUATION CITY MANAGER

PURPOSE

The purpose of the City Manager's employee performance evaluation is to ensure communication between the City Council and City Manager concerning the City Manager's performance relative to his/her assigned duties and responsibilities as well as establishment of specific work-related goals and objectives.

PURPOSE

The Sherwood City Council will conduct a review and evaluation of the City Manager's work performance at least annually.

1. The City Manager prepares a memorandum to Council including his/her self-evaluation using the same performance evaluation form given to Council.
2. A confidential copy of the memorandum and self-evaluation will be distributed to Council members.
3. Senior Staff will be offered the chance, utilizing criteria described in Exhibit "A", to provide Council with their collective and individualized observations/perceptions on the City Manager's performance. These observations/perceptions will be treated as confidential and provided to the City Attorney's Office for that Office's compilation, summarization and transmittal to Council.
4. Electronic Evaluation forms to be used by Council members will be distributed by the City Attorney's Office.
5. Each council member will complete the online or paper form, if requested, and return it to the Mayor and Council President. The Mayor and Council President will tabulate and summarize the results of the evaluation forms as submitted and create a compiled evaluation. The Mayor and Council President can elect to have the City Attorney's Office complete this task.
6. Prior to the executive session the composite evaluation, memorandum, and self-evaluation will be distributed to Council in confidential documents.
7. The Mayor and council members will meet in executive session with the City Manager to discuss his/her compiled evaluation.
8. After the City Manager is dismissed the Mayor and Council will discuss the performance of the City Manager in executive session.
9. The City Council will meet with the City Manager in executive session to review the evaluation and performance, unless the City Manager requests an open meeting.

10. The Mayor will schedule a City Council meeting to adopt a resolution approving the final performance evaluation.
11. The Mayor will schedule a work session or Council agenda item if compensation or contract changes are desired by Council.

INSTRUCTIONS

Review the City Manager's work performance for the entire period under review; refrain from basing the evaluation solely on recent events or isolated incidents. Disregard your general impressions concentrating instead on each factor, one at a time. Evaluate based on standards you expect to be met for the position giving due consideration for the length of time he/she has held it. Check the number which most accurately reflects the level of performance for the factor being appraised using the rating scale described below. If you did not have an opportunity to observe a factor during the evaluation period, indicate so in the N/O column next to the favor.

CITY MANAGER PERFORMANCE EVALUATION

DATE: _____

RATING SCALE DEFINITIONS (1-5)

Unsatisfactory (1)

The employee's work performance is inadequate and definitely inferior to the standards of performance required for the job. Performance at this level cannot be allowed to continue.

Improvement Needed (2)

The employee's work performance does not consistently meet the standards for the position. Serious effort is needed to improve performance.

Meets Job Standards (3)

The employee's work performance consistently meets the standards of the position.

Exceeds Job Standards (4)

The employee's work performance is frequently or consistently above the level of a satisfactory employee, but has not achieved an overall level of outstanding performance.

Outstanding (5)

The employee's work performance is consistently excellent when compared to the standards of the job.

N/O

No Opinion.

I. PERFORMANCE EVALUATION AND ACHIEVEMENTS

1. City Council Relationships

- | | |
|--|---|
| A. Effectively implements policies and programs approved by City Council. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| B. Reporting to City Council is timely, clear, concise and thorough. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| C. Accepts direction/instructions in a positive manner. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| D. Effectively aids City Council in establishing long range goals. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| E. Keeps City Council informed of current plans and activities of administration and new developments in technology, legislation, governmental practices and regulations, etc. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| F. Provides City Council with clear reports of anticipated issues that could come before the City Council. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| G. Assists City Council in resolving problems at the administrative level to avoid unnecessary Council action. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| H. Council agenda packet preparation is thorough and timely. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| I. Participates in City Council discussions and makes recommendations where appropriate, but allows Council to make policy decisions without exerting undue pressure. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |

Comments:

2. Community/Public Relations

- | | |
|---|---|
| A. Represents City with positive outlook and image. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| B. Is courteous to public at all times. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| C. Seeks to use criticism of self or City in positive ways. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| D. Maintains effective relations with media representatives. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| E. Available and visible to citizens. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| F. Open to suggestions from the public concerning improvements in services. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| G. Resolves citizen complaints consistent with Council policy in a timely manner. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| H. Open and honest with citizens. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| I. Development of community correspondence and events to inform and involve the public. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |

Comments:

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3. Effective Leadership of Staff

- A. Encourages Department Directors to make decisions within their own jurisdiction without City Manager approval, yet maintains general control of administrative operations. 1 2 3 4 5 N/O
- B. Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs. 1 2 3 4 5 N/O
- C. Provides clear expectations and assignments, with deadlines, for Department Directors and holds them accountable. 1 2 3 4 5 N/O
- D. Has developed a friendly and informal relationship with the workforce as a whole, yet maintains the prestige and dignity of the City Manager office. 1 2 3 4 5 N/O
- E. Recruits and retains competent personnel for City positions. 1 2 3 4 5 N/O
- F. Provides an overall environment that encourages good employee morale, lessens employee turnover, and creates employee satisfaction in ability to participate in decision-making. 1 2 3 4 5 N/O

Comments:

4. Fiscal Management

- | | |
|--|---|
| A. Prepares and proposes in a timely manner a balanced, understandable and realistic budget. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| B. Budget is well documented and organized to assist City Council with policy decisions. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| C. Seeks efficiency, economy and effectiveness in all programs. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| D. Controls expenditures in accordance with the approved budget. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| E. Keeps City Council informed about revenues and expenditures, actual and projected. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| F. Makes sound decisions that consider cost/benefit. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| G. Shows innovation in reducing expenses. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |

Comments:

5. Personal Traits

- | | |
|---|---|
| A. Controls emotions effectively in difficult situations. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| B. Is creative in developing practical solutions to problems faced in the course of work. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| C. Is flexible in accepting and adjusting to change. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| D. Demonstrates personal honesty and frankness in day-to-day relationships. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| E. Seeks to improve own skills and knowledge. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| F. Completes work in acceptable time periods. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| G. Anticipates problems and develops effective approaches for solving them. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| H. Invests sufficient efforts toward being diligent and thorough in the discharge of duties. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |
| I. Composure, appearance, and attitude fitting for an individual in his/her executive position. | 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> N/O <input type="checkbox"/> |

Comments:

6. Communication

- A. Written communications are clear, concise and accurate. 1 2 3 4 5 N/O
- B. Oral communications are clear, concise and expressed effectively. 1 2 3 4 5 N/O
- C. Keeps all City Councilors informed about important issues. 1 2 3 4 5 N/O

Comments:

7. Decision Making

- A. Attempts to obtain all available facts prior to making a decision. 1 2 3 4 5 N/O
- B. Is objective in decision making. 1 2 3 4 5 N/O
- C. Considers possible alternatives and their consequences before making a decision. 1 2 3 4 5 N/O
- D. Ability to reach timely decisions, and initiate action, without being compulsive. 1 2 3 4 5 N/O
- E. Uses common sense, tact and diplomacy. 1 2 3 4 5 N/O
- F. Notifies all affected parties prior to implementing decisions. 1 2 3 4 5 N/O

Comments:

8. Intergovernmental Relationships

- A. Represents City to intergovernmental bodies. 1 2 3 4 5 N/O
 - B. Effective communication with local, regional, state, and federal government agencies. 1 2 3 4 5 N/O
 - C. Financial resources (e.g. cost sharing, grants, etc.) from other organizations are pursued. 1 2 3 4 5 N/O
 - D. Contributes to good government through participation in local, regional, and state committees and organizations. 1 2 3 4 5 N/O
 - E. Lobbies effectively with legislators and state agencies regarding City programs and projects. 1 2 3 4 5 N/O

Comments:

10. The following table summarizes the results of the study. The first column lists the variables, the second column lists the sample size, and the third column lists the estimated effect sizes.

II. What have been the finest accomplishments of the City Manager this past year?

As a result, the *labeled* version of the model is able to learn the underlying structure of the data, while the *unlabeled* version is able to learn the specific features of the data. This allows the model to make accurate predictions even when it has never seen a particular input before.

III. What areas need the most improvement? Why? What constructive, positive ideas can you offer the City Manager to improve these areas?

IV. SUMMARY RATING

Overall Performance Rating - the following overall rating is calculated by averaging each of the above ratings: _____

V. FUTURE GOALS AND OBJECTIVES

Specific goals and objective to be achieved in the next evaluation period:

This evaluation was reviewed and discussed between the City Council and the City Manager on: _____.

City Council

Concurrence

YES / NO

Krisanna Clark, Mayor

Jennifer Harris, Council President

YES / NO

Linda Henderson

YES / NO

Dan King

YES / NO

Sally Robinson

YES / NO

Jennifer Kuiper

YES / NO

Renee Brouse

YES / NO

City Manager

Joseph Gall

TO: Sherwood City Council

FROM: Brad Crawford, IT Director
Through: Joseph Gall, ICMA-CM, City Manager and Josh Soper, City Attorney

SUBJECT: **Resolution 2016-054 Authorizing the City Manager to Renew the Franchise Agreement for Cable Services with Comcast of Oregon II, Inc.**

Issue:

Shall the City Council approve the terms of the included Franchise Agreement between Comcast of Oregon II, Inc. and the City of Sherwood?

Background:

The current Comcast franchise agreement was set to expire on January 31, 2015. The City extended this expiration date by one year through Resolution 2015-004 to allow for further negotiation and completion of the Metro Area Communications Council (MACC) franchise. MACC is the local cable regulator who manages franchises for most cities in Washington County. The City of Sherwood is not a part of this group and therefore signs and manages its own franchises with cable operators. While the City of Sherwood is not a member of MACC, we have worked closely together in the past and this specific franchise is very similar to the franchise MACC has vetted and approved.

In an effort to expedite the franchise renewal process, staff used the MACC agreement as a starting point for negotiating with Comcast. A copy of the approved MACC agreement with some initial redlines specific to Sherwood is attached to this staff report. Also attached is a copy of the original TCI/Comcast franchise that was signed in 2000 and a redlined executable agreement showing the changes that staff and Comcast negotiated.

The main negotiation points for the City with this franchise renewal were as follow:

- We requested an additional Washington County government channel be added to the Sherwood area. This is channel 30 and would allow Sherwood residents to see Washington County Board of Commissioner and Metro meetings.
- We requested our standard definition channel be upgraded to high definition when certain terms are met.
- We requested an additional channel to be given to Sherwood if the amount of content we are playing justifies it.
- We reduced the fee (PEG fee) Comcast pays the city for capital support of our cable channel from \$1.00 to 80¢. This will result in a 20¢ monthly savings to Comcast customers.
- We requested that Right of Way (ROW) construction language in the franchise be removed and have the franchise reference the city's Municipal Code for any ROW regulations. This

follows the practice the city has been using with other utility operators and gives the city the most flexibility and consistency in the future.

- Reduced some of the fine amounts to be more in line with Sherwood's size. The fines in the MACC agreement were much larger due to the size of the organization.
- Removed the Customer Service Attachment and added a section that indicates Comcast will abide by the FCC rules related to Customer Service. We used the same language that was recently approved by Oregon City.

Financial Impacts:

The only impact the City will see is a reduction in the PEG fee which will go from \$1.00 to 80¢ per subscriber per month. Staff is supportive with this reduction as the PEG account is healthy and there is enough money in that account to support future PEG expenditures. The franchise fee of 5% from the prior agreement will stay in effect in this new agreement. Comcast has informed us that we will not see any financial impact on franchise revenue with this new agreement.

Recommendation:

Staff respectfully recommends adoption of Resolution 2016-054 renewing the franchise agreement for cable services with Comcast of Oregon II, Inc.

Attachments:

- TCI/Comcast franchise signed in 2000
- MAAC franchise with initial redlines specific to Sherwood
- Executable franchise with redlines

MACC Franchise with Sherwood Edits

**CABLE TELEVISION
FRANCHISE AGREEMENT**

Between the ~~Jurisdictions participating in the~~
CITY OF SHERWOOD METROPOLITAN AREA
COMMUNICATIONS COMMISSION

AND
COMCAST OF OREGON II, INC.

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ATTACHMENT A – CUSTOMER SERVICE

~~ATTACHMENT B – TELEPHONE RESPONSE ACTIVITY REPORT~~

~~ATTACHMENT C – LIVE ORIGINATION SITES~~

~~ATTACHMENT D – VOD LICENSE AGREEMENT~~

~~ATTACHMENT E – MASTER SERVICES AGREEMENT AND ATTACHMENTS~~

SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:
 - (A) **Public Access** means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;
 - (B) **Educational Access** means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;
 - (C) **Governmental Access** means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and
 - (D) **PEG Access** means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals and PEG Access Channels, or as such service tier may be further defined by federal law.
- 1.6 **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").
- 1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.13 **Commission** means the Metropolitan Area Communications Commission and its officers, agents and employees, created and exercising its powers pursuant to an Intergovernmental Cooperation Agreement entered into by Grantors herein, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by Grantors and although it may exercise those powers as an entity, it remains a composite of Grantors herein.
- 1.141.13 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.
- 1.151.14 **Designated Access Provider ("DAP")** means the entity or entities designated by the Grantor to manage or co-manage PE G Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 1.161.15 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.171.16 **Effective Date** means the date defined in Section 2.4 herein.
- 1.181.17 **FCC** means the Federal Communications Commission.

1.191.18 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.

1.201.19 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

1.241.20 **Franchise Area** means the area within the legal jurisdictional boundaries of ~~the City of WilsonvilleSherwood and areas that may be annexed into the City during the term of this agreement. individual member units of local government who are members of the Commission during the term of this Agreement. The Franchise Area shall include any additional signers of the Intergovernmental Agreement only if Grantee is currently providing Cable Service in such additional areas. For purposes of Washington County, the Franchise Area includes only the unincorporated areas within the legal jurisdictional boundaries of the County.~~

1.221.21 **Grantee** means Comcast of Oregon, II, Inc. or its permitted successors, transferees or assignees.

1.231.22 **Grantor** means ~~the City of WilsonvilleSherwood, individually and, where applicable, collectively, the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, Tualatin, and West Linn together with Washington County, Oregon.~~

1.241.23 **Gross Revenue** 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;
- 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 within the Franchise Area;
- 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: (1) 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; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
- Revenues from program 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 within the Franchise Area 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 and PEG fee shall not be regarded as such a tax or fee;
- Launch fees and marketing co-op fees; and,
- ~~Revenues associated with the provision of managed network services provided under separate business contract.~~

- 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 fifty percent (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 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.

1.251.24 Headend means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.

1.261.25 Interconnect or Interconnection means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.

1.271.26 Leased Access Channel means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.

1.281.27 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.

1.29 **Parent Corporation** means Comcast Communications, Inc. or successors and assigns and includes any other existing or future corporations with greater than fifty percent (50%) ownership or control over Grantee.

1.301.28 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Oregon, and includes any natural person.

1.341.29 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.

1.321.30 **Programming** means television programs, audio, video or other patterns of Signals 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.

1.33 **Public Communications Network (“PCN”)** means the separate communications institutional network provided by the Grantee under Section 12 of this Agreement designed principally for the provision of non-entertainment, interactive services to public Schools, public universities and colleges, Pacific University, public agencies, or the Virginia Garcia Health Centers (or successor agencies) for use in connection with the ongoing operations of such institutions. Services provided include data to PCN Subscribers users on an individual application, private channel basis.

1.341.31 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. “Public Rights of Way” shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).

1.351.32 **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.

1.361.33 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.

1.371.34 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.

1.381.35 **Section** means a provision of this Agreement, unless specified as part of another document.

1.391.36 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.

1.401.37 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.

1.441.38 **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, the Cable System.

1.421.39 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 **Grant**

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services ~~and to provide a PCN for voice, video, and data~~, subject to the terms and conditions set forth in this Agreement.
- (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended, ~~and to provide a related PCN as described in Section 12 of this Agreement~~. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or 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.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through June 30, 2025, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The Effective Date of this Agreement shall be July 1, 2015 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 Franchise Nonexclusive

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.6 below.

2.6 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 2.6 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 2.6 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 shall apply separately in the individual member units of local government who are members of the Commission. Grantee may seek to invoke the provisions of this Section only in that individual jurisdiction, not in any jurisdiction where a competitor has not secured a competitive Franchise. 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 per cent) of the geographic area of the Grantor; or to systems that only provide video services via the public Internet.

2.7 Police Powers

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.

2.8 **Relations to Other Provisions of Law**

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 **Effect of Acceptance**

By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 **Franchise Fees**

- (A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.
- (B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the

maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

3.2 Payments

Grantee's Franchise fee payments to Grantor shall be computed Quarterly. Each Quarterly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding Quarter.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, and in a form approved by Grantor, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports

Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement verified by an authorized representative of the Grantee, stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

3.6 Audit/Reviews

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to fifteen thousand dollars (\$7,500~~\$15,000~~) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

- (A) Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of Franchise fees, revenues or expenses related thereto.
- (B) Source documents that completely explain any and all calculations related to any allocation of any amounts involving Franchise fees, revenues, or expenses related thereto.

- (C) Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving Franchise fees, revenues or expenses related thereto.

3.7 Interest on Late Payments

Payments not received within forty-five (45) days from the Quarter ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.8 Additional Commitments Not Franchise Fees

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees related to Cable Services to Grantor in accordance with applicable law. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

3.9 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.10 Tax Liability

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 that may be imposed by Grantor.

3.11 Payment on Termination

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 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. Grantor has vested the Commission with the administration of this Agreement and Grantee is expected to rely upon, look to, communicate with and comply with the decisions and orders of the Commissions, its agents and employees on all cable matters to which the Grantor has lawfully delegated the

exercise of its authority under this Agreement to the Commission during such time that Grantor is a member of the Commission.

4.2 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.

4.3 Rate Discrimination

All of Grantee's rates 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.

4.4 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 Service provided under this Agreement.

4.5 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.7, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.6 Mid-Term Performance Evaluation Session

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the

number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

4.7 **Force Majeure**

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or 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 to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 **Insurance Requirements**

- (A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
- (1) Commercial General Liability: OneThree million dollar (\$13,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two four million dollar (\$242,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability.
 - (2) Automobile Liability: Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 - (3) Employer's Liability: Two million dollar (\$2,000,000) limit.

5.2 **Deductibles and Self-Insured Retentions**

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is

consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

- (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
- (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;
- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
- (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".

(C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 **Indemnification**

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through

the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
 - (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels or use of PEG funds by Grantor and/or DAP;
 - (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
 - (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.
- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the

claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 **Performance Bond**

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantors collectively with good and sufficient surety approved by the Commission, in the penal sum of ~~Three Hundred~~ Fifty Thousand Dollars (\$~~350,000.00~~), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor or the Commission as to its adequacy under the requirements of this Section. 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.

SECTION 6. CUSTOMER SERVICE

- 6.1 Customer service obligations are set forth herein as Attachment A and are hereby incorporated by this reference.
- 6.2 Emergency Broadcast. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.
- 6.3 ADA Accessible Equipment. Grantee shall comply with the Americans with Disabilities Act ("ADA"), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 6.4 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

SECTION 7. REPORTS AND RECORDS

7.1 **Open Records**

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Parent Corporations and Affiliated entities that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Parent Corporation, Affiliated entity or a third party. Grantor may, in writing, request copies of any such Records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and Records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.
- ~~(B) Grantee shall provide Grantor with a sample Cable Services bill, on a monthly basis. Cable Services bills associated with complimentary services accounts provided under this Agreement shall satisfy this requirement.~~
- ~~(C)(B)~~ Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, Records and "as built" maps showing the approximate location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantor's review of the plans, Records, and as-built maps, provided for herein, shall occur at the Grantee's local office.
- ~~(D)(C)~~ The ability for Grantor to obtain Records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 15.

7.2 Confidentiality

Subject to the limits of the Oregon Public Records Law, Grantor agrees to treat as confidential any books and Records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person.

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during Normal Business Hours.
- | (1) Upon request by Grantor, Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
- (a) Nature and type of customer complaints.
 - (b) Number, duration, general location and customer impact of unplanned service interruptions.
 - (c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (d) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Tier Subscribers, and "Pay" Subscribers.
 - (e) Total disconnections and major reasons for those disconnections.
 - (f) Total number of service calls.
 - (g) Video programming changes (additions/deletions).
 - (h) ~~A Telephone Response activity report provided in a manner consistent with the requirements of Attachment A showing Total Calls Answered within thirty (30) seconds, Average Hold Time, Percent of Calls Answered within thirty (30) Seconds, Percent of Abandoned Calls, and the Percent of Lines Available. A sample of an acceptable report pursuant to this Section is attached to this Agreement as Attachment B.~~

(f)(h) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.

- (2) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Attachment A. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 **Inspection of Facilities**

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

7.6 **False Statements**

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

7.7 **Report Expense**

All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8. PROGRAMMING

8.1 **Broad Programming Categories**

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:
- (1) Educational Programming.
 - (2) Sports.
 - (3) General entertainment (including movies).
 - (4) Children/family-oriented.
 - (5) Arts, culture and performing arts.
 - (6) Foreign language.
 - (7) Science/documentary.

- (8) Weather information.
 - (9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (10) National, state, and local government affairs.
- (B) Grantee shall not delete any broad category of Programming within its control.

8.2 **Parental Control Devices**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 **Leased Access Channels**

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 **Continuity of Service**

- (A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.7 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- (B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 **Management and Control of Access Channels**

- (A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.
- (B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.
- (C) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.

(D) The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 13 of this Agreement.

9.2 Channel Capacity and Use

- (A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP.
- (1) Existing Access Channels: Grantee shall provide ~~one five (15)~~ standard definition ("SD") Downstream Channels for distribution on Grantee's Basic Service level of Public, Educational, and Governmental Access Programming. The Channel designations of ~~thisese~~ Channels as of the Effective Date of this Agreement shall be: ~~Channel 11; Channel 21; Channel 23 Sherwood; Channel 28; and Channel 30~~. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.
- (2) Throughout the term of this Agreement, Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, provide and maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant in Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.

9.3 Standard Definition Channels

Grantee shall carry all components of the SD Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for providing the Access Channel Signal in a SD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD Access Channel on its side of the Demarcation point.

9.4 High Definition Channels

- (A) ~~Within one hundred twenty (120) days of the Effective Date of this Agreement, or a later date mutually agreed upon by Grantee and Grantor, following written notice by the Grantor, Grantee shall activate one (1) of the existing Access Channels, as designated by the Grantor, in high definition ("HD") format and simultaneously carrying that SD Access Channel Signal provided under Section 9.2.~~
- (B) ~~Grantee shall carry all components of the HD format Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio~~

~~and other elements associated with the Programming. The DAP shall be responsible for the costs associated with providing the Access Channel Signal in an HD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for actual costs associated with the transport and distribution of the HD Access Channel on its side of the Demarcation point, except that Grantee may offset its actual costs in an amount not to exceed Eight Thousand Dollars (\$8,000) per PEG Channel against the PEG capital fee in Section 13 for the one time purchase of network equipment associated with the provision of HD PEG Programming.~~

(C) Additional HD PEG Access Channels.

- ~~(1) No earlier than twelve (12) months after the Effective Date of this Agreement, and upon one hundred sixty (160) days written notice from Grantor, which notice may be sent prior to the twelfth (12th) month after the Effective Date, Grantee shall provide and activate one (1) more of the existing SD Access Channels provided under Section 9.2, as designated by written notice of the Grantor, in an HD format, and simultaneously carry the SD Signal of that Channel for a total of two (2) HD format Access Channels.~~
- ~~(2) No earlier than four (4) years following the Effective Date of this Agreement, and upon one hundred sixty (160) days written notice from Grantor, Grantee shall provide and activate one (1) more of the existing SD Access Channels provided under Section 9.2, as designated by written notice of the Grantor, in an HD format, and simultaneously carry the SD Signal of that Channel for a total of three (3) HD format Access Channels (subject to the conditions in Section 9.4.C (3) below). The maximum number of PEG Access Channels to be provided under this Agreement after year four (4), whether in HD or SD, shall be eight (8).~~
- ~~(3) Activation of the third (3rd) HD Access Channel under Section 9.4.C (2) above shall be subject to the following conditions:~~

 - ~~(a) At least eighty percent (80%) of the basic tier Channels (or its equivalent tier), excluding the Access Channels, are provided in HD;~~
 - ~~(b) On the SD Access Channel identified by the Grantor to be simulcast as the third (3rd) HD Channel, at least eighty percent (80%) of the Programming carried on that Access Channel is produced in HD format for the three (3) month time period prior to the notice provided under this Section; and~~
 - ~~(c) On the SD Access Channel identified by the Grantor to be simulcast as the third (3rd) HD Channel, not more than fifty percent (50%) of the Access Programming content carried on that SD Access Channels is character generated only Programming for the three (3) month time period prior to the notice provided under this Section.~~

~~(D) Grantee shall have no more than one hundred twenty (120) days from the date of the written notices in this Section 9.4 to fully activate the Access Channels from the DAP to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the DAP. Upon request, Grantor shall provide documentation to confirm that the criteria set forth above has been met.~~

~~(E)(A) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all ~~remaining~~ SD Access Channel 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 ~~five-one~~ (15) HD Channels.~~

~~(F)(B) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.~~

9.5 Quality of SD and HD Access Channel Signals.

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 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 15. 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 9.5.

9.6 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 9.2 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 DAP (s). 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 Attachment A 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 (\$~~25~~,000) to the Grantors ~~collectively or the Commission~~ for actual costs associated with the change, or (2) ~~Two Nine~~ Thousand Dollars (\$~~29~~,000) of in-kind airtime on advertiser supported Channels to the Grantors ~~collectively or the Commission~~ 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.

9.7 Access Interconnections

The Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous Cable Systems owned by the Grantee as of the Effective Date of this Agreement, in order to receive from and deliver to the DAP's ~~h~~Headend, via the Grantee's Headend, all the Access Channels required by this Agreement and originating by the Grantor or its designee.

9.8 Origination Points

- (A) The existing Grantee's Origination Points at the time of the effective date of this agreement listed in Attachment C I will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.
- (B) ~~The additional permanent Origination Points required by the Grantor or DAP listed in Attachment C II shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantee.~~
- (C) ~~The additional Origination Points that may be required by the Grantor or a DAP at the future public sites listed on Attachment C III, shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantee, up to a distance of one hundred twenty-five (125) feet from Grantee's existing outside plant facilities provided that Grantee can reach the Demarcation point using (1) existing conduit, (2) conduit provided by Grantor, or (3) an aerial connection. Grantor shall be responsible for any additional actual connection costs beyond the one hundred twenty-five (125) feet. Such additional costs may be paid for from the PEG capital fee in Section 13.~~
- (D) ~~Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 13.~~
- (E) ~~There shall be no charge to the Grantor, to the Commission, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).~~

9.9 Changes in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels (SD or HD), Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Agreement, necessary to carry a quality Signal to and from Demarcation at Grantor's or DAP's facilities.

9.11 PEG Access Program Listings On Cable System's Digital Channel Guide

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the DAP to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 13.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 10.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. When obtaining a permit, Grantee shall inquire in writing 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, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.

- (C) Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area as it shall find necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by the Grantor.
- (D) In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than forty-eight (48) hours after discovery of the emergency. Grantee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.
- (E) Whenever possible, to avoid additional wear and tear on the Public Rights of Way, Grantee shall utilize existing poles and conduit. Grantee may charge for use of the conduit consistent with all applicable laws. Notwithstanding the foregoing, this Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

10.2 Location of Facilities

Grantee shall comply with the requirements of Oregon Utility Notification Center ORS 757.542-757.562 and ORS 757.993 (2009) (penalty for violation of utility excavation notification provisions), and applicable rules and regulations promulgated thereunder in OAR Chapter 952 relating to Oregon Utility Notification Center.

10.3 Relocation

- (A) Relocation for Grantor.
 - (1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way 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. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.
 - (2) If public funds, which Grantor received, are available to any other user of the Public Rights of Way (except for Grantor) for the purpose of defraying the cost of relocating or removing facilities and Grantee relocates or

removes its facilities as required by Grantor under this Agreement, the Grantor shall notify Grantee of such funding and will consider reimbursing Grantee for such costs to the extent permitted or allowed by the funding source or applicable state law and to the extent other users of the Public Rights of Way are provided such funds.

- (B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, provided that Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.
- (C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated.
- (D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

10.4 Restoration of Public Rights of Way

Whenever Grantee excavates, damages, or disturbs the surface of any Public Right of Way for any purpose, including but not limited to relocation or undergrounding as required in this Section, Grantee shall promptly restore the Public Right of Way to the satisfaction of the Grantor in accordance with applicable Grantor ordinances and codes and any permit issued by the Grantor. In the event there is no applicable ordinance, code or permit, Grantee shall promptly restore the Public Right of Way to at least its prior condition. Unless otherwise provided in any permit issued by Grantor, when any opening is made by Grantee in a hard surface pavement in any Public Right of Way, Grantee shall refill within twenty-four (24) hours. Grantee shall be responsible for restoration and maintenance of the Public Right of Way and its surface affected by the excavation in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, refill or repave any opening made by Grantee in the Public Rights of Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and/or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. All excavations made by Grantee in the Public Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

10.5 Maintenance and Workmanship

- (A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Public Rights of Way by, or under, Grantor's authority.
- (B) Grantee shall maintain and use any equipment necessary to control and carry Grantee's cable television Signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

10.6 Reservation of Grantor Public Rights of Way

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Public Right of Way; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Public Right of Way or public improvement, including construction, repair or removal of a sewer or water main or any other public work, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

10.7 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

10.8 Public Rights of Way Vacation

If any Public Right of Way or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Public Right of Way, Grantee shall, without delay or expense to Grantor, remove its facilities from such Public Right of Way, and restore, repair or reconstruct the Public Right of Way where such removal has occurred, and place the Public Right of Way in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee,

after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Public Right of Way, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

10.9 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

10.10 Hazardous Substances

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.
- (B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

10.11 Undergrounding of Cable

- (A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the Grantor or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, (2) statute, ordinance, policy, or other regulation of an individual

Grantor or Commission requires utility lines to be placed underground, or (3) all overhead utility lines are placed underground.

- (B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.
- (C) For purposes of this Section 10.11, "utility lines" and "utility wiring" does not include high voltage electric lines.

10.12 Tree Trimming

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.13 Construction, Building and Zoning Codes

Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

10.14 Standards

- (A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable provisions of the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- (B) Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home at time of installation, and are consistent, in all respects, with applicable provisions of the National Electrical Code and the National Electrical Safety Code.

SECTION 11. SYSTEM DESIGN AND STANDARDS

11.1 Subscriber Network

- (A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.
- (B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

11.2 Test and Compliance Procedures

- (A) 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 applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

11.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

SECTION 12. INSTITUTIONAL NETWORK SERVICES.

12.1 History

~~Grantee has constructed and provided managed network services through an institutional network known as the Public Communications Network ("PCN"). The PCN was provided by the Grantee to the Grantor and the Grantor authorized Users of the PCN, including public agencies/Schools, public universities, Pacific University, and the Virginia Garcia Health Centers, or their successor agencies ("PCN Users"). Grantor and Grantee have agreed to transition the PCN Users to the managed services provided by Grantee's Metro E network ("Managed Services").~~

12.2 Grantee Responsible for Providing Institutional Network Service

- (A) ~~Grantee or an Affiliate shall be fully responsible for and at all times shall operate, repair, maintain, manage and ensure provision of the Managed Services to all eligible PCN Users in accordance with the terms of the Master Services Agreement and all attachments and amendments, including the First Amendment and the Rate Card, copies of which are attached hereto as Attachment E (collectively the "MSA") and the provisions of this Section 12. The parties agree that regardless of whether Grantee or an Affiliate provides the Managed Services, these Managed Services comprise an institutional network required under this~~

~~Agreement as authorized by Section 611 of the Cable Act, and Grantee is ultimately responsible for the provision, operation and management of the Managed Services pursuant to the MSA. During the term of this Agreement, Grantee shall not terminate nor legally challenge the requirement to provide the Managed Services as provided in the MSA.~~

- (B) ~~Should any designated Affiliate of the Grantee be unable or unwilling to provide the Managed Services described in this Section and the MSA, the parties agree that Grantee is fully and unconditionally responsible for continued provision of the Managed Services, including the assumption of responsibilities of PCN User contracts and the MSA.~~

12.3 Master Services Agreement

~~Subject to the transition plan set forth in Section 12.4 below, Grantee, or its Affiliate, shall at all times provide the Managed Services to PCN Users in accordance with an executed MSA. Grantee shall not offer, and shall not cause any Affiliate to offer, to any PCN User or eligible PCN User a Managed Services agreement other than the MSA. Where the MSA conflicts with any term or condition of this Agreement, the MSA shall prevail. If Grantor or any PCN User terminates in any manner the Managed Services provided under its MSA prior to the expiration date of this Agreement, such termination shall not affect any other rights or obligations under this Agreement or obligate Grantee to provide any other managed network or institutional network services to Grantor or any PCN User.~~

12.4 Transition/Upgrade to Master Services Agreement

- (A) ~~Prior to any transition of a PCN User to services under the MSA, Grantee shall continue providing PCN services to PCN Users as agreed to under its existing Grantor approved PCN User Contract. Grantee or its Affiliate shall transition PCN Users to Managed Services under the MSA within twenty four (24) months from the Effective Date of this Agreement, but shall implement rates consistent with the Rate Card no later than January 1, 2016. This will include an upgrade of current Grantee supplied equipment at PCN User sites at no cost to PCN Users that sign contracts with a term of greater than one (1) year.~~
- (B) ~~Grantee shall develop a proposed transition plan that shall be provided to a current PCN User no later than three (3) months prior to the proposed transition date. The PCN User shall have thirty (30) days to review and comment on the proposed plan. Upon receipt of any comments from the PCN User on the proposed transition plan, Grantee shall confer with the PCN User and shall provide a mutually agreed upon transition plan to such User no later than thirty (30) days prior to the transition. If the PCN User does not comment on the proposed transition plan, the date of the transition shall be that set forth in the proposed plan.~~
- (C) ~~For network cutover and transition work that will result in service outages, Grantee shall schedule the work between the hours of 12:00 a.m. and 5:00 a.m., or at another time agreed to in writing by the affected PCN Users. Grantee shall provide shorter windows for those cutover activities that can be performed in less than two (2) hours. When scheduled work has the potential to use the full five (5) hour window, Grantee will clearly communicate this to affected PCN Users.~~

12.5 Breach of the Master Service Agreement

~~The parties intend that day to day issues regarding the provision of Managed Services shall be addressed and resolved with reference solely to the MSA. If there is a sustained and ongoing material failure by the Grantee, or its Affiliate, to provide the Managed Services pursuant to the terms of the MSA, such failure may be deemed a breach of this Agreement and shall be subject to the fines and procedures set forth in Section 15 of this Agreement. All other breaches of the MSA shall be subject to the remedies set forth in the MSA.~~

12.6 Grantor/User Meetings

~~Grantee and any Affiliate providing the Managed Services agree to meet at least once annually with the members of the Broadband Users Group ("BUG") or its successor organization, to discuss planned improvements or changes to the Managed Services provided under a MSA, and to hear the comments and concerns of the BUG.~~

12.7 Annual Report to Grantor

~~Within forty five (45) days of the end of each calendar year, Grantee shall provide Grantor with a report listing each PCN User site under the MSA, along with that site's address and the level of service provided at that site.~~

12.8 Security

~~Grantee agrees to abide by all privacy and security requirements in applicable state and federal laws and regulations with respect to the Managed Services acknowledges and warrants that the Managed Services provided for in this Section 12 comply with all applicable state and federal laws and regulations. Data transmitted or stored through these services may be subject to CJIS, HIPPA, or PCI security standards. Grantee agrees to abide by all applicable laws and regulations.~~

SECTION 13. SECTION 12. PEG ACCESS AND PCN GRANT FUND

Grantee shall support the continued viability of ~~Institutional Network~~ and Public, Educational and Government (PEG) Programming, through the following funding:

13.112.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor ~~Eighty Gents (\$0 .80)~~ per Subscriber, per month to support the Capital equipment and facility needs of PEG Access ~~and the Grantor institutional network (previously known as the PCN)~~, which funds shall be used in accordance with applicable federal law. Nothing in this Section 1~~23~~ shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section 1~~23~~.1 for any lawful purpose permitted under applicable federal law. 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 after the end of each Quarter.

13.212.2 Annual Grant Award Report

- (A) Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of Grantor's fiscal year.

- (B) Grantee may reasonably review Records of the Grantor (and of the DAP) related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor (and the DAP) that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor (or the DAP).

13.312.3 PEG Access Not Franchise Fees

- (A) Grantee agrees that financial support for the PEG Access and PCN Grant Fund, and all other Grantee PEG and PCN obligations set forth in this Agreement shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of 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 past, present or future Franchise fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.
- (B) Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the FCC rate regulations in force at the time of adoption of this Agreement and Grantee has the right and ability to include Franchise fees and certain other commitments on the bills of cable Subscribers (47 C.F.R. Section 76.922).

SECTION 14. SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

14.113.1 Equivalent Service

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions, subject to federal law. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

14.213.2 Service Availability

- (A) Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.
- (B) Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
 - (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.
- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.
- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 15.

14.313.3 Connection of Public Facilities

| As a voluntary initiative, Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to public use buildings, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of basic and digital economy tier (or its functional

equivalent) Programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

SECTION 15. SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

15.114.1 Procedure for Remedyng 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.
- (B) The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
 - (1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 - (2) Cure the violation, or;
 - (3) 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. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (C) below.
- (C) 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, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G) below.
- (D) 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 (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

- (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, 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 fines shall be applied.
- (F) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, 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.
- (G) The fines set forth in Section 15.2 of this Agreement may be reduced 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:
 - (1) Whether the violation was unintentional;
 - (2) The nature of the harm which resulted;
 - (3) Whether there is a history of prior violations of the same or other requirements;
 - (4) Whether there is a history of overall compliance, and/or;
 - (5) Whether the violation was voluntarily disclosed, admitted or cured.
- (H) If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:
 - (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - (2) Establish the amount of fine set forth in Section 15.2, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
 - (3) Revoke this Agreement, and/or;
 - (4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- (I) Fines shall not be imposed in an amount in excess of ~~seventy~~-five thousand dollars (\$~~7~~5,000) for the Grantors collectively within any twelve (12) month consecutive period.
- (J) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such

final determination shall be subject to review by a court of competent jurisdiction under applicable law.

15.214.2 Fines

(A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and 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 Grantors collectively 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.

(1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:

- (a) \$10,000 for the first such violation;
- (b) \$20,000 for the second such violation, unless the violation has been cured;
- (c) \$30,000 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;

(2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;

(3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7): \$250/day for each violation for each day the violation continues.

(B) The fines set forth in Section 15.2(A) may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:

- (a) whether the violation was unintentional;
- (b) the nature of the harm which resulted;
- (c) whether there is a history of prior violations of the same or other requirements;
- (d) whether there is a history of overall compliance, and/or;
- (e) whether the violation was voluntarily disclosed, admitted or cured.

(C) Collection of Fines. The collection of fines by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantors provided, however, that collection of fines shall be the exclusive remedy for the Grantors for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

15.314.3 Revocation

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 15.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) 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.
- (B) 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 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.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter 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 Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

15.414.4 Relationship of Remedies

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 15.2. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:
 - (1) Refunds or credits owed to Subscribers; or
 - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise, except as provided in Section 15.2; or an excuse of faithful performance by Grantee.

15.514.5 Removal

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

15.614.6 Receivership and Foreclosure Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
 - (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
 - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and

provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
- (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
 - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

15.714.7 No Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

15.814.8 Nonenforcement By Grantor

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 16. SECTION 15. ABANDONMENT

16.115.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until this Agreement is revoked and a new grantee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

16.215.2 What Constitutes Abandonment

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
 - (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.7; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 17. SECTION 16. FRANCHISE RENEWAL AND TRANSFER

17.116.1 Renewal

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

17.216.2 Transfer of Ownership or Control

- (A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ~~fifty-onetwenty-five~~ percent (~~5125~~) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at

least a ~~fifty-one~~^{twenty-five} percent (~~5125%~~) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.

- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required 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.

SECTION 18. SECTION 17. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which

such holding shall have been rendered, and shall not in any way affect the validity of any other Section, subsection, paragraph, term, or provision hereof. Under such a circumstance the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to this Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may (1) seek appropriate legal remedies to amend this Agreement, or (2) shorten this Agreement to thirty-six (36) months, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

SECTION 19. SECTION 18. MISCELLANEOUS PROVISIONS

19.118.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

19.218.2 Dispute Resolution

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.
- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

19.318.3 Notices

- (A) Throughout the term of this Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such addresses shall be:

Comcast of Oregon, II, Inc.
Attn: Government Affairs
9605 SW Nimbus Ave
Beaverton, OR 97008

with copy to:

Attn : West Division/Government Affairs
15815 25th Ave West
Lynnwood, WA 98087

- (B) All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such address shall be:

~~City of WilsonvilleSherwood Metropolitan Area Communications Commission
29799 SW Town Center Loop E15201 NW Greenbrier Parkway, C-1
WilsonvilleSherwood, OR 97070 Beaverton, OR 97006~~

19.418.4 Binding Effect

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

19.518.5 Authority to Amend

This Agreement may be amended at any time by written agreement between the parties.

19.618.6 Governing Law

This Agreement shall be governed in all respects by the laws of the State of Oregon.

19.7 Guarantee

~~The performance of the Grantee shall be guaranteed in all respects by TCI West, LLC. A signed guarantee, in a form acceptable to the Grantor, shall be filed with the Grantor prior to the Effective Date hereof.~~

19.818.7 Captions

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

19.918.8 Entire Agreement

This Agreement, together with all appendices and attachments, 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.

19.1018.9 Construction of Agreement

The provisions of this Agreement shall be liberally construed to promote the public interest.

Agreed to this _____ day of _____, 2015

COMCAST OF OREGON II, INC.
~~METROPOLITAN AREA~~

CITY OF WILSONVILLE SHERWOOD

~~COMMUNICATIONS COMMISSION~~

By: _____
Division President

By: _____
~~Bruce Crest~~
~~Administrator~~

Attachment A CUSTOMER SERVICE

These standards shall apply to Grantee to the extent it is providing Cable Services over the Cable System in the Franchise Area. This Attachment A sets forth the minimum customer service standards that the Grantee must satisfy.

1. Definitions

- (A) 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.
- (B) 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.
- (C) 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.
- (D) Service Call: The action taken by Grantee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- (E) Service Interruption. The loss of picture or sound on one or more cable Channels.
- (F) 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.
- (G) Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

2. Telephone Availability

- (A) 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.
- (B) 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.

- (C) 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.

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.

- (D) 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.
- (E) 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.
- (F) Upon Grantor's request, and within one hundred twenty five (12045) days following the end of each Calendar Year 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:
- (1) Percentage of calls answered within thirty (30) seconds as set forth in subsection 2(D) of this Attachment A; and
 - (2) Percentage of time Subscribers received a busy signal when calling the Grantee's service center as set forth in Section 2(E) of this Attachment A.

~~(G) 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.~~

3. **Installations and Service Appointments**

- (A) 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.

- (B) 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.
- (C) Upon request by Grantor, Grantee shall provide Grantor with a report one hundred twenty forty-five 120(45) days following the end of each calendar year 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.
- (D) ~~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.~~
- (E)(D) 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.
- (1) Grantee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.
 - (2) 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.

(F)(E) 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 maintaining establishing a local business office within ten (10) miles of 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.

4. Service Interruptions and Outages

- (A) Grantee shall promptly notify Grantor of any Significant Outage of the Cable Service.
- (B) 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.

- (C) 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.
- (D) 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:
 - (1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.
 - (2) 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.
- (E) 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.
- (F) Grantee shall meet the standard in Section 4(E) of this Attachment A for ninety percent (90%) of the Service Calls it completes, as measured on a Quarterly basis.
- (G) Upon Grantor's request, Grantee shall provide Grantor with a report within one hundred twenty forty five 120(45) days following the end of each calendar year 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 4.G. 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.
- (H) ~~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.~~
- (I)(H) 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.

(J)(1) 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.

5. **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 5 of this Attachment A, "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.

6. **Billing**

- (A) 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.
- (B) 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.
- (C) 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 Section 6(B) of this Attachment A.
- (D) 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:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Grantee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within Grantee's sole discretion to determine when the dispute has been resolved.
- (E) 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.
- (F) Grantee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Grantee.
- (G) 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.
- (H) 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.

7. Deposits, Refunds and Credits

- (A) 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.
- (B) 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.
- (C) 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).

- (D) 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.
- (E) 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.

8. **Rates, Fees and Charges**

- (A) 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).
- (B) 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.
- (C) 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.

9. **Disconnection/Denial of Service**

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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 9(D) of this Attachment A, 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.

10. Communications with Subscribers

- (A) 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.
- (B) All contact with a Subscriber or potential Subscriber by a Person representing Grantee shall be conducted in a courteous manner.
- (C) 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 6.10(C) of this Attachment A will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.
- (D) 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).
- (E) All notices identified in this Section 10 shall be by either:
 - (1) 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
 - (2) A separate electronic notification.
- (F) 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.

- (G) 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 Section 10(E), at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Grantee:
- (1) Products and Cable Service offered;
 - (2) 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;
 - (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
 - (4) Channel positions of Cable Services offered on the Cable System;
 - (5) 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;
 - (6) Procedures for requesting Cable Service credit;
 - (7) The availability of a parental control device;
 - (8) Grantee practices and procedures for protecting against invasion of privacy; and
 - (9) The address and telephone number of Grantee's office to which complaints may be reported.

A copy of notices required in this Section 10(G) 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.

- (H) Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.
- (I) 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.
- (J) Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
 - (2) The amount of the delinquency for all services billed;
 - (3) The date by which payment is required in order to avoid termination of Cable Service; and
 - (4) The telephone number for Grantee where the Subscriber can receive additional information about their account and discuss the pending termination.
- (K) Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

Attachment B
COMMISSION FRANCHISE STATISTICS QUARTERLY REPORT

Due By: April 15, July 15, October 15 and January 15

To: _____ From: _____

TELEPHONE ANSWERING ACTIVITY	1st Qtr Total	2nd Qtr Total	3rd Qtr Total	4th Qtr Total
TOTAL CALLS ANS'D W/IN 30 SECS.	_____	_____	_____	_____
AVERAGE HOLD TIME (measured in seconds)	_____	_____	_____	_____
% ANS W/IN 30 SECS.	_____	_____	_____	_____
% ABANDONED	_____	_____	_____	_____
% LINES AVAILABLE	_____	_____	_____	_____
SUBSCRIBERS	_____	_____	_____	_____
TOTAL SUBSCRIBERS	_____	_____	_____	_____
EBU REPORTING #	_____	_____	_____	_____
HOMES PASSED	_____	_____	_____	_____
DIGITAL (including EBUs)	_____	_____	_____	_____
TOTAL TRAD. PAYS	_____	_____	_____	_____
(HBO, Showtime, The Movie Channel, Cinemax)				
TOTAL DISCO's	_____	_____	_____	_____
TECH DISCO's	_____	_____	_____	_____
NON-PAY DISCO's	_____	_____	_____	_____
CONSTRUCTION ACTIVITY	_____	_____	_____	_____
NEW HOMES PASSED	_____	_____	_____	_____
MARKETABLE PASSINGS	_____	_____	_____	_____
TECHNICAL ACTIVITY	_____	_____	_____	_____
SERVICE CALLS	_____	_____	_____	_____
OUTAGES	_____	_____	_____	_____
TOTAL TIME OUT FOR OUTAGES	_____	_____	_____	_____
AVERAGE DURATION OF OUTAGES	_____	_____	_____	_____

Equivalent Billing Unit: Commercial and bulk account revenues that may be adjusted below or above the standard (basic + expanded) cable rate are either counted as greater than a full subscriber or less than a full subscriber by dividing the actual revenues for bulk and commercial accounts by the standard cable rate. Example: If an apartment unit is being charged 50% off the standard rate and there are 500 customers, the EBU number is 250.

Confidential and Proprietary - Comcast

Information is confidential under Oregon Public Records Law as it is a compilation of information which is not patented, which is known only to certain individuals within the company and is used in the business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it

COMPLAINT SUMMARY

20 — Q COMMISSION TOTALS

~~All Information is property of Comcast Cable and deemed confidential and proprietary.~~

~~Complaints highlighted in yellow indicate non-video issues.~~

~~Comcast~~

~~TELEPHONE RESPONSE REPORT~~

Metropolitan Area Communications Commission (MACC) Quarterly Report

Q1 20

Attachment C I
EXISTING LIVE ORIGINATION SITES

Beaverton City Hall
12725 SW Millikan Way
Beaverton, OR 97005

Beaverton Police/Courts Headquarters
4755 SW Griffith Drive
Beaverton, OR 97076

Washington County Public Services Bldg.
155 N. First Ave.
Hillsboro, OR 97123

Hillsboro Civic Center
150 E. Main St.
Hillsboro, OR 97123

Lake Oswego City Hall
380 "A" Ave
Lake Oswego, OR 97034

Tigard City Hall
13125 SW Hall Blvd
Tigard, OR 97223

Forest Grove Auditorium
1915 Main St.
Forest Grove, OR 97116

Pacific University
2043 College Way
Forest Grove, OR 97116

West Linn City Hall
22500 Salamo Read
West Linn, OR 97068

West Linn Wilsonville Sherwood School District 3JT
22210 SW Stafford Road
Tualatin, OR 97062

Clackamas Community College
19600 Molalla Avenue
Oregon City, OR 97045

Attachment C II
New Public Meeting Sites

Cornelius City Hall

1310 N. Adair

Cornelius, OR 97113

PCC Rock Creek Event Center

17705 NW Springville Rd.

Portland, OR 97229

Tualatin Hospital Auditorium

335 SE 8th Ave.

Hillsboro, OR 97123

Tualatin Valley Water District Board Room

1850 SW 170th Ave.

Beaverton, OR 97006

COH Brookwood Library Auditorium/Community Meeting Room

2850 Brookwood Parkway

Hillsboro, OR 97124

New Community Event Sites

COH Civic Center Courtyard

150 E. Main St.

Hillsboro, OR 97123

Attachment C III

Future Public Sites

Beaverton Performing Arts Center

Tualatin Council Building

Attachment D

Video On Demand License Agreement

This VIDEO ON DEMAND LICENSE AGREEMENT (this "Agreement") dated as of the _____ day of [INSERT MONTH], 20 [INSERT YEAR], between [INSERT FULL LEGAL NAME OF LICENSOR], having a business address at [INSERT ADDRESS OF LICENSOR] ("Licensor"), and [Name of Local Legal Entity] ("Comcast"), sets forth the terms and conditions that shall govern the distribution over Comcast Systems (as defined below) of the Programs (as defined below).

Licensor and Comcast, in consideration of the mutual covenants set forth herein, and for other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, intending to be legally bound hereby, agree as follows:

Definitions. Any capitalized terms used in this Agreement that are not defined in this Section shall have the meaning set forth with respect thereto in the applicable provision of this Agreement.

"Comcast Entity" shall mean Comcast and/or any entity controlling, controlled by, or under common control with Comcast and/or Comcast Corporation.

"Comcast System(s)" shall mean those systems owned, operated, or managed by any Comcast Entity.

"Licensor Marks" shall mean Licensor's and its licensors' trademarks, service marks, logos, trade dress, trade names, service marks, and other designs.

"Program" shall mean an individual program or an episode of a series (or a segment of such episode, program or show if such segment is made available and separately identified as a Program) identified on Exhibit A, attached hereto and incorporated by reference herein. No Program shall contain any advertising, promotions, or other commercial content (including, without limitation, any long-form advertising, infomercials or other paid reviews, endorsements, guides or informational content).

"VOD" shall mean video-on-demand, i.e., using technology, whether now known or hereafter developed that allows subscribers to select for viewing content desired by such subscribers on an on-demand basis, such that each subscriber can start such programming upon the subscriber's selection and thereafter control the playback of such programming.

"VOD Server" shall mean any disk array storage or other device, whether now known or hereafter developed, that accepts and stores video and data input and provides streaming media output including MPEG video.

"VOD Subscribers" shall mean those VOD System subscribers capable of accessing the Programs via VOD.

"VOD Systems" shall mean those Comcast Systems actually distributing any Programs to subscribers via VOD, as determined by Comcast in its sole discretion.

Grant of Rights. Subject to the terms and conditions herein, Licensor hereby grants to Comcast, and Comcast accepts, an non-exclusive, royalty free, fully paid up license, including a right of sublicense (but not the obligation) to: (a) transmit, exhibit, distribute and otherwise make available the Programs to VOD Subscribers via VOD in accordance with this Agreement during the Term of this Agreement; (b) digitize, compress, modify and edit the Programs solely as necessary for technical and practical purposes and the insertion of any advertising, sponsorship and/or promotions; (c) encode the Programs with applicable digitally encoded non-video data attributes, including, without limitation, as described on Exhibit B hereto ("Meta Data"); (d) store the Programs in a VOD Server, and (e) promote by any and all means the availability and access of such

~~Programs on any Comcast Systems. Without limiting the foregoing, Licensor hereby grants to Comcast, and Comcast accepts, the non-exclusive, royalty free, worldwide license (but not the obligation) to use the Licensor Marks in connection with Comcast's exhibition of, and promotion of the availability and access to, the Programs.~~

~~Term. This Agreement shall be effective as of the date hereof and shall expire on [INSERT TERMINATION DATE], unless earlier terminated pursuant to the terms set forth herein (the "Term"). Either party may terminate this Agreement with thirty (30) days prior written notice in the event of a material breach of the other party's obligations, representations or warranties hereunder that is not cured within such thirty (30) day period. The terms and conditions of Sections 3, 56, 7, 8, 109 and 121 shall survive any termination or expiration of this Agreement.~~

~~Programs. Comcast shall in its sole discretion determine (a) which Programs, if any, to make available on a VOD basis in each individual Comcast System; (b) the categorization and placement of such Programs in applicable menus and user interfaces and (c) whether to include, and the content and format of any, disclaimers before, during or after the Programs. Without limiting the foregoing, Comcast shall have no obligation to exhibit the Programs, and may discontinue and/or delete any Programs at any time in its sole discretion.~~

~~No Fees. The rights granted to Comcast under this Agreement are being provided without charge by Licensor. There shall be no fee or charge to Comcast by Licensor for the VOD transmission, distribution and/or exhibition of the Programs by any of the Comcast Systems hereunder and/or the use of the Licensor Marks. Licensor shall be responsible for any and all royalties and/or other fees, if any, payable to any applicable licensor(s) for content and/or License Marks included in the Programs (including, without limitation, residuals, or other payments to guilds or unions, rights for music clearances, including but not limited to performance rights, synchronization rights, and mechanical rights, and all other fees, payments, or obligations arising out of the activities contemplated by this Agreement). Comcast shall have no responsibility or liability for any such royalties or fees, including any royalties or fees associated with use of the Licensor Marks and/or distribution of the Programs via VOD.~~

~~Transmission and Distribution. Licensor will deliver the Programs in a manner and format designated by Comcast as set forth on Exhibit B attached hereto (which Exhibit Comcast may amend from time to time by notifying Licensor in writing).~~

~~Representations and Warranties. Licensor hereby represents, warrants and covenants that: (a) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Licensor and constitutes a valid and legally binding agreement of Licensor enforceable against Licensor in accordance with its terms and conditions; (b) Licensor has all rights and authority necessary to fully perform and grant the rights granted herein and all rights in and to the Programs and any advertisements, sponsorships or other promotional material inserted therein by Licensor, the Licensor Marks and in and to all intellectual property, images and graphics and related material included therein required for the exercise of rights granted in this Agreement without liability of any kind to any third party, and (c) the Programs and any advertisements, sponsorships or other promotional material inserted therein by Licensor, as may be applicable and Comcast's exercise of the rights granted hereunder shall not infringe or violate any third party rights or applicable laws, rules, regulations or orders.~~

~~Comcast hereby represents, warrants and covenants that the execution, delivery and performance of this Agreement has been duly authorized by all necessary company action~~

~~on the part of Comcast and constitutes a valid and legally binding agreement of Comcast enforceable against Comcast in accordance with its terms and conditions.~~

~~Indemnification.~~ Comcast and Lessor each agrees to hold the other party, its parent, subsidiary and affiliated companies and entities and their officers, directors, employees and agents harmless from and against any and all damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of any breach or alleged breach of any of its respective representations or obligations pursuant to this Agreement. Furthermore, and without limiting the foregoing, Lessor will indemnify, defend and hold harmless each Comcast Entity and its officers, directors, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of the content of the Programs, including but not limited to all advertising, sponsorship or promotional material included therein (if permitted hereby), except to the extent that such claims arise from insertions or deletions made by Comcast to the Programs.

~~Insurance:~~ Lessor shall at its own expense and for the duration of the Term secure and maintain Comprehensive General Liability Insurance and producer's errors and omissions liability insurance each in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, and shall supply to Comcast a certificate of such insurance, which shall provide that such insurance cannot be modified, terminated, or canceled by the carrier without its first notifying Comcast of such event. Such policy shall name as additional insured Comcast, its parent, subsidiary and affiliated companies, its licensees, and the officers, directors, agents and employees of the same, and shall contain an endorsement that negates the "other insurance" clause in the policy and a statement that the insurance being provided herein is primary and that any errors and omissions insurance carried by Comcast is neither primary nor contributing.

~~Press Release; Confidentiality.~~ Neither party shall issue any press release regarding this Agreement or the business relationship of the parties as set forth herein except with the advance written consent of the other party. Neither party shall disclose to any third party (other than its respective employees, directors, officers, and agents, in their capacity as such) any information with respect to the provisions and terms of this Agreement except to the extent necessary to comply with law or valid order of a court of competent jurisdiction (provided that the disclosing party seeks confidential treatment of such information in connection with such compliance).

~~Miscellaneous.~~

~~Without the prior written consent of the other party, neither party may assign the rights and obligations under this Agreement, except that Comcast may assign this Agreement to any Comcast Entity and/or entity merging with or into or acquiring substantially all of the stock or assets of any Comcast Entity. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit thereof.~~

~~The respective obligations of the parties hereto under this Agreement are subject to all applicable federal, state, and local laws, rules, and regulations (including, without limitation, the Communications Act of 1934, as amended, the Cable Communications Policy Act of 1984, as amended, and the rules and regulations of the Federal Communications Commission thereunder).~~

~~This Agreement constitutes the entire agreement between the parties hereto with respect to the particular subject matter hereof. This Agreement may not be amended nor any provision waived except in writing signed by the parties hereto. The parties hereto~~

~~agree that, except as set forth herein or as otherwise agreed in writing hereafter, no right, obligation, restriction or any other term or condition in this Agreement, on the one hand, and any discussions, negotiations and/or any other agreement between the parties hereto, on the other hand, shall have any bearing upon, be used in any way to interpret or clarify, or be deemed to supersede, amend, or modify in any way, the other or the meanings thereof.~~

~~This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania applicable to contracts made and wholly performed therein without regard to principles of conflicts of law.~~

~~IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representative to execute this Agreement as of the date first set forth above.~~

[INSERT LICENSOR FULL LEGAL NAME] Comcast of Washington II,

Inc Comcast of Oregon II, Inc.

~~By:~~ _____

~~By:~~ _____

~~Name: _____~~

~~Name: _____~~

~~_____
Title: _____~~

~~_____
Title: _____~~

EXHIBIT A

PROGRAMS

The "Programs" shall be [INSERT DETAILED DESCRIPTION OF PROGRAMS, INCLUDING, AS APPLICABLE, TITLE, QUANTITY, DURATION, TOPIC, ETC.]

- _____ 1. A description of content (including title and date)
 - _____ 2. The duration (run time) of content being provided
 - _____ 3. The rate at which the content will be refreshed, if applicable
 - _____ 4. The timing for available windows and schedule if there are multiple programs (i.e., a program is available immediately after airing or upon a certain date and may be kept up for one week, one month or until a specified date)
- _____ Note: changes to the original schedule need to be submitted to Comcast 7 days prior to the date of the event. For live events, please provide the station name, contact information and channel designation, as well as specifying the specific start and end time of the program.

EXHIBIT B

TRANSMISSION AND DELIVERY

[INSERT FORMAT, TECHNICAL SPECIFICATIONS, ADDRESS AND DATES FOR DELIVERY AND ALL OTHER DELIVERY SPECIFICATIONS.]

The following are the minimum production standards that must be met for Programmers content to be made available on the VOD server. Comcast reserves the right to use their discretion on whether or not these standards are being met. If at any time Programmer does not meet these minimum production standards, Comcast reserves the right to not make available and/or remove Programmers On Demand content from the VOD server.

A minimum of 2 cameras for live events

Cameras match in color

Cameras are in focus and properly exposed

Audio is undistorted and at a listenable level

An open and a close

At least basic graphics and titles

No control track break or noise/snow

At least DVD quality

Tape/DVD must be clearly labeled with a hard copy of the RTE attached to the Tape/DVD

Tape - at least 15 seconds of black before and after each program

DVD - if there are multiple programs on the DVD, ensure there are chapter breaks and at least 15 seconds of black before and after each program

Media will be purged after 30 days if prior arrangements are not made for having media returned

Note:

Specify whether or not the content will be real time encoded or if the Programmer will provide tapes (and if they are providing tapes, list out the specifications and delivery location needed by the System). Also specify that Programmer is picking up the costs if content is being delivered by tape, etc.

~~Attachment E~~
~~MASTER SERVICE AGREEMENT AND ATTACHMENTS~~

**CABLE SERVICES
FRANCHISE AGREEMENT**

**BETWEEN THE
CITY OF SHERWOOD, OREGON
AND
TCI OF TUALATIN VALLEY, INC.**

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ATTACHMENT A – INSTITUTIONAL NETWORK (I-Net) Service and Performance Standards

ATTACHMENT B – INSTITUTIONAL NETWORK (I-Net) Rate Schedule

CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

This Cable Television System Franchise Agreement (hereafter Agreement) is entered into this 24th day of February 2000, by and between the City of Sherwood, Oregon (hereafter Grantor) and TCI of Tualatin Valley, Inc. (hereafter Grantee), whose parent company is TCI Cablevision of Oregon, Inc., a registered corporation in the State of Oregon.

SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:
 - (A) **Public Access** which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;
 - (B) **Educational Access** which means Access where schools and educational institutions are the primary users of programming and service;
 - (C) **Governmental Access** which means Access where governmental institutions are the primary users of programming and service; and
 - (D) **PEG Access** which means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 **Affiliate** when used in connection with Grantee means any corporation, Person

or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

- 1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels, or such service tier as may be further defined by federal law.
- 1.6 **Cable Acts** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; 3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Channel** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- 1.11 **Designated Access Provider** means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use

Channels and facilities. The Grantor may be a Designated Access Provider.

- 1.12 **Downstream** means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 1.13 **FCC** means the Federal Communications Commission.
- 1.14 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.15 **Franchise Area** means the area within the jurisdictional boundaries of the Grantor including any subsequently annexed areas.
- 1.16 **Grantor** means the City of Sherwood, OR.
- 1.17 **Gross Revenues** means all amounts, in whatever form and from all sources, earned either by the Grantee from the operation of Grantee's Cable System to provide Cable Services within the Franchise area, or by any Affiliate only to the extent such amounts are earned from the operation of Grantee's Cable System to provide Cable Services within the Franchise area. "Gross Revenues" shall include, without limitation, amounts for Basic Service, tiers of service and premium services, audio services, Subscriber installations and transactions, leased access, advertising, equipment rentals, and all other revenues derived from the operation of Grantee's Cable System to provide Cable Services. Revenues that are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period.

"Gross Revenues" shall not be net of: (1) any operating expense; (2) any 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 have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales or taxes imposed by law on Subscribers that

the Grantee is obligated to collect or any fees collected pursuant to Section 9.7 of this Agreement. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

- 1.18 **Headend** means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.
- 1.19 **Institutional Network** or I-Net means that part of the Cable System's facilities or capacity designed principally for non-commercial use by non-residential Subscribers including communications to, from and among government agencies, Schools, libraries and other public agencies; nothing in this definition, however, prevents an Institutional Network from being used to send communications to or receive communications from Subscribers or the general public, or prevents any authorized user from providing access to an Institutional Network to the public, by remote terminals or otherwise, including by way of example and not limitation, through connections between an Institutional Network and the Subscriber Network.
- 1.20 **Interconnection** means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway thereof with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this Agreement.
- 1.21 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public in conformance with federal law.
- 1.22 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.
- 1.23 **Person** means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.
- 1.24 **Public Rights of Way** include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the City's right, title, interest, or authority to grant a franchise to occupy and use such streets and easements for telecommunications facilities. "Public rights of way" shall also include any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes.

- 1.25 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools, and colleges and universities.
- 1.26 **Street** means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and other public ways.
- 1.27 **Subscriber** means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.
- (A) **Commercial Subscriber** means any Subscriber other than a Residential Subscriber.
- (B) **Residential Subscriber** means any Person who contracts individually for Cable Service to a residence, whether that residence is a single family unit or located in a multiple dwelling unit.
- 1.28 **Upstream** means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2 – GRANT OF FRANCHISE

2.1 GRANT

- A. Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Streets and Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement.
- B. This Agreement is intended to convey limited rights and interests only as to those Streets and Public Rights of Way in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide the Grantee any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in the grant hereof.

This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Streets covered by this Agreement, including without limitation, the right to perform work on its

roadways, rights-of-way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- C. This Agreement is subject to the general lawful police power of Grantor affecting matters of local government concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.
- D. This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- E. Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or 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.

2.2 USE OF PUBLIC STREETS AND WAYS

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public utility easements within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantors prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

2.3 DURATION

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the effective date of this Agreement through January 31, 2015, unless extended or terminated sooner as hereinafter provided.

2.4 EFFECTIVE DATE

The effective date of this Agreement shall be 2/24/2000 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by June, 2000. In either event, this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

2.5 FRANCHISE NONEXCLUSIVE

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Agreement, and for such additional Franchises for Cable Systems or other providers of video services such as Open Video Systems (OVS) as Grantor deems appropriate, upon substantially equivalent terms and conditions to those contained herein as Grantor deems appropriate.

2.6 GRANT OF OTHER FRANCHISES

A. In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor's public ways for the purpose of constructing or operating a Cable System, or providing Cable Service or other video services such as Open Video Systems (OVS) to any part of the Service Area in which the Grantee is actually providing Cable Service under the terms and conditions of this Agreement, or is required to extend Cable Service to under the provisions of Section 13.2 of this Agreement, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

B. If Grantor grants a Franchise to a third party for service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained herein, Grantor shall offer Grantee a Franchise to serve the same area under terms and conditions that are reasonably comparable to those set forth in the Franchise Agreement entered into with the third party.

2.7 POLICE POWERS

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

2.8 RELATIONS TO OTHER PROVISIONS OF LAW

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law; provided, however, nothing herein shall grant the Grantor the right to unilaterally amend or modify the terms and conditions in this Agreement. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Franchise Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern; however, nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provision of applicable law. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 EFFECT OF ACCEPTANCE

By accepting the Agreement the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3 - FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 FRANCHISE FEES

As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues including the Franchise fee itself, derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Agreement. The Franchise fees are in addition to all other fees,

assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent (5%) of gross revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

3.2 PAYMENTS

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and made available to Grantor no later than forty-five (45) days after the last day of the preceding quarter.

3.3 ACCEPTANCE OF PAYMENT AND RECOMPUTATION

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 QUARTERLY FRANCHISE FEE REPORTS

Each payment shall be accompanied by a written report to Grantor containing an accurate statement in summarized form, as well as in detail, and in a form approved by Grantor, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 ANNUAL FRANCHISE FEE REPORTS

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement (Audited Gross Receipts Report) stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

3.6 AUDITS/REVIEWS

On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's records for the previous year which are reasonably related to the administration or enforcement of this Agreement and in accordance with generally accepted accounting principles. The Grantor may hire an independent certified public accountant to audit or review the Grantee's financial records, in which case the

Grantee shall provide all necessary records to the certified public accountant. All such records shall be made available in the local offices of the Grantee. If the audit or review shows that Franchise fees have been underpaid by three percent (3%) or more, Grantee shall reimburse to Grantor the total cost of the audit or review within 30 days of the Grantor's written demand for same.

Records for audit/review purposes shall include without limitation:

- A. Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of franchise fees, revenues or expenses related thereto.
- B. Source documents that completely explain any and all calculations related to any allocation of any amounts involving franchise fees, revenues, or expenses related thereto.
- C. Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving the payment of franchise fees and the revenues or expenses related thereto.

3.7 INTEREST ON LATE PAYMENTS

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.8 ALTERNATIVE REMEDIES

If any section, subsection, paragraph, term, or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other section, subsection, paragraph, term, or provision hereof. Under such a circumstance the parties agree to meet and confer with the Grantor to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days either party may (1) seek appropriate legal remedies to amend the Agreement, or (2) shorten the Agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. Subsection 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

3.9 ADDITIONAL COMMITMENTS NOT FRANCHISE FEES

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional capital commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional capital commitments herein are not Franchise fees as defined under any federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

3.10 COSTS OF PUBLICATION

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.11 TAX LIABILITY

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 that may be imposed by Grantor.

3.12 PAYMENT ON TERMINATION

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

SECTION 4 - ADMINISTRATION AND REGULATION

4.1 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.

4.2 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.

4.3 RATE DISCRIMINATION

All of Grantee's rates 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, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area.

Grantee shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:

- A. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns.
- B. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens.
- C. Grantee from establishing different and nondiscriminatory rates and charges for commercial customers, as well as different nondiscriminatory monthly rates for commercial customers as allowable by federal law and regulations; or
- D. Grantee from establishing different and nondiscriminatory rates and charges for Residential Subscribers as allowable by federal law and regulations.

4.4 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 Service provided under this Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns, and rates for multiple dwelling units, provided that Grantee shall make reasonable efforts to notify Grantor in writing in advance of such promotions.

Grantee shall provide upon request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

4.5 TIME LIMITS STRICTLY CONSTRUED

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.6 PERFORMANCE EVALUATION SESSIONS

- A. Grantor may hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Agreement or hold special evaluation sessions at any time during the term of this Agreement.
- B. Grantor shall conduct all such evaluation sessions. Evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- C. Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Agreement and compliance with state and federal laws and regulations.
- D. Upon request, as part of the annual performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Franchisee, which include a description of the portions of the Franchise Area that are cabled and have all Cable Services available, including those areas where the system, including the I-Net, has been upgraded. Such report shall also include the number of miles and location of overhead and underground cable plant, and the number of miles (overhead and underground) and location of an I-Net (if applicable). If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- E. During evaluations under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation.

- F. Section 4.6 shall sunset and be of no further force and effect to the extent Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

SECTION 5 - FINANCIAL AND INSURANCE REQUIREMENTS

5.1 INSURANCE REQUIREMENTS

- A. General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- B. Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
 - 1) Commercial General Liability: Two million dollar (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits a two million five hundred thousand (\$2,500,000) aggregate limit, and one million dollars (\$1,000,000) broadcasters liability.
 - 2) Automobile Liability: Two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 - 3) Employer's Liability: Two million dollar (\$2,000,000) limit.

5.2 DEDUCTIBLES AND SELF-INSURED RETENTIONS

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

- A. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A".
- B. Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be

received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantors' ordinances and laws.

5.3 INDEMNIFICATION

- A. **Scope of Indemnity.** Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:
 - 1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
 - 2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels by Grantor and/or Designated Access Provider;
 - 3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
 - 4) Arising from any third party suit, action or litigation, whether brought by a

competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

- B. **Duty to Give Notice and Tender Defense.** The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 LETTER OF CREDIT

- A. No later than the effective date of this Agreement, Grantee shall establish and provide to Grantor, as security for the faithful performance by Grantee of all provisions of this Agreement, a Letter of Credit in the amount of ten thousand dollars (\$10,000). The Letter of Credit shall be filed in a form acceptable to the Grantor and issued by a financial institution acceptable to the Grantor, provided the Grantor, in its sole discretion, may direct that the Letter of Credit be issued by a local financial institution.
- B. The Letter of Credit shall be maintained at ten thousand dollars (\$10,000) throughout the term of this Agreement.
- C. The Letter of Credit may be assessed by Grantor for various purposes including, but not limited to, the following:
- 1) Failure of Grantee to pay Grantor sums due under the terms of this Agreement.
 - 2) Reimbursement of costs borne by Grantor to correct violations of this Agreement not corrected by Grantee.
 - 3) Fines assessed against Grantee due to violations of the requirements of

this Agreement.

- D. If Grantee fails within thirty (30) days after the date of written notice to pay to Grantor any franchise fees, assessment or taxes lawfully due which Grantor determines can be remedied by a draw upon the Letter of Credit, Grantor may thereafter withdraw the amount thereof from the Letter of Credit. Upon such withdrawal, Grantor shall notify Grantee of the amount and date thereof. Within seven (7) days following receipt by Grantee of written notice from Grantor that any amount has been withdrawn from the Letter of Credit, Grantee shall restore such Letter of Credit to the amount required under this Agreement. Failure by Grantee to so restore the Letter of Credit shall be considered a material violation of this Agreement.
- E. The Letter of Credit deposited pursuant to this Section shall become the property of Grantor in the event that this Agreement is lawfully terminated or revoked for cause by reason of the violation by Grantee, and Grantee has exhausted all of its remedies relating thereto. Grantee, however, shall be entitled to the return of the Letter of Credit deposited in accordance with this Section, or any portion thereof remaining upon normal expiration of this Agreement.
- F. The rights reserved to Grantor with respect to the Letter of Credit are in addition to all other rights of Grantor whether reserved by this Agreement or authorized by law or equity, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall constitute a waiver of any other right Grantor may have.
- G. A single Letter of Credit for the amount required herein shall satisfy the requirements of Grantor.

5.5 PERFORMANCE BOND

Concurrent with the effective date of this Agreement, Grantee shall post a performance bond in the amount of one hundred thousand dollars (\$100,000). Upon the successful completion of the system upgrade (as described herein) the amount of the performance bond shall be reduced to twenty five thousand dollars (\$25,000).

SECTION 6 – CUSTOMER SERVICE

The Grantee shall be subject to FCC Regulations Part 76.309, as amended from time to time, regarding compliance with customer service standards, customer notice requirements and customer billing . This provision shall sunset and shall be of no further force and effect to the extent the Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

6.1 SUBSCRIBER PRIVACY

Grantee will comply with privacy rights of Subscribers in accordance with federal, state and local law.

6.2 Emergency Alert Capability

In accordance with, and at the time required by, the provisions of the FCC Regulations Part 11, Subpart 11.51, as such provisions may from time to time be amended, Grantee shall provide the emergency alert capability in accordance with Federal Law, and in compliance with the FCC approved Oregon State Emergency Alert System (EAS) plan, and the Local Area EAS plans that apply to Washington County, Oregon. Grantee will cooperate with the Grantor and local emergency officials to develop policies and procedures for the use of the emergency broadcast capability within the Franchise Agreement service area.

SECTION 7 – REPORTS AND RECORDS

7.1 OPEN RECORDS

- A. Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.
- B. Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the Grantor and the Grantee. Grantor's review of the plans, records, and as-built maps, provided for herein, shall occur at the Grantee's local office.

- C. The ability for Grantor to obtain records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 15.

7.2 CONFIDENTIALITY

Subject to the limits of the Oregon Public Records Law, Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

7.3 COPIES OF FEDERAL AND STATE DOCUMENTS

Upon request from Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to Grantor no later than thirty (30) days after the receipt of such requests. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 COMPLAINT FILE AND REPORTS

- A. Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the operation and performance of the Cable System, within the franchise

area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to Grantor during normal business hours.

- 1) Grantee shall provide an executive summary report quarterly (within thirty (30) days of the end of the preceding quarter) to Grantor, which shall include the following information:
 - a) Nature and type of customer complaints.
 - b) Number, duration, general location and customer impact of unplanned service interruptions.
 - c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - d) Subscriber counts, by service tiers, and EBU (Equivalent Basic Unit) counts.
 - e) Total disconnections and major reasons for those disconnections
 - f) Average response times and total number of service calls.
 - g) Video programming changes (additions/deletions).
 - h) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- 2) Grantee shall provide Grantor with an executive summary report (within thirty (30) days of the end of the preceding quarter as described below in a., b., c. and d.) that shall include the following:
 - a) Phone activity report, on a monthly basis;
 - b) New areas constructed and available for Cable Service, including multiple dwelling units, on a quarterly basis;
 - c) Subscriber reports to Grantor indicating the total number of Subscribers by service categories, on a quarterly basis; and
 - d) The Grantor may require the reports for b) and c) to be submitted on a monthly basis if Grantor reasonably believes that Grantee may not be in compliance with the standards covered by these reports.
- 3) Grantor shall also have the right to request such information as

appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6.1. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

- 4) Section 7.4 shall sunset and be of no further force and effect to the extent Grantee is subject to effective competition as such term is defined in 47 C.F.R. 76.905.

7.5 INSPECTION OF FACILITIES

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

7.6 FALSE STATEMENTS

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise.

7.7 REPORT EXPENSE

All reports and records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8 - PROGRAMMING

8.1 BROAD PROGRAMMING CATEGORIES

- A. Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:
 - 1) Educational programming.
 - 2) Sports.
 - 3) General entertainment (including movies).
 - 4) Children/family-oriented.

- 5) Arts, culture and performing arts.
- 6) Foreign language.
- 7) Science/documentary.
- 8) Weather information.
- 9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
- 10) National, state, and local government affairs.

B. Grantee shall not delete any broad category of programming within its control.

8.2 PARENTAL CONTROL DEVICE

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 LEASED ACCESS CHANNELS

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 CONTINUITY OF SERVICE

- A. It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- B. In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

8.5 SERVICE FOR THE DISABLED

Grantee shall comply with the Americans With Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

SECTION 9 - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS (PEG)

9.1 GENERAL DEFINITIONS

With respect to purposes of this section, the following definitions will apply with respect to Public, Educational, and Governmental (PEG) use of the Cable System.

- A. "Access Channel" means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service. Each Access Channel shall be six (6) MHz and must be capable of transmitting a standard analog video signal. The capacity can be used to transmit non-commercial signals in any format, and can be used to transmit: audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high-definition signals, and compressed signals.) A non-standard NTSC use shall be subject to the Grantee's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other Channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be commercial use or lease of such PEG capacity without the express written permission of the Grantee.
- B. "Digital Access Channel", as used in this Section, means a Channel carrying PEG continuous full-motion video programming in a digital format. Digital Access Channels shall have the same compression ratio and transmission quality as is used to carry any of the commercial Channels that deliver programming to the Grantor in a similar format for delivery to each Subscriber.
- C. "Designated Access Provider" means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use Channels and facilities. The Grantor may be a Designated Access Provider.
- D. "Origination Point" means a location other than an Access Center, where Public, Educational, and Governmental use programming is delivered to the Grantee for Upstream transmission.

9.2 MANAGEMENT AND CONTROL OF ACCESS CHANNELS

- A. Grantor may authorize Designated Access Provider to control and manage the use of any and all Access Facilities provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the Designated Access Provider and Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of

the PEG Access channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

- B. Grantee shall cooperate with the Grantor and Designated Access Provider in the use of the Cable System and Access facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with the Designated Access Provider as may be necessary to facilitate and coordinate the provision of PEG Access, provided that such operating agreements shall not be inconsistent with the terms of this Agreement and shall be subject to approval by the Grantor.
- C. Except as provided in this Agreement, the Grantor shall allocate Access resources only to the Designated Access Provider. The Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.
- D. Subject to written authorization from the Grantor, the Grantee shall have the right to use temporarily any Channel, or portion thereof, which is allocated under this Section for public, educational, or governmental uses pursuant to Section 611(d) of the Cable Act.

9.3 CHANNEL CAPACITY AND USE

- A. Upon the effective date of this Agreement, all Access Channels provided for herein are administered by the Grantor or designee.
- B. Upon completion of the upgrade the Grantee shall provide one (1) Access Channel for distribution of Public, Educational, and Governmental Access programming on the residential Cable System.
- C. Upon completion of the upgrade, Grantor may require Grantee to activate one (1) additional Access Channel for a maximum of two (2) Access Channels.
- D. Upon completion of the upgrade, the Grantee shall provide connection of all PEG Access Channels required by this Agreement to and from the Grantee's Headend and the Designated Access Provider's Headend. Grantee agrees to provide reconnection for Designated Access Provider's Headend if it is relocated within twelve (12) months of the effective date of this Agreement, at no charge to Grantor or to Designated Access Provider.
- E. As required in Section 9.3 C., Grantee shall be required to provide a maximum of two (2) Access Channels. However, if all video programming is delivered in a digital format and the Grantor requests that PEG Channels be digitized, then, in lieu of the Access Channels provided for in Section 9.3 B.

and C., there shall be a maximum of four (4) PEG continuous, full-motion video programming Digital Channels ("Digital Access Channels") not subject to the trigger criteria set forth in Section 9.7. The Grantor shall determine the number of Digital Access Channels to be activated, not to exceed four (4). Finally, if all PEG video programming is delivered in digital format, the bandwidth available for PEG use shall not exceed twice the amount of bandwidth that is necessary to transmit the four (4) PEG Digital Access Channels, except that the amount of capacity available beyond the amount required to transmit the four (4) Digital Access Channels shall not be less than twelve (12) MHz in any case.

9.4 RELOCATION OF ACCESS CHANNELS

Grantee shall provide Grantor with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time Public, Educational, and Governmental(PEG) Access Channel designations are changed. Grantee shall consult with Grantor prior to making a final determination regarding any changes in PEG Access Channel designations/assignments. Any new Channel designations for the PEG Access Channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality and proof of performance standards.

9.5 ORIGINATION POINTS

- A. At a date to be mutually determined by the Grantee and Grantee, Grantee shall provide, without charge, adequate capacity to facilitate the transmission of character generated, pre-recorded, and live cablecasts from Origination points within the Cable Service area to enable the distribution of PEG Access programming on the Residential Cable System on Access Channels. Permanent Origination Points shall be determined by mutual agreement by Grantor and Grantee.
- B. Upon completion of the Upgrade, or by mutual agreement by Grantor and Grantee, upon six (6) weeks written notice in advance of the scheduled cablecast, and provided that an active drop is available at the desired location, Grantee shall provide Origination Points on a short-term basis for the live cablecast of Access Programming. The incremental, out-of-pocket costs to Grantee shall be paid for by Grantor or Designated Access Provider. Grantee shall not be required to facilitate more than two such Origination Points in any twenty-four (24) hour period.
- C. There shall be no charge to the Grantor, nor to any other person for the use of the upstream capacity from the program origination locations described in this section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.6 ACCESS INTERCONNECTIONS

- A. The Grantee shall maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous cable systems.
 - 1) Grantee shall be capable of interconnection of PEG Access Channels in the Cable System and Cable Systems in Franchise Areas that are geographically adjacent to Grantor, provided that Grantor has secured the written permission for such Interconnection from the regulatory authority for the adjacent Franchise Area. The cost of such Interconnections shall be Grantee's so long as Grantee or Grantee's affiliate owns the adjacent Cable System. If the adjacent Cable System is not owned by Grantee, the cost for interconnection shall be equally shared by the two Cable Systems.
- B. All Interconnections shall have the capability of transmitting and receiving PEG programming. All Interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this agreement on all interconnected Channels, consistent with Section 9.11. Installation of all interconnect capacity shall be completed at the Grantee's expense, except as otherwise provided herein.
- C. The Grantor, or its Designated Access Provider, shall have the right to control and schedule the operation of all interconnected Access Channels and capacity. In addition, the Grantor, or its Designated Access Provider, shall have the right to use, at its sole discretion and at no cost, any Access Channels and capacity provided under this agreement for non-commercial purposes, in furtherance of PEG use. However, the requirement to interconnect PEG programming with adjacent Cable Systems of willing franchise authorities shall not result in an increase in the number of PEG Channels beyond the number of Access Channels provided for in Sections 9.3 and 9.7 of this Agreement.
- D. The Grantee shall take all necessary steps to ensure that technically adequate signal quality in compliance with FCC requirements are initially and continuously provided for all Access Interconnections and Origination Points.

9.7 CAPITAL SUPPORT FOR ACCESS COSTS

Grantee shall pay to the Grantor as capital support for Access Facilities, an amount specified by the Grantor up to a maximum of \$1.00 per month per Residential Subscriber. The Grantor may use PEG capital support for any capital costs involved in PEG Access, including but not limited to the capital costs of the I-Net to the extent that the I-Net is provided by the Grantee. The Grantor shall give Grantee at least sixty (60)

days advance written notice of Grantee's obligation to begin payment of the capital support, including the monthly amount per Subscriber to be paid.

Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter from when the capital support takes effect. The Grantor shall have discretion to allocate the capital support in accordance with applicable law.

Residential Subscribers with courtesy accounts provided by the Grantee without charge or bulk MDU accounts, will not be counted in the calculation of capital support pursuant to this section.

The Grantor may adjust the amount of the capital support on an annual basis (up to the maximum amount specified in this subsection), provided that Grantee is given sixty (60) days advance written notice.

9.8 EXPANSION OF ACCESS CHANNELS

Following completion of the upgrade, Grantee shall, if directed by the Grantor, provide additional, activated Downstream Channel capacity for PEG Access, to a maximum total of two (2) Access Channels as described in Section 9.3. The Grantor shall give Grantee at least ninety (90) days prior notice of required additional Access Channels.

9.9 ACCESS SUPPORT NOT FRANCHISE FEES

The Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement and the Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

9.10 ACCESS CHANNELS ON LOWEST AVAILABLE TIER

All Access Channels provided to Subscribers under this Agreement shall be included by the Grantee, without limitation, as a part of Basic Cable Service offered by the Grantee on its Cable System.

9.11 CHANGE IN TECHNOLOGY

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

9.12 TECHNICAL QUALITY

The Grantee shall maintain all Upstream and Downstream Access services, Channels and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. The Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Agreement, necessary to carry a quality signal to and from the Grantor's or Designated Access Provider's facilities.

9.13 PROMOTIONAL SERVICES

- A. The Grantee shall provide, at no cost to the Grantor, ten 30-second PEG Access advertising availabilities per month on various Subscriber Cable Services carried by the Grantee on the Cable System, scheduled at Grantee's discretion. Grantee shall be provided an opportunity to review and approve the content of the PEG advertising.
- B. The Grantee shall allow the Grantor to include two bill stuffers per year. The Grantor or Designated Access Provider shall be responsible for the cost of printing its bill stuffers, the costs of inserting the information into Grantee's bills, and for any incremental postage costs. Bill stuffers must conform to Grantee's mailing requirements. Grantee shall be provided an opportunity to review and approve all PEG bill stuffers.

9.14 CHANNEL IDENTIFICATION

If requested by the Grantor or Designated Access Provider, at Grantor or Designated Access Provider costs, the Grantee will identify the PEG Channels and FM signal and identify the programming carried on the PEG Channels and FM signal in its printed and electronic programming guides, in the same manner in which it identifies the Channels and programming on Channels and audio services under its control. It is the responsibility of the Designated Access Provider to provide appropriate entities with program schedules in a timely manner, and, if the Designated Access Provider fails to do so for a particular Channel, the Grantee may simply identify the general type of programming carried on the Channel. Grantee will bill the Grantor or Designated Access Provider for the costs of these listings.

SECTION 10 – GENERAL STREET USE AND CONSTRUCTION

10.1 CONSTRUCTION

- A. Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction necessary for

the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

- B. Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing 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 Street cuts.
- C. Grantor shall have the right to inspect all construction or installation work performed within the franchise area as it shall find necessary to ensure compliance with the terms of this agreement and other pertinent provisions of law.

10.2 LOCATION OF FACILITIES

Within forty-eight (48) hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

- A. Mark on the surface all of its underground facilities within the area of the proposed excavation;
- B. Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or
- C. Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.3 RELOCATION

Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. 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. If Grantor requires Grantee to relocate its facilities located within the Streets, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

10.4 RESTORATION OF STREETS

- A. Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.
- B. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

10.5 MAINTENANCE AND WORKMANSHIP

- A. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.
- B. Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

10.6 RESERVATION OF GRANTOR STREET RIGHTS

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System

shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

10.7 USE OF CONDUITS BY GRANTOR

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Streets and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available, and pursuant to all applicable Ordinances and Codes. For the purposes of this Subsection 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor.

10.8 STREET VACATION

If any Street or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to Grantor, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Street, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

10.9 DISCONTINUING USE OF FACILITIES

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by

Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

10.10 HAZARDOUS SUBSTANCES

- A. Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.
- B. Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

10.11 UNDERGROUNDING OF CABLE

A. Wiring.

- 1) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines services at no additional expense to the Grantor or Subscribers, and to the extent permitted by law. Cable must be installed underground where: (1) all existing utilities are placed underground, (2) statute, ordinance, policy, or other regulation of an individual Grantor or Commission requires utilities to be placed underground, or (3) all new or existing overhead utility lines are placed underground.

Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by each Grantor's appropriate public works official. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.

- 2) The Grantee shall utilize existing poles and conduit wherever possible.
- 3) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the

Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

- 4) Whenever possible, to avoid additional wear and tear on Grantee's Rights of Way, Grantor shall when relocating or upgrading the current cable network install additional conduit or provide additional space for a rebuilt system. Grantee may charge for use of the conduit consistent with all applicable laws.

B. Repair and Restoration of Property.

- 1) The Grantee shall protect public and private property from damage. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.
- 2) If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other Grantor property shall be restored, in a manner and within a timeframe approved by the Grantor's Director of Public Works or other appropriate designated official. If restoration of public right-of-way or other property of the Grantor is not satisfactorily performed within a reasonable time, the Director of Public Works or other appropriate designated official may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the Grantor, then the Grantee shall pay all of the Grantor's actual costs and expenses resulting from the non-payment, including penalties, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.
- 3) Prior to entering onto private property to construct, operate or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

C. Movement of Cable System For and By Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the

public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor. Except during an emergency, the Grantor shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Grantor.

- D. Movement for Other Franchise Holders.** If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Those persons shall determine how costs associated with the removal or relocation required herein shall be allocated.
- E. Movement for Other Permittees.** At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.
- F. Tree Trimming.** Subject to acquiring prior written permission of the Grantor, the Grantee shall have the authority to trim trees that overhang a public right-of-way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.12 CODES

Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

10.13 STANDARDS

- A. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- B. Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home, and are consistent, in all respects, with the requirements of the National Electric Code and the National Electrical Safety Code.

SECTION 11 – SYSTEM DESIGN

11.1 SUBSCRIBER NETWORK

A. Upgrade Design

- 1) Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:
 - (a) The System will use a fiber to the neighborhood node architecture. This will involve deployment of fiber optic cable throughout those portions of the System to be upgraded. The upgraded plant will tie into a hybrid fiber/coaxial Cable System already serving Subscribers.
 - (b) The System shall serve no more than fifteen hundred (1,500) customers per fiber node.
 - (c) All active electronics will be at least 550 MHz capable equipment, or equipment of higher bandwidth.
 - (d) The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.
 - (e) Passive devices will pass a minimum bandwidth of 550 MHz.
 - (f) The upgrade of the Cable System will be conducted in phases. Grantor will authorize Grantee to activate the System as nodes are constructed or upgraded.

- (g) Upon completion of the upgrade, the Cable System shall be capable of delivering at least seventy-five (75) analog Channels of video programming services to Subscribers.
- 2) As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed, FCC technical quality standards regardless of the particular manner in which the signal is transmitted. The upgrade shall commence within six (6) months of the effective date of this Agreement and be completed on or before August 1, 2002. The upgraded Cable System will be capable of supporting addressable equipment throughout the System and shall enable the provision of digitally compressed video services. Grantee's upgraded Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

B. System Functionality

- 1) It is the intent of the parties to provide for a process that provides the Grantor with an opportunity to review the system design plan and construction progress to ensure that the Cable System meets or exceeds the specifications described herein. Grantee agrees that it shall provide Grantor with reasonable notice of its intent to test the performance of the upgraded Cable System so that Grantor can witness such testing.
- 2) At least sixty (60) days before the upgrade of the Cable System begins, or if a design plan for the system upgrade exists at the time the Grantor adopts this Agreement, no later than 15 days following such adoption, Grantee shall provide the Grantor with a proposed timeline for the upgrade and an opportunity to review the system design plan consistent with Grantee's obligations as described in Section 5 and Section 9. The Grantor shall indicate to Grantee, within thirty (30) days of the receipt and review of materials, as to any aspects of the timeline and/or design plan Grantor believes are inconsistent with the requirements set forth herein in Section 5 and Section 9. Grantee shall respond within thirty (30) days to the Grantor to resolve any inconsistencies.
- 3) Construction of fiber to the nodes shall be completed no later than August 1, 2002.
- 4) The upgrade must be completed in its entirety by August 1, 2002.
- 5) Within thirty (30) days of the effective date of this Agreement, and every month thereafter, at the request of the Grantor, Grantee and Grantor will meet to discuss the progress of the upgrade and work cooperatively to speed the construction process and to minimize the impact upon

Subscribers (by e.g. discussing any problems in obtaining permits and by having Grantors provide information to Grantee on population and/or demographic trends and projections."). At each meeting, Grantee will provide a progress report on the upgrade detailing its progress in satisfying the requirements of this Section.

- 6) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Agreement or applicable law.

C. Timing of Construction

Grantee's decisions on constructing plant for service from each hub or node shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of the Franchise Area.

11.2 INSTITUTIONAL NETWORK (I-Net)

"Institutional Network" means a communication network that is constructed, owned or operated by the Grantee and which is generally available only to Subscribers who are not residential Subscribers.

A. Upgrade

- 1) Grantee shall upgrade the existing I-Net within the same time period the Grantee upgrades the Cable System. The upgrade of the I-NET shall be completed on or before August 1, 2002. The I-Net may be used by the Grantor and its agencies, other governments and their agencies, Schools, libraries, public corporations created by the Grantor, and other non-profit community based institutions to the extent that such non-profit institutions provide public services.
- 2) The upgrade will incorporate an optical fiber architecture to achieve the Service and Performance Standards described in Attachment A. The upgraded I-Net will enable full fiber optic connectivity to requesting institutions upon completion of the upgrade.

B. Existing I-Net

The Grantee shall continue to provide and maintain the I-Net existing as of the effective date of this Franchise.

Upon written request of the Grantor, the Grantee agrees to assist the Grantor in the ongoing evaluation of the Institutional Network that interconnects specific public buildings for the transmission and receipt of voice, data, video and other communications between specific points in the discrete network within the

Service Area.

C. Rates for Service

Monthly fees for upgraded service and installation costs for use of the I-Net will be negotiated and attached to this agreement at such time that is mutually agreed to by the Grantor and Grantee, however no later than 60-days after completion of the upgrade. The Grantee agrees that the charges for installation and use of the I-Net shall be at comparable rates and on similar terms and conditions as that offered by the Grantee to other municipal users in the State of Oregon for similar services. Service contracts will be negotiated between Grantee and each I-Net user. Such contracts shall comply with all the terms and conditions of this Agreement. Existing I-Net users as of the effective date of this Agreement will be subject to the charges established for the upgraded I-Net.

D. I-Net Capacity

The I-Net shall be capable of full bi-directional, video, voice and low- and high-speed data communications (including, but not limited to, closed circuit video applications).

E. Interconnection of Institutional Network to other Networks

The upgraded I-Net and the existing I-NET, shall be capable of interconnecting to Institutional networks in cable systems that are geographically adjacent to Grantor, provided that Grantor has secured written permission for such interconnection from the regulatory authority for the adjacent Franchise area. The cost of such interconnection shall be Grantee's so long as Grantee or Grantee's affiliate owns the adjacent cable system. If the adjacent cable system is not owned by Grantee, the cost for interconnection shall be equally shared by the two cable systems. Grantee shall be required to provide (1) connection-per interconnection requirement between Grantee's Cable System and the adjacent cable system. When the adjacent cable system is owned by Grantee or Grantee's Affiliate, the interconnection link shall meet the I-Net Service and Performance Standards. Grantee's financial obligation for equipment required to interconnect the I-Net shall not exceed \$7,500.00.

F. Network Monitoring, Maintenance and Management

The I-Net shall be monitored by the Grantee to ensure that the I-Net meets or exceeds the I-Net Service and Performance Standards. Grantee will employ appropriate network management hardware and software to ensure optimum performance of all data services over the I-Net. Grantee will provide status monitoring for the optical transmitters and receivers of the I-Net, as well as all headend equipment, cable modems, and power supplies that may be provided by the Grantee in the future, except for those power supplies at user sites.

Grantee will manage the operation and perform all maintenance and repair to the I-Net. I-Net users will provide, and be responsible for, the operation and maintenance of equipment attached to the terminal ends of the network. Grantee may charge to procure and/or maintain equipment for I-Net users.

G. Network Segmentation

Upon completion of the upgrade to the I-Net, the I-Net shall be capable of being segmented such that video, voice, and data communications can be transmitted discretely within a geographic area or jurisdiction mutually agreed upon by Grantee and Grantor. Such segmentation shall enable frequency reuse to facilitate discrete communications, such that the network does not become capacity limited. The I-Net shall also incorporate necessary video/audio and data switching to enable the appropriate routing of signals within and between network segments. If the network segmentation provided for herein requires additional equipment and labor beyond that provided by Grantee, the cost for the equipment and installation shall be shared equally by Grantee and Grantor, however, the cost to the Grantee shall not exceed \$7,500.00 per each request for segmentation

H. Transition from the Existing I-Net to the Upgraded I-Net and Between Equipment Assignments

All existing I-Net users shall continue to have their current network capacity available to them on the I-Net until such time as they migrate to the upgraded I-Net. Where it is necessary to migrate users from an existing equipment assignment to a new assignment, Grantee will assist such users in the migration so that there is minimal disruption from the existing to the new operating assignments.

Unless otherwise agreed to in writing with I-Net users, cutover to upgraded sections of the I-Net shall occur between midnight and 5:00 a.m., or on weekends, so I-Net transmissions are not adversely affected. I-Net users shall have at least ten (10) business days advance notification of cutover activities that will affect the operation of their I-Net circuits.

I. Migration from Analog to Digital Transmission

As the I-Net incorporates digital transmission methodologies if digital video compression is employed on the subscriber network that may require I-Net users to convert from analog to digital transmission, Grantee agrees to assist users in such conversions. Affected I-Net users shall be given notice of conversion requirements so that I-Net user operations are not adversely affected. Costs associated with such a conversion will be paid by Grantee when the conversion is at Grantee's request, and shall be paid by the I-Net user when the conversion is at the request of the I-Net user.

J. Network Costs

I-Net users shall pay the Grantee for costs associated with the upgrade to the I-Net and the costs associated with providing operational support for the users' circuits on the I-Net as part of their monthly services rates. In no case shall the cost for these services exceed the market rate charged for substantially equivalent services provided by other service providers, and pursuant to the rates and conditions for use of the upgraded I-Net using cable modem technology as included in Attachment B. Grantor will periodically review rates for I-Net users to ensure Grantee's compliance with this provision.

The current I-Net user rate card shall not be modified until such time as the I-Net user migrates to the upgraded I-Net network at which time the rates established in Attachment B will apply. I-Net user rates for enhanced services shall be negotiated on a case-by-case basis between I-Net user and Grantee. Rates may be adjusted to reflect competitive market rates for substantially equivalent services as periodically reviewed by Grantor. Grantee and Grantor must mutually agree to such rate adjustments.

K. Network Alterations

If the Grantee alters its Cable System after the upgrade described in Section 11, or moves its headend so that the I-Net must be changed, the Grantee must provide any additional equipment and facilities required to prevent any change in the quality of service or additional costs to I-Net users. Grantee must ensure that the changes to the Cable System do not adversely affect the I-Net or use of the I-Net by existing or future users.

Nothing in Section 11.2 shall be deemed by the Grantor or Grantee to subject Grantee's operations, or the I-Net services provided by Grantee under authority of this Franchise, to regulation as a common carrier within the meaning of applicable state or federal law.

Grantor and Grantee shall work together cooperatively to coordinate and market the operations of the I-Net, and shall jointly promote and support the best use of this area-wide communications network.

Attachments A (I-Net Service and Performance Standards) and B (I-Net Rate Schedule) are considered part of this Agreement. In that regard, they are incorporated herein by reference, and are intended to be Franchise standards.

L. I-Net Failure

In the event of a failure of the I-Net, whether in whole or in part, Grantee's liability shall be limited to repairing the I-Net and the provisions of Section

15.2 and 15.3 and I-Net Service Penalties and Procedures as outlined in Attachment A (I-Net Performance Standards). Grantee is not responsible for any other monetary damages whether, actual, special or consequential damages, resulting from any failure, in whole or in part, from the operation of the I-Net constructed by the Grantee.

SECTION 12 - TEST AND COMPLIANCE PROCEDURES

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 applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements.

SECTION 13 – SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

13.1 EQUIVALENT SERVICE

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area, provided that Grantee is authorized to activate the upgraded system node by node.

13.2 SERVICE AVAILABILITY

A. Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.

Grantee shall provide such service:

- 1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
- 2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred and twenty five (125)

feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for Residential Subscribers.

B. Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Customers at no cost to said Customers for Cable System extension, other than the usual connection fees for all Customers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation, of the Cable System, or as provided under Section 2.6 of this Agreement.

C. Customer Charges for Extensions of Service. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate a cable drop underground, existence of more than one hundred and twenty-five (125) feet of distance from distribution cable to connection of service to Customers, or a density of less than ten (10) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

D. Enforcement. Failure to meet these standards shall subject grantee to enforcement actions on a per Subscriber basis in Section 15.3(A)2.

13.3 CONNECTION OF PUBLIC FACILITIES

Grantee shall, at no cost to Grantor, provide one (1) outlet of Basic and expanded basic programming to Grantors' public use buildings, as designated by the Grantors, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of Basic and expanded basic programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be

accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

13.4 NEW DEVELOPMENTS

The Grantor shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Franchise Area requiring undergrounding of cable facilities. The Grantor agrees to require as a condition of issuing the permits notice of the date of availability of trenches. Such notice must be received by the Grantee at least 10 days prior to availability. The developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor, and cable facilities. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or developer unless otherwise provided.

SECTION 14 - STANDBY POWER

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to Grantor no later than ninety (90) days following the effective date of this Agreement.

SECTION 15 - FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

15.1 PROCEDURE FOR REMEDYING 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.
- B. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date

Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation.

- C. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
 1. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 2. Cure the violation, or;
 3. 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. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (D) below.
- D. 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, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G) of this section.
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 (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.
- E. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, 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 fines shall be applied.
- F. In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, 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 and Grantee may appeal such decision to a court of competent

jurisdiction.

G. The fines set forth in Section 15.2 of this Agreement may be reduced 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:

- 1) Whether the violation was unintentional;
- 2) The nature of the harm which resulted;
- 3) Whether there is a history of prior violations of the same or other requirements;
- 4) Whether there is a history of overall compliance, and/or;
- 5) Whether the violation was voluntarily disclosed, admitted or cured.

H. If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:

- 1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
- 2) Establish the amount of fine set forth in Section 15.2, taking into consideration the criteria provided for in subsection (G) of this section as appropriate in Grantor's discretion;
- 3) Revoke this Agreement as specified in Section 15.3, and/or;
- 4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

15.2 FINES

A. **Failure to Comply.** Failure to comply with provisions of the agreement may result in injury to Grantor. 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 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.

- (1) For violating aggregate performance telephone answering standards for a quarterly measurement period:
 - a) Five thousand dollars (\$5,000) for the first such violation;

- b) Seven thousand five hundred dollars (\$7,500) for the second such violation, unless the violation has been cured;
- c) Ten thousand dollars (\$10,000) 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 consecutive quarterly measurement periods.

- (2) For violation of applicable subscriber service standards where violations are not measured in terms of aggregate performance standards: \$20.00 per violation multiplied by the number of affected subscribers, per day;
- (3) For violations of Sections 11.1 and 11.2: Two hundred fifty dollars (\$250.00) per day;
- (4) For all other violations of this agreement, except as otherwise provided herein, (for example, but not limited to, record submissions under Section 7): \$100.00/day for each violation for each day the violation continues.

B. Collection of Fines. The collection of fines by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantor.

15.3 REVOCATION

In addition to all other rights and powers retained by the Grantor under this Agreement or otherwise, the Grantor reserves the right to forfeit and terminate this Agreement and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to the following:

- 1) Violation of any material provision of this Agreement or any other Agreement between Grantor and Grantee, or any material rule, order, regulation, standard or determination of the Grantor or authorized agent made pursuant to this Agreement or other Agreement;
- 2) Attempt to evade any material provision of this Agreement or to practice any fraud or deceit upon the Grantor or its Subscribers or customers;

- 3) Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the Grantor;
- 4) Material misrepresentation of fact in the application for or negotiation of this Agreement, or;
- 5) If Grantee becomes insolvent, or the subject of a bankruptcy proceeding, or;
- 6) Fails to complete the system upgrade or I-Net upgrade as provided for in Section 11.

The provisions of Section 15.1 (F) shall specifically apply to this Section.

15.4 RELATIONSHIP OF REMEDIES

A. Remedies are Non-exclusive. The remedies provided for in this agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:

- (1) Compensation owed to subscribers; or
- (2) Grantee's obligation to comply with the provisions of this agreement or applicable law.

B. No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's Letter of Credit (LOC), or the recovery of amounts under the insurance, indemnity or penalty provisions of this agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise; or an excuse of faithful performance by Grantee.

15.5 REMOVAL

A. In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

B. If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the Letter of Credit provided by Grantee.

15.6 RECEIVERSHIP AND FORECLOSURE

A. At the option of Grantor, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

- 1) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment, or;
- 2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

B. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

- 1) Grantor has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
- 2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

15.7 NO RE COURSE AGAINST GRANTOR

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

15.8 NON-ENFORCEMENT BY GRANTOR

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 16 – ABANDONMENT

16.1 EFFECT OF ABANDONMENT

If the Grantee abandons its System during the Agreement term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until the Agreement is revoked and a new Franchise is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

16.2 WHAT CONSTITUTES ABANDONMENT

The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:

- A. The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.5; or
- B. The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 17 - FRANCHISE RENEWAL AND TRANSFER

17.1 RENEWAL

- A. The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply

with the provisions of the Cable Act (47USC§546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

- B. In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

17.2 TRANSFER OF OWNERSHIP OR CONTROL

- A. The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- B. The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.
- C. The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- D. The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested

information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

- E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, Agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- F. In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- G. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- H. Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement.

SECTION 18 – SEVERABILITY

If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

SECTION 19 - MISCELLANEOUS PROVISIONS

19.1 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

19.2 DISPUTE RESOLUTION

The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.

If the parties are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

19.3 NOTICES

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such addresses shall be:

(1) TCI of Tualatin Valley, Inc.
Attn : Legal Department
3500 S.W. Bond
Portland, Oregon 97201

(2) TCI Northwest, Inc.
Attn : Legal Department
P.O. Box C8004
Bothell, WA 98082-8004

All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

City of Sherwood, Attn: City Manager
20 NW Washington Street
Sherwood, Oregon 97140

19.4 BINDING EFFECT

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

19.5 AUTHORITY TO AMEND

This Agreement may be amended at any time by written agreement between the parties.

19.6 GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of Oregon.

19.7 GUARANTEE

The performance of the Grantee shall be guaranteed in all respects by TCI West, Inc. A signed guarantee, in a form acceptable to the Grantor, shall be filed with the Grantor prior to the effective date hereof.

19.8 CAPTIONS

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

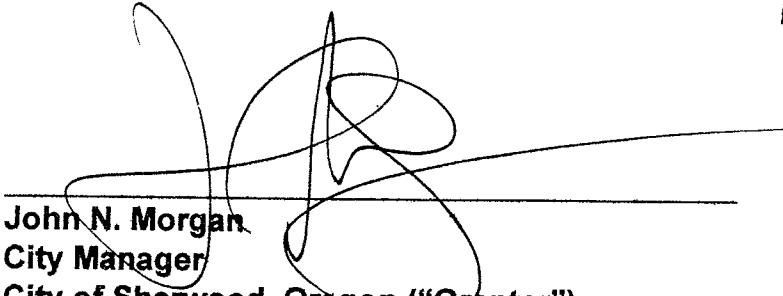
19.9 ENTIRE AGREEMENT

This Agreement, together with all appendices and attachments, 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.

19.10 CONSTRUCTION OF AGREEMENT

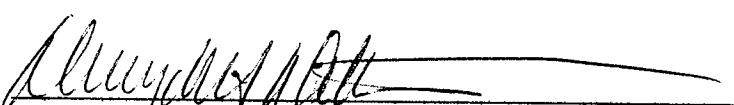
The provisions of this Agreement shall be liberally construed to promote the public interest.

Entered into this 24th day of FEBRUARY, 2000.


John N. Morgan
City Manager
City of Sherwood, Oregon ("Grantor")


James H. Smith III, President
TCI ~~Cablevision~~ of Tualatin Valley, Inc.

Approved as to Form By:


Derryck H. Dittman
Attorney Representing the City of Sherwood, Oregon ("Grantor")

ATTACHMENT A

INSTITUTIONAL (I-Net) SERVICE AND PERFORMANCE STANDARDS

SIGNAL QUALITY

The Institutional Network (I-Net) shall achieve the performance standards listed below under worst-case conditions for communications occurring between each I-Net institution and Grantee's headend, since all communications will be regenerated at the headend.

Noise and Distortion Performance - The combined upstream and downstream performance of the system shall meet or exceed the following:

- ◆ Carrier to noise equals 45 dB or better
- ◆ Carrier to composite triple beat equals -55 dB or better
- ◆ Carrier to second order distortion equals -58 dB or better
- ◆ Carrier to cross modulation equals -54 dB or better

Data Communications - For any data communications link on the network, the bit error ratio (BER) shall be equal to or better than 1×10^{-9} , provided customer premise equipment meets or exceeds, and is operating to these specifications.

Network Availability - For each user on the network, network availability shall be equal to or better than 99.965% (no more than 184 minutes of network downtime per user) as measured on an annual basis.

The network shall be defined as 'unavailable' under the standards in Attachment A for any given user when such user:

A. Cannot, because of a network problem, measured by SNMP software or other appropriate software and associated hardware, or through a failure of a Grantee-provided interconnect, transmit video, voice and/or data communications to, from, and/or on the network, for which such user is paying a fee to Grantee.

Such problems shall be the result of a failure of one or more of the following: 1) the fiber optic cabling, connections and transmission equipment on the network; 2) the optical to RF conversion equipment at Grantee's headend; 3) the optical to RF conversion equipment at the customer's premise (if such equipment is provided by Grantee); 4) network powering systems; 5) the network equipment, connections and cabling, network management, hardware and software, and related equipment provided by Grantee at Grantee's headend; and/or 6) any other Grantee-provided network component; and/or

The following information must be filed by the I-Net user's designated contract representative and the claim must include the following information:

- 1) Organizations name and contact information
- 2) Name of User Contract Representative
- 3) Date and beginning/end time of claimed outage
- 4) Site address(es) where outage(s) occurred
- 5) Description of outage event.

Claim Process: I-Net users must submit the required information by United States Postal Service and mail to:

TCI Cablevision of Oregon, Inc.
3500 SW Bond Avenue
Portland, Oregon 97201

Grantee will acknowledge all claims within two business days of receipt of claim and will review all claims within ten (10) business days of receipt.

Grantee shall inform I-Net user and Grantor in writing whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for the rejection. If Grantee fails to respond to properly made claim within fifteen (15) days of receipt of claim, claim is deemed to be accepted by Grantee and appropriate service credits will be due. I-Net user or Grantee may request Grantor to mediate disputed claims.

Credit Process: Grantee will issue service credits in the form of deductions applied towards the I-Net user's next applicable contract period service rate.

ATTACHMENT B

INSTITUTIONAL NETWORK (I-Net) RATE SCHEDULE (TO BE DETERMINED)



Northwest Division

AT&T Broadband & Internet Services
22025 30th Ave. SE
Bothell, WA 98021-4444

March 15, 2000

City of Sherwood
20 N.W. Washington
Sherwood, OR 97140
Attn: John N. Morgan

Re: Franchise Agreement Between the City of Sherwood, Oregon and
TCI of Tualatin Valley, Inc.

The undersigned TCI of Tualatin Valley, Inc., d/b/a AT&T Cable Services does hereby accept the franchise agreement passed and approved on February 24, 2000, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the franchise agreement, subject to applicable federal, state and local law.

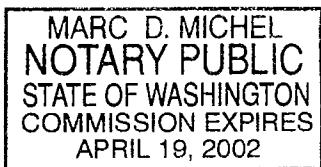
Very truly yours,

James H. Smith III
James H. (Trey) Smith III
President
TCI of Tualatin Valley, Inc.

STATE OF WASHINGTON)
)
) SS
COUNTY OF SNOHOMISH)

On March 15, 2000, before me, a Notary Public in and for said State, personally appeared James H. (Trey) Smith III, known to me to be the President of the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as Operator and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



Marc D. Michel
Marc Michel, Notary Public
In and for the State of Washington
Residing at: SEATTLE
My Commission Expires: 4-19-02



Washington Market

22025 30th Dr. SE
Bothell, WA 98021-4444

RECEIVED

January 9, 2002

JAN 11 2002

Mr. Ross Schultz
City Manager
City of Sherwood
20 N.W. Washington
Sherwood, OR 97140

CITY OF SHERWOOD

Re: Franchise Agreement Between the City of Sherwood, Oregon and
TCI of Tualatin Valley, Inc.

Dear Mr. Schultz:

Pursuant to our telephone conversation of this date, please find attached a fully executed copy of the Franchise Agreement between the City of Sherwood and TCI of Tualatin Valley, Inc., known as AT&T Broadband. I have also attached a copy of the written Acceptance as required by section 2.4 of the franchise.

If you have any questions or need additional documents, please feel free to contact me at (425) 398-6141.

Sincerely,

Janice Burch
Janice Burch
Franchise Administrator
WA and Oregon Markets

Cc: Pamela J. Beery, Beery and Elsner LLP (w/enclosures)
Chris Wiley, City of Sherwood (w/out enclosures)
Jeanne Benecke, AT&T Broadband (w/out enclosures)

Original(s)
Filed in _____

**CABLE TELEVISION
FRANCHISE AGREEMENT**

Between the
CITY OF SHERWOOD
AND
COMCAST OF OREGON II, INC.

{00530737; 1 }2810911v2

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ATTACHMENT A – CUSTOMER SERVICE ORIGIN POINTS

SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:
 - (A) **Public Access** means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;
 - (B) **Educational Access** means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;
 - (C) **Governmental Access** means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and
 - (D) **PEG Access** means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals and PEG Access Channels, or as such service tier may be further defined by federal law.

- 1.6 **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").
- 1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.13 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.

- 1.14 **Designated Access Provider (“DAP”)** means the entity or entities designated by the Grantor to manage or co-manage PE G Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 1.15 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.16 **Effective Date** means the date defined in Section 2.4 herein.
- 1.17 **FCC** means the Federal Communications Commission.
- 1.18 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 1.19 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.20 **Franchise Area** means the area within the legal jurisdictional boundaries of the City of Sherwood and areas that may be annexed into the City during the term of this agreement.
- 1.21 **Grantee** means Comcast of Oregon, II, Inc. or its permitted successors, transferees or assignees.
- 1.22 **Grantor** means the City of Sherwood.¹
- 1.23 **Gross Revenue** 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;
 - 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 within the Franchise Area;

- 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: (1) 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; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
 - Revenues from program 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 within the Franchise Area 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 and PEG 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 fifty percent (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 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.

- 1.24 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.
- 1.25 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.
- 1.26 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.
- 1.27 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.
- 1.28 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.29 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.
- 1.30 **Programming** means television programs, audio, video or other patterns of Signals 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.
- 1.31 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).

- 1.32 **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.
- 1.33 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 1.34 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 1.35 **Section** means a provision of this Agreement, unless specified as part of another document.
- 1.36 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 1.37 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.
- 1.38 **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, the Cable System.
- 1.39 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 **Grant**

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement.
- (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without

limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or 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.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through _____, 2026, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The Effective Date of this Agreement shall be _____, 2016 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days

of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 Franchise Nonexclusive

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.6 below.

2.6 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 2.6 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 2.6 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 per cent) of the geographic area of the Grantor; or to systems that only provide video services via the public Internet.

2.7 **Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.

2.8 **Relations to Other Provisions of Law**

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee

reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 Effect of Acceptance

By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

- (A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.
- (B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

3.2 Payments

Grantee's Franchise fee payments to Grantor shall be computed Quarterly. Each Quarterly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding Quarter.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, and in a form approved by Grantor, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports

Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement verified by an authorized representative of the Grantee, stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

3.6 Audit/Reviews

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to ten thousand dollars (\$10,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

- (A) Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of Franchise fees, revenues or expenses related thereto.
- (B) Source documents that completely explain any and all calculations related to any allocation of any amounts involving Franchise fees, revenues, or expenses related thereto.
- (C) Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving Franchise fees, revenues or expenses related thereto.

3.7 Interest on Late Payments

Payments not received within forty-five (45) days from the Quarter ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.8 Additional Commitments Not Franchise Fees

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees related to Cable Services to Grantor in accordance with applicable law. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

3.9 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.10 Tax Liability

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 that may be imposed by Grantor.

3.11 Payment on Termination

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 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.

4.2 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.

4.3 Rate Discrimination

All of Grantee's rates 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.

4.4 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 Service provided under this Agreement.

4.5 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.7, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.6 Mid-Term Performance Evaluation Session

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

4.7 **Force Majeure**

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or 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 to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

4.8 **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.~~

Commented [NW1]: Moved to Section 6—Customer Service.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 **Insurance Requirements**

- (A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to

Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.

- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
- (1) Commercial General Liability: Three million dollar (\$3,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a four million dollar (\$4,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability.
 - (2) Automobile Liability: Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 - (3) Employer's Liability: Two million dollar (\$2,000,000) limit.

5.2 **Deductibles and Self-Insured Retentions**

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

- (A) Endorsements.
- (1) All policies shall contain, or shall be endorsed so that:
 - (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
 - (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;

- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
 - (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.
- (B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".
- (C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 Indemnification

- (A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:
- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors,

subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;

- (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels or use of PEG funds by Grantor and/or DAP;
 - (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
 - (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.
- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 **Performance Bond**

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, 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 Fifty Thousand Dollars (\$50,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor as to its adequacy under the requirements of this Section. 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.

SECTION 6. CUSTOMER SERVICE

- 6.1 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. Customer service obligations are set forth herein as Attachment A and are hereby incorporated by this reference.
- 6.2 Emergency Broadcast. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.
- 6.3 ADA Accessible Equipment. Grantee shall comply with the Americans with Disabilities Act ("ADA"), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 6.4 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

Commented [NW2]: Moved from above to replace the reference to customer service standards from Attachment A.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its ~~Parent Corporations and Affiliates~~ entities that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any ~~Parent Corporation, Affiliated entity~~ or a third party. Grantor may, in writing, request copies of any such Records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and Records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.
- (B) Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, Records and "as built" maps showing the approximate location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantor's review of the plans, Records, and as-built maps, provided for herein, shall occur at the Grantee's local office.
- (C) The ability for Grantor to obtain Records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 14.

7.2 Confidentiality

Subject to the limits of the Oregon Public Records Law, Grantor agrees to treat as confidential any books and Records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise

Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person.

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

Commented [NW3]: Same comment as above—this term is no longer defined/used in the document.

7.4 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during Normal Business Hours.
- (1) Upon request by Grantor, Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
- (a) Nature and type of customer complaints.
 - (b) Number, duration, general location and customer impact of unplanned service interruptions.
 - (c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (d) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Tier Subscribers, and "Pay" Subscribers.
 - (e) Total disconnections and major reasons for those disconnections.

- (f) Total number of service calls.
 - (g) Video programming changes (additions/deletions).
 - (h) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- (2) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards ~~as referenced in Attachment A~~. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 Inspection of Facilities

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

7.6 False Statements

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

7.7 Report Expense

All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:
- (1) Educational Programming.
 - (2) Sports.
 - (3) General entertainment (including movies).

- (4) Children/family-oriented.
 - (5) Arts, culture and performing arts.
 - (6) Foreign language.
 - (7) Science/documentary.
 - (8) Weather information.
 - (9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (10) National, state, and local government affairs.
- (B) Grantee shall not delete any broad category of Programming within its control.

8.2 Parental Control Devices

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 Leased Access Channels

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 Continuity of Service

- (A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.7 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- (B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Management and Control of Access Channels

- (A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.
- (B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.
- (C) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.
- (D) The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 12 of this Agreement.

9.2 Channel Capacity and Use

- (A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP or a DAP.
 - (1) Existing Access Channels: Grantee shall provide two one five (215) standard definition ("SD") Downstream Channels for distribution on Grantee's Basic Service level of Public, Educational, and Governmental Access Programming. The Channel designations of these isese Channels as of the Effective Date of this Agreement shall be: Channel 23 Sherwood, and Channel 30 (TVCTV). Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.
 - (2) Grantor may require Grantee to provide one (1) additional Access Channel for a particular type of PEG Access under this Section, when a Channel for a particular type of PEG Access programming meets the criteria set forth below. Upon Grantee's request, a public hearing will be conducted regarding the need for the additional PEG

Access Channel. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of the required additional Access Channel.

- (a) Grantor must show that during any eight (8) consecutive weeks, the Government Channel 23 is in use for Locally Produced, Locally Scheduled Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight.

The applicable PEG Access Channel capacity expansion criteria as set forth in subsections (a-2) shall have been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 9.2(A)(2)(a):

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

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

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

- (3) Throughout the term of this Agreement, Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, provide and maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant in-to Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.

9.3 **Standard Definition Channels**

Grantee shall carry all components of the SD Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements

associated with the Programming. The DAP shall be responsible for providing the Access Channel Signal in a SD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD Access Channel on its side of the Demarcation point.

9.4 High Definition Channels

Grantee shall provide and activate the Government Access Channel in HD format, for a total of one (1) HD channel, in the manner and conditions set forth in Section 9.4 below:

- (A) Within one hundred twenty (120) days of written notice by Grantee, after the fourth (4th) year of this agreement, Grantee shall activate Channel 23 – Sherwood, as designated by the Grantor, in high definition (“HD”) format and simultaneously carrying that SD Access Channel Signal provided under Section 9.2, and under the following conditions:
 - (a) Grantor shall have provided for the previous three (3) months twenty (20) hours weekly of local original Original programmingProgramming, as described in 9.4 (A) (a) below, on Channel 23; and
 - (b) At least eighty percent (80% ~~eighty percent~~) of the Access programming carried on Standard Definition (SD) format Channel, which the Grantor has identified as the Channel to be carried in a HD format Channel, has been produced in an HD format for any three-month time period prior to notice provided under this Section; and
 - (c) All programming on the SD Access Channel must be Local Original Scheduled Programming produced within the franchise area, or other Original Programming produced specifically for the Grantor, or programming of interest to subscribers as determined by Grantor; and
 - (d) On the SD Access Channel identified by the Grantor to be simulcast as the HD Channel, not more than twenty percent (20%) of the Access Programming content carried on that SD Access Channels is character-generated only Programming for the three (3) month time period prior to the notice provided under this Section
 - (e) For purposes of this subsection 9.4(A), “Original Programming” means Programming in its initial cablecast on the Cable System or in its first, second, third or fourth repeat for Grantor’s City Council meetings and in its first or second repeat for all other programming.

Commented [NW4]: Changed to be consistent with reference above and definition below.

- (f) If Grantor fails to maintain twenty (20) hours per week of programming as described in 9.4 A.(a) & (c) above, the Channel would revert back to SD; which could be reinstated to HD if Grantor meets the twenty (20) hour weekly requirement for one (1) month.
- (B) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all SD Access Channel 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 -three (43) HD Channels.
- (C) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.

9.5 Quality Access Channel Signals.

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 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 14. 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 9.5.

9.6 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 9.2 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 DAP (s). 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 Attachment A 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 Two~~ Thousand Dollars (\$2,000) to the Grantor for actual costs associated with the change, or (2) Two Thousand Dollars (\$2,000) 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.

Commented [NW5]: Attachment A (Customer Service Standards) was deleted.

9.7 Access Interconnections

The Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous Cable Systems owned by the Grantee as of the Effective Date of this Agreement, in order to receive from and deliver to the DAP's headend, via the Grantee's Headend, all the Access Channels required by this Agreement and originating by the Grantor or its designee.

9.8 Origination Points

- (A) The existing Origination Points at the time of the effective date of this agreement will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.
- (B) The additional permanent Origination Points required by the Grantor or DAP listed in Attachment ~~G-A II~~ shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of GrantorGrantee.
- (C) The additional Origination Points that may be required by the Grantor or a DAP at the future public sites listed on Attachment ~~G-HA III~~, shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of GrantorGrantee, up to a distance of one hundred twenty-five (125) feet from Grantee's existing outside plant facilities provided that Grantee can reach the Demarcation point using (1) existing conduit, (2) conduit provided by Grantor, or (3) an aerial connection. Grantor shall be responsible for any additional actual

Commented [NW6]: This Attachment has been inserted.

connection costs beyond the one hundred twenty-five (125) feet. Such additional costs may be paid for from the PEG capital fee in Section 13.

- (D) Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 13.
- (E) There shall be no charge to the Grantor, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.9 Changes in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels (SD or HD), Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Agreement, necessary to carry a quality Signal to and from Demarcation at Grantor's or DAP's facilities.

9.11 PEG Access Program Listings On Cable System's Digital Channel Guide

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the DAP to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 12.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. Without limiting the foregoing sentence, Grantee shall be subject to and comply with the provisions of SMC Chapter 12.16.070, and 12.16.080, 12.16.100 and 12.16.110, as amended from time to time, including all provisions applicable to "utility operators" as defined therein regardless of whether or not Grantee is a "utility operator." Grantee shall, at no cost to the Grantor, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the Right-of-Way when the same is in the best interest of the public for that portion of the Right of Way, and the Grantee is requested to do so in writing.

Commented [NW7]: Referencing the maintenance and vacations sections as agreed by email.

Commented [NW8]: Comcast accepted deletion of this phrase in our June 3rd email exchange.

10.2 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.2, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

10.3 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable

schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

10.4 Hazardous Substances

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.
- (B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

10.5 Tree Trimming

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.6 Construction, Building and Zoning Codes

Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

10.7 Standards

- (A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable provisions of the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- (B) Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home at time of installation, and are consistent, in all respects, with applicable provisions of the National Electrical Code and the National Electrical Safety Code.

SECTION 11. SYSTEM DESIGN AND STANDARDS

11.1 Subscriber Network

- (A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.
- (B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

11.2 Test and Compliance Procedures

- (A) 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 applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

11.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in

place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

SECTION 12. PEG ACCESS AND PCN GRANT FUND

Grantee shall support the continued viability of Public, Educational and Government (PEG) Programming, through the following funding:

12.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor eighty cents (\$.80) per Subscriber, per month to support the Capital equipment and facility needs of PEG Access which funds shall be used in accordance with applicable federal law.

Nothing in this Section 12 shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section 12.1 for any lawful purpose permitted under applicable federal law. 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 after the end of each Quarter.

12.2 Annual Award Report

- (A) Upon request by Grantee, Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of Grantee's request .

Grantee may reasonably review Records of the Grantor (and of the DAP) related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor (and the DAP) that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor (or the DAP).

12.3 PEG Access Not Franchise Fees

- (A) Grantee agrees that financial support for the PEG Access ~~and PCN Grant Fund~~, and all other Grantee PEG ~~and PCN~~ obligations set forth in this Agreement, shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of 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 past, present or future Franchise

fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.

- (B) Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the FCC rate regulations in force at the time of adoption of this Agreement and Grantee has the right and ability to include Franchise fees and certain other commitments on the bills of cable Subscribers (47 C.F.R. Section 76.922).

SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

13.1 Equivalent Service

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions, subject to federal law. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

13.2 Service Availability

- (A) Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.
- (B) Grantee shall provide such service:
- (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
 - (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual

connection fees for all Subscribers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.

- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.
- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 14.

13.3 **Connection of Public Facilities**

As a voluntary initiative, Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to public use buildings, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of basic and digital economy tier (or its functional equivalent) Programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

The Grantor acknowledges that the provision of free Basic Cable Services to the locations identified in Section 3.12 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.

The Grantor acknowledges that the provision of free Basic Cable Services to the locations identified in Section 13 reflects a voluntary initiative on the part of the Grantee. Grantee does not waive any rights it may have regarding complimentary service under Federal law or regulation for any outlets in excess of ten (10) as provided for in this section. Subject to the applicable law, should Grantee elect to offset governmental complimentary services for any outlets in excess of ten (10) against franchise fees, Grantee shall first provide the Grantor with ninety (90) days' notice prior notice.

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

14.1 Procedure for Remedyng 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.
- (B) The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 14 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
 - (1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 - (2) Cure the violation, or;
 - (3) 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. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (C) below.

- (C) 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, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G) below.
- (D) 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 (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.
- (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, 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 fines shall be applied.
- (F) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, 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.
- (G) The fines set forth in Section 14.2 of this Agreement may be reduced 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:
 - (1) Whether the violation was unintentional;
 - (2) The nature of the harm which resulted;
 - (3) Whether there is a history of prior violations of the same or other requirements;
 - (4) Whether there is a history of overall compliance, and/or;

- (5) Whether the violation was voluntarily disclosed, admitted or cured.
- (H) If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:
- (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - (2) Establish the amount of fine set forth in Section 14.2, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
 - (3) Revoke this Agreement, and/or;
 - (4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- (I) Fines shall not be imposed in an amount in excess of twenty five thousand dollars (\$25,000) for the Grantor within any twelve (12) month consecutive period.
- (J) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

14.2 **Fines**

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and 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.
- (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
 - (a) \$2,500 for the first such violation;
 - (b) \$5,000 for the second such violation, unless the violation has been cured;
 - (c) \$7,500 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;
- (2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;
 - (3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7): \$250/day for each violation for each day the violation continues.
- (B) The fines set forth in Section 14.2(A) may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:
- (a) whether the violation was unintentional;
 - (b) the nature of the harm which resulted;
 - (c) whether there is a history of prior violations of the same or other requirements;
 - (d) whether there is a history of overall compliance, and/or;
 - (e) whether the violation was voluntarily disclosed, admitted or cured.
- (C) Collection of Fines. The collection of fines by the Grantor shall in no respect affect:
- (1) Compensation owed to Subscribers; or
 - (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
 - (3) Other remedies available to the Grantor provided, however, that collection of fines shall be the exclusive remedy for the Grantor for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

14.3 Revocation

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 14.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance.

Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) 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.

- (B) 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 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, which transcript shall be at Grantee's sole cost.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter 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 Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

14.4 **Relationship of Remedies**

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 14.2. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:
 - (1) Refunds or credits owed to Subscribers; or

- (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise, except as provided in Section 14.2; or an excuse of faithful performance by Grantee.

14.5 Removal

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

14.6 Receivership and Foreclosure Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
 - (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
 - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s)

assume and agree to be bound by each and every term and provision of this Agreement.

- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
- (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
 - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

14.7 No Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

14.8 Nonenforcement By Grantor

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 15. ABANDONMENT

15.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until this Agreement is revoked and a new grantee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is

required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

15.2 What Constitutes Abandonment

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
 - (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.7; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

16.2 Transfer of Ownership or Control

- (A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein

pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of fifty-one percent (51%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a fifty-one percent (51%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.
- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any

transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.

- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required 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.

SECTION 17. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other Section, subsection, paragraph, term, or provision hereof. Under such a circumstance the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to this Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may (1) seek appropriate legal remedies to amend this Agreement, or (2) shorten this Agreement to thirty-six (36) months, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

18.2 Dispute Resolution

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to

mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.

- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

18.3 Notices

- (A) Throughout the term of this Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such addresses shall be:

Comcast of Oregon, II, Inc.
Attn: Government Affairs
9605 SW Nimbus Ave
Beaverton, OR 97008

with copy to:

Attn : West Division/Government Affairs
15815 25th Ave West
Lynnwood, WA 98087

- (B) All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such address shall be:

City of Sherwood 22560 SW Pine Street, Sherwood, OR 97140

18.4 Binding Effect

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

18.5 Authority to Amend

This Agreement may be amended at any time by written agreement between the parties.

18.6 Governing Law

This Agreement shall be governed in all respects by the laws of the State of Oregon.

18.7 Captions

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

18.8 Entire Agreement

This Agreement, together with all appendices and attachments, 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.

18.9 Construction of Agreement

The provisions of this Agreement shall be liberally construed to promote the public interest.

Agreed to this _____ day of _____, 20165

COMCAST OF OREGON II, INC.

CITY OF SHERWOOD

By: _____

By: _____

Division President

Attachment A

Existing Origination Points

Sherwood City Hall
22560 SW Pine St
Sherwood, OR 97140

Attachment All

Additional Permanent Origination Points

Sherwood High School
16956 SW Meinecke RD
Sherwood, OR 97140

Sherwood Police Station
20495 SW Borchers Dr
Sherwood, OR 97140

Attachment All

Future Permanent Origination Points

Future Sherwood High School



RESOLUTION 2016-054

AUTHORIZING THE CITY MANAGER TO RENEW THE FRANCHISE AGREEMENT FOR CABLE SERVICES WITH COMCAST OF OREGON II, INC.

WHEREAS, Comcast of Oregon II, Inc. ("Comcast") currently holds a cable services franchise agreement with the City of Sherwood with an effective date of February 24, 2000 and expiration date of January 31, 2015; and

WHEREAS, by a letter dated March 6, 2012, Comcast initiated the renewal process under Section 626 of the Cable Act and reserved its statutory rights related thereto; and

WHEREAS, the City and Comcast begun informal negotiations in December 2014 and the City extended the expiration date through Resolution 2015-004 to allow for further negotiation; and

WHEREAS, the City negotiated new terms and conditions to better support the needs of the city and establish consistent Right of Way rules and regulations; and

WHEREAS, the Council determines that is in the public interest to approve the proposed cable franchise agreement and authorize and direct its execution.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. There is hereby granted to Comcast of Oregon II., a non-exclusive cable franchise under the terms and conditions set forth in Exhibit A.

Section 2. The City Manager is authorized and directed to execute the franchise agreement on behalf of the City.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 6th of September, 2016.

Krisanna Clark, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

**CABLE TELEVISION
FRANCHISE AGREEMENT**

**Between the
CITY OF SHERWOOD
AND
COMCAST OF OREGON II, INC.**

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SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video and Signals as permitted under applicable law, including, but not limited to:
 - (A) **Public Access** means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary Programmers or users having editorial control over the content;
 - (B) **Educational Access** means Access where Schools and educational institutions are the primary Programmers or users having editorial control over the content;
 - (C) **Governmental Access** means Access where governmental institutions are the primary Programmers or users having editorial control over the content; and
 - (D) **PEG Access** means Public Access, Educational Access, and Governmental Access, collectively.
- 1.2 **Access Center** means a facility or facilities where Public, Educational, or Governmental use Signals are managed and delivered Upstream to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.
- 1.3 **Access Channel** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.
- 1.4 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.5 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals and PEG Access Channels, or as such service tier may be further defined by federal law.

- 1.6 **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.7 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").
- 1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.13 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.

- 1.14 **Designated Access Provider (“DAP”)** means the entity or entities designated by the Grantor to manage or co-manage PE G Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 1.15 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.16 **Effective Date** means the date defined in Section 2.4 herein.
- 1.17 **FCC** means the Federal Communications Commission.
- 1.18 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 1.19 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.20 **Franchise Area** means the area within the legal jurisdictional boundaries of the City of Sherwood and areas that may be annexed into the City during the term of this agreement.
- 1.21 **Grantee** means Comcast of Oregon, II, Inc. or its permitted successors, transferees or assignees.
- 1.22 **Grantor** means the City of Sherwood.
- 1.23 **Gross Revenue** 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;
 - 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 within the Franchise Area;

- 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: (1) 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; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
 - Revenues from program 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 within the Franchise Area 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 and PEG 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 fifty percent (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 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.
- 1.24 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.
- 1.25 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.
- 1.26 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.
- 1.27 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.
- 1.28 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.29 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.
- 1.30 **Programming** means television programs, audio, video or other patterns of Signals 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.
- 1.31 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public

utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a) (2).

- 1.32 **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.
- 1.33 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 1.34 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 1.35 **Section** means a provision of this Agreement, unless specified as part of another document.
- 1.36 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 1.37 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.
- 1.38 **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, the Cable System.
- 1.39 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

- 2.1 **Grant**
 - (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services **subject** to the terms and conditions set forth in this Agreement.
 - (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive

the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or 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.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through _____, 2026, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The Effective Date of this Agreement shall be _____, 2016 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 **Franchise Nonexclusive**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.6 below.

2.6 **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 2.6 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 2.6 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 per cent) of the geographic area of the Grantor; or to systems that only provide video services via the public Internet.

2.7 Police Powers

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law.

2.8 Relations to Other Provisions of Law

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its

police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 Effect of Acceptance

By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

- (A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.
- (B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

3.2 Payments

Grantee's Franchise fee payments to Grantor shall be computed Quarterly. Each Quarterly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding Quarter.

3.3 Acceptance of Payment and Re-Computation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, and in a form approved by Grantor, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports

Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement verified by an authorized representative of the Grantee, stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

3.6 Audit/Reviews

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to ten thousand dollars (\$10,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

- (A) Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of Franchise fees, revenues or expenses related thereto.

- (B) Source documents that completely explain any and all calculations related to any allocation of any amounts involving Franchise fees, revenues, or expenses related thereto.
- (C) Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving Franchise fees, revenues or expenses related thereto.

3.7 Interest on Late Payments

Payments not received within forty-five (45) days from the Quarter ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.8 Additional Commitments Not Franchise Fees

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees related to Cable Services to Grantor in accordance with applicable law. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

3.9 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.10 Tax Liability

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 that may be imposed by Grantor.

3.11 Payment on Termination

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 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.

4.2 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.

4.3 Rate Discrimination

All of Grantee's rates 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.

4.4 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 Service provided under this Agreement.

4.5 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.7, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.6 Mid-Term Performance Evaluation Session

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

4.7 Force Majeure

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or 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 to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Insurance Requirements

- (A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
 - (1) Commercial General Liability: Three million dollar (\$3,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a four million dollar (\$4,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability.
 - (2) Automobile Liability: Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage; and
 - (3) Employer's Liability: Two million dollar (\$2,000,000) limit.

5.2 Deductibles and Self-Insured Retentions

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

- (A) Endorsements.
 - (1) All policies shall contain, or shall be endorsed so that:
 - (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
 - (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;

- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
 - (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.
- (B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".
- (C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 Indemnification

- (A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the grant of this Agreement pursuant to Section 2.9 of this Agreement; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:
- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors,

subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;

- (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels or use of PEG funds by Grantor and/or DAP;
- (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
- (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 Performance Bond

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, 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 Fifty Thousand Dollars (\$50,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor as to its adequacy under the requirements of this Section. 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.

SECTION 6. CUSTOMER SERVICE

- 6.1 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.
- 6.2 Emergency Broadcast. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.
- 6.3 ADA Accessible Equipment. Grantee shall comply with the Americans with Disabilities Act (“ADA”), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 6.4 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Affiliates that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Affiliate or a third party. Grantor may, in writing, request copies of any such Records or books and Grantee shall provide such copies within ten (10) business days of the transmittal of such request. If the requested books and Records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.
- (B) Grantee shall at all times maintain and allow Grantor, with reasonable notice, access and the right to review a full and complete set of plans, Records and "as built" maps showing the approximate location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantor's review of the plans, Records, and as-built maps, provided for herein, shall occur at the Grantee's local office.
- (C) The ability for Grantor to obtain Records and information from Grantee is critical to the administration of this Agreement and the requirements herein. Therefore, Grantee's failure to comply with the requirements of this Section may result in fines as prescribed in Section 14.

7.2 Confidentiality

Subject to the limits of the Oregon Public Records Law, Grantor agrees to treat as confidential any books and Records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any

information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person.

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during Normal Business Hours.
 - (1) Upon request by Grantor, Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
 - (a) Nature and type of customer complaints.
 - (b) Number, duration, general location and customer impact of unplanned service interruptions.
 - (c) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (d) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Tier Subscribers, and "Pay" Subscribers.

- (e) Total disconnections and major reasons for those disconnections.
 - (f) Total number of service calls.
 - (g) Video programming changes (additions/deletions).
 - (h) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- (2) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 Inspection of Facilities

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

7.6 False Statements

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

7.7 Report Expense

All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:
 - (1) Educational Programming.

- (2) Sports.
 - (3) General entertainment (including movies).
 - (4) Children/family-oriented.
 - (5) Arts, culture and performing arts.
 - (6) Foreign language.
 - (7) Science/documentary.
 - (8) Weather information.
 - (9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (10) National, state, and local government affairs.
- (B) Grantee shall not delete any broad category of Programming within its control.

8.2 **Parental Control Devices**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 **Leased Access Channels**

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 **Continuity of Service**

- (A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.7 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- (B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Management and Control of Access Channels

- (A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.
- (B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.
- (C) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.
- (D) The Grantee shall, at Grantee's expense, provide connection, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 12 of this Agreement.

9.2 Channel Capacity and Use

- (A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP.
 - (1) Existing Access Channels: Grantee shall provide two (2) standard definition ("SD") Downstream Channels for distribution on Grantee's Basic Service level of Public, Educational, and Governmental Access Programming. The Channel designation of these Channels as of the Effective Date of this Agreement shall be: Channel 23 Sherwood and Channel 30 (TVCTV). Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.

- (2) Grantor may require Grantee to provide one (1) additional Access Channel for a particular type of PEG Access under this Section, when a Channel for a particular type of PEG Access programming meets the criteria set forth below. Upon Grantee's request, a public hearing will be conducted regarding the need for the additional PEG Access Channel. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of the required additional Access Channel.
- (a) Grantor must show that during any eight (8) consecutive weeks, the Government Channel 23 is in use for Locally Produced, Locally Scheduled Original Programming eighty percent (80%) of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight.

The applicable PEG Access Channel capacity expansion criteria as set forth in subsection (a) shall have been met, or exceeded, by the Grantor or the Designated Access Provider with responsibility for programming the PEG Access Channel. For the purpose of Section 9.2(A) (2) (a):

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

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

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

- (3) Throughout the term of this Agreement, Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, provide and maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant to Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.

9.3 **Standard Definition Channels**

Grantee shall carry all components of the SD Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for providing the Access Channel Signal in a SD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for costs associated with the transport and distribution of the SD Access Channel on its side of the Demarcation point.

9.4 **High Definition Channels**

Grantee shall provide and activate the Government Access Channel in HD format, for a total of one (1) HD channel, in the manner and conditions set forth in Section 9.4 below:

- (A) Within one hundred twenty (120) days of written notice by Grantee, after the fourth (4th) year of this agreement, Grantee shall activate Channel 23 – Sherwood, as designated by the Grantor, in high definition (“HD”) format and simultaneously carrying that SD Access Channel Signal provided under Section 9.2, and under the following conditions:
 - (a) Grantor shall have provided for the previous three (3) months twenty (20) hours weekly of local Original Programming, as described in 9.4 (A) (a) below, on Channel 23; and
 - (b) At least eighty percent (80%) of the Access programming carried on SD format Channel, which the Grantor has identified as the Channel to be carried in a HD format Channel, has been produced in an HD format for any three-month time period prior to notice provided under this Section; and
 - (c) All programming on the SD Access Channel must be local Original Programming produced within the franchise area, or other Original Programming produced specifically for the Grantor, or programming of interest to subscribers as determined by Grantor; and
 - (d) On the SD Access Channel identified by the Grantor to be simulcast as the HD Channel, not more than twenty percent (20%) of the Access Programming content carried on that SD Access Channels is character-generated only Programming for the three (3) month time period prior to the notice provided under this Section
 - (e) For purposes of this subsection 9.4(A), “Original Programming” means Programming in its initial cablecast

on the Cable System or in its first, second, third or fourth repeat for Grantor's City Council meetings and in its first or second repeat for all other programming.

- (f) If Grantor fails to maintain twenty (20) hours per week of programming as described in 9.4 A.(a) & (c) above, the Channel would revert back to SD; which could be reinstated to HD if Grantor meets the twenty (20) hour weekly requirement for one (1) month.
- (B) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all SD Access Channel 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 three (3) HD Channels.
- (C) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.

9.5 Quality Access Channel Signals.

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 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 14. 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 9.5.

9.6 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 9.2 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 DAP (s). 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 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 Two Thousand Dollars (\$2,000) to the Grantor for actual costs associated with the change, or (2) Two Thousand Dollars (\$2,000) 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.

9.7 Access Interconnections

The Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, maintain for the duration of this Agreement any and all existing Interconnections of Access Channels with contiguous Cable Systems owned by the Grantee as of the Effective Date of this Agreement, in order to receive from and deliver to the DAP's headend, via the Grantee's Headend, all the Access Channels required by this Agreement and originating by the Grantor or its designee.

9.8 Origination Points

- (A) The existing Origination Points at the time of the effective date of this agreement will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.
- (B) The additional permanent Origination Points required by the Grantor or DAP listed in Attachment A II shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantor.
- (C) The additional Origination Points that may be required by the Grantor or a DAP at the future public sites listed on Attachment A III, shall be provided by Grantee within ninety (90) days following receipt of written notice from Grantor, at the expense of Grantor. Such additional costs may be paid for from the PEG capital fee in Section 13.

- (D) Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 13.
- (E) There shall be no charge to the Grantor, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.9 Changes in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's Signal delivery technology, which directly or indirectly affects the Signal quality or transmission of Access services or Programming or requires Grantor to obtain new equipment in order to be compatible with such change for purposes of transport of and delivery of any Access Channels (SD or HD), Grantee shall, at its own expense and free of charge to Grantor and DAP, take necessary technical steps or provide necessary technical assistance, including the purchase or acquisition and maintenance of all necessary equipment, and training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

The Grantee shall maintain all Upstream and Downstream Access services, Programming and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including transmitters/receivers, associated cable and equipment in use upon the Effective Date of this Agreement, necessary to carry a quality Signal to and from Demarcation at Grantor's or DAP's facilities.

9.11 PEG Access Program Listings On Cable System's Digital Channel Guide

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Grantor or the DAP to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 12.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. Without limiting the foregoing sentence, Grantee shall be subject to and comply with the provisions of SMC Chapter 12.16.070, 12.16.080, 12.16.100 and 12.16.110, as amended from time to time., including all provisions applicable to "utility operators" as defined therein regardless of whether or not Grantee is a "utility operator." Grantee shall, at no cost to the Grantor, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the Right-of-Way when the same is in the best interest of the public, and the Grantee is requested to do so in writing.-

10.2 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor, to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.2, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

10.3 Discontinuing Use of Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a

reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

10.4 Hazardous Substances

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.
- (B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

10.5 Tree Trimming

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.6 Construction, Building and Zoning Codes

Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

10.7 Standards

- (A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable provisions of the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- (B) Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home at time of installation, and are consistent, in all respects, with applicable provisions of the National Electrical Code and the National Electrical Safety Code.

SECTION 11. SYSTEM DESIGN AND STANDARDS

11.1 Subscriber Network

- (A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.
- (B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

11.2 Test and Compliance Procedures

- (A) 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 applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

11.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan

in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

SECTION 12. PEG ACCESS FUND

Grantee shall support the continued viability of Public, Educational and Government (PEG) Programming, through the following funding:

12.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor eighty cents (\$.80) per Subscriber, per month to support the Capital equipment and facility needs of PEG Access which funds shall be used in accordance with applicable federal law. Nothing in this Section 12 shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section 12.1 for any lawful purpose permitted under applicable federal law. 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 after the end of each Quarter.

12.2 Annual Report

- (A) Upon request by Grantee, Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of Grantee's request .

Grantee may reasonably review Records of the Grantor (and of the DAP) related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor (and the DAP) that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor (or the DAP).

12.3 PEG Access Not Franchise Fees

- (A) Grantee agrees that financial support for the PEG Access, and all other Grantee PEG obligations set forth in this Agreement, shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of 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 past, present or future Franchise fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.

- (B) Grantor recognizes Franchise fees and certain additional commitments are external costs as defined under the FCC rate regulations in force at the time of adoption of this Agreement and Grantee has the right and ability to include Franchise fees and certain other commitments on the bills of cable Subscribers (47 C.F.R. Section 76.922).

SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

13.1 Equivalent Service

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions, subject to federal law. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

13.2 Service Availability

- (A) Service to New Subdivisions. Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following a request from a resident. For purposes of this Section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.
- (B) Grantee shall provide such service:
- (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
 - (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) Required Extensions of Service. Whenever the Grantee shall receive a request for service from at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at

no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.

- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.
- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 14.

13.3 Connection of Public Facilities

As a voluntary initiative, Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to public use buildings, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to all such future public buildings if the drop line to such building does not exceed one hundred and twenty five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) feet, including the cost of such excess labor and materials. Outlets of basic and digital economy tier (or its functional equivalent) Programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

The Grantor acknowledges that the provision of free Basic Cable Services to the locations identified in Section 13 reflects a voluntary initiative on the part of the Grantee. Grantee does not waive any rights it may have regarding complimentary service under Federal law or regulation for any outlets in excess of ten (10) as provided for in this section. Subject to the applicable law, should Grantee elect to offset governmental complimentary services for any outlets in excess of ten (10) against franchise fees, Grantee shall first provide the Grantor with ninety (90) days' notice prior notice.

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

14.1 Procedure for Remedyng 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.
- (B) The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 14 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:
 - (1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection (E) below, or;
 - (2) Cure the violation, or;
 - (3) 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. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (C) below.

- (C) 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, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in subsection (G) below.
- (D) 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 (C), the Grantor shall set a hearing to determine what fines, if any, shall be applied.
- (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (B)(1) above, 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 fines shall be applied.
- (F) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, 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.
- (G) The fines set forth in Section 14.2 of this Agreement may be reduced 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:
 - (1) Whether the violation was unintentional;
 - (2) The nature of the harm which resulted;
 - (3) Whether there is a history of prior violations of the same or other requirements;
 - (4) Whether there is a history of overall compliance, and/or;
 - (5) Whether the violation was voluntarily disclosed, admitted or cured.
- (H) If, after the hearing, Grantor determines that a violation exists, Grantor may use one or more of the following remedies:

- (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - (2) Establish the amount of fine set forth in Section 14.2, taking into consideration the criteria provided for in subsection (G) of this Section as appropriate in Grantor's discretion;
 - (3) Revoke this Agreement, and/or;
 - (4) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- (I) Fines shall not be imposed in an amount in excess of twenty five thousand dollars (\$25,000) for the Grantor within any twelve (12) month consecutive period.
- (J) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

14.2 Fines

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and 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.
- (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
- (a) \$2,500 for the first such violation;
 - (b) \$5,000 for the second such violation, unless the violation has been cured;
 - (c) \$7,500 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;
- (2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;

- (3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7): \$250/day for each violation for each day the violation continues.
- (B) The fines set forth in Section 14.2(A) may be reduced at the sole discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:
 - (a) whether the violation was unintentional;
 - (b) the nature of the harm which resulted;
 - (c) whether there is a history of prior violations of the same or other requirements;
 - (d) whether there is a history of overall compliance, and/or;
 - (e) whether the violation was voluntarily disclosed, admitted or cured.
- (C) Collection of Fines. The collection of fines by the Grantor shall in no respect affect:
 - (1) Compensation owed to Subscribers; or
 - (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
 - (3) Other remedies available to the Grantor provided, however, that collection of fines shall be the exclusive remedy for the Grantor for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

14.3 Revocation

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 14.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) 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.

- (B) 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 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, which transcript shall be at Grantee's sole cost.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter 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 Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

14.4 Relationship of Remedies

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 14.2. By way of example and not limitation, the collection of fines by Grantor shall in no respect affect:
 - (1) Refunds or credits owed to Subscribers; or
 - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.

- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for fines or otherwise, except as provided in Section 14.2; or an excuse of faithful performance by Grantee.

14.5 **Removal**

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.
- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

14.6 **Receivership and Foreclosure** Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
- (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
- (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
- (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
 - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

14.7 No Recourse Against Grantor

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

14.8 Non-Enforcement By Grantor

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 15. ABANDONMENT

15.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until this Agreement is revoked and a new grantee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

15.2 What Constitutes Abandonment

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
 - (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.7; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) In addition to the procedures set forth in the Cable Act, the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

16.2 Transfer of Ownership or Control

- (A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of fifty-one percent (51%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a fifty-one percent (51%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to cancellation unless and until the Grantor shall have consented thereto.
- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.

- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required 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.

SECTION 17. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other Section, subsection, paragraph, term, or provision hereof. Under such a circumstance the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to this Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may (1) seek appropriate legal remedies to amend this Agreement, or (2) shorten this Agreement to thirty-six (36) months, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

18.2 Dispute Resolution

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such

event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.

- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

18.3 **Notices**

- (A) Throughout the term of this Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such addresses shall be:

Comcast of Oregon, II, Inc.
Attn: Government Affairs
9605 SW Nimbus Ave
Beaverton, OR 97008

with copy to:

Attn: West Division/Government Affairs
15815 25th Ave West
Lynnwood, WA 98087

- (B) All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such address shall be:

City of Sherwood 22560 SW Pine Street, Sherwood, OR 97140

18.4 **Binding Effect**

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

18.5 Authority to Amend

This Agreement may be amended at any time by written agreement between the parties.

18.6 Governing Law

This Agreement shall be governed in all respects by the laws of the State of Oregon.

18.7 Captions

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

18.8 Entire Agreement

This Agreement, together with all appendices and attachments, 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.

18.9 Construction of Agreement

The provisions of this Agreement shall be liberally construed to promote the public interest.

Agreed to this _____ day of _____, 2016

COMCAST OF OREGON II, INC.

CITY OF SHERWOOD

By: _____

By: _____

Attachment A
Existing Origination Points

Sherwood City Hall
22560 SW Pine St
Sherwood, OR 97140

Attachment All
Additional Permanent Origination Points

Sherwood High School
16956 SW Meinecke RD
Sherwood, OR 97140

Sherwood Police Station
20495 SW Borchers Dr
Sherwood, OR 97140

Attachment All
Future Permanent Origination Points

Future Sherwood High School

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager

Through: N/A

SUBJECT: Resolution 2016-055, Setting Forth the City of Sherwood's Commitment to Put Healthy Options Within Reach of All Residents

Issue:

Shall the City of Sherwood join the Healthy Eating Active Living (HEAL) Cities campaign?

Background:

At last year's League of Oregon Cities (LOC) conference, Mayor Clark and a number of other City Councilors learned about the Healthy Eating Active Living (HEAL) Cities campaign. During the City Council retreat earlier this year, one of the Council goals developed was to explore joining this statewide campaign.

In 2012, the League of Oregon Cities Board of Directors resolved to partner with the Oregon Public Health Institute (OPHI) in the Healthy Eating Active Living (HEAL) Cities Campaign, and encouraged all Oregon cities to join the HEAL Cities Campaign and qualify as a HEAL City. The City of Sherwood can do this by accepting information, and technical assistance from OPHI staff on policies to support healthier eating and increased physical activity levels for all residents, create more livable communities, and create a culture of wellness at municipal workplaces, and adopting at least one recommended HEAL policy. Our city already meets these criteria in a number of ways including our new community garden program and the ongoing Cedar Creek trail project.

There are four different campaign levels within the HEAL program (see attachment 1 for description of levels). City staff has recently met with representatives of this statewide campaign and it has been determined that we would join at the Level Two – Active campaign level. Our goal would be to consider additional policies and programs to achieve Level Four – Fabulous within a short timeframe. There are currently 33 cities within Oregon that are HEAL cities (see attachment 2 for list of cities and campaign levels).

Financial Impacts:

There are no direct costs for the City of Sherwood to join this statewide campaign. By becoming a HEAL city, the City of Sherwood would become eligible for a grant program only available to HEAL cities.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2016-055, setting forth the City of Sherwood's commitment to put healthy options within reach of all residents.

Attachments:

1. Description of Campaign Levels
2. List of HEAL Cities

HEAL CITIES CAMPAIGN LEVELS

LEVEL ONE (EAGER)	EAGER CITIES join the Campaign by providing the Campaign with a resolution, proclamation, or letter expressing the intent to work with the Campaign to explore HEAL policies.
LEVEL TWO (ACTIVE)	ACTIVE CITIES are cities that already had at least one HEAL policy on their books before joining the Campaign. Active Cities join the Campaign by submitting these policies together with a resolution, or proclamation, or letter expressing the intent to work with the Campaign to explore additional HEAL policies.
LEVEL THREE (FIT)	FIT CITIES join the Campaign by adopting and implementing at least one new HEAL policy and submitting the policy with an implementation plan.
LEVEL FOUR (FABULOUS)	FABULOUS CITIES are FIT CITIES that adopt and implement at least two additional new HEAL policies.

Current Oregon HEAL Cities

Level One – Eager

- Donald
- Mosier
- St. Paul
- The Dalles
- Weston

Level Two – Active

- Astoria
- Coburg
- Coos Bay
- Coquille
- Corvallis
- Dallas
- Estacada
- Falls City
- Gervais
- Harrisburg
- Independence
- Lebanon
- Milwaukie
- Monmouth
- Mt. Angel
- Salem
- Scappoose
- Seaside
- Silverton
- St. Helens
- Tualatin
- Veneta

Level Three – Fit

- Fairview
- Tigard

Level Four – Fabulous

- Beaverton
- Gresham
- Lake Oswego
- Wilsonville



RESOLUTION 2016-055

SETTING FORTH THE CITY OF SHERWOOD'S COMMITMENT TO PUT HEALTHY OPTIONS WITHIN REACH OF ALL RESIDENTS

WHEREAS, improving livability and community health are important goals; and

WHEREAS, the nutrition and physical activity choices that individuals make for themselves and their families are influenced by their environment; and

WHEREAS, local policies on land use & transportation, access to healthy food, and shared use determine whether options for healthy eating and active living are within reach of the people who live, work, go to school, play or worship in the city; and

WHEREAS, high rates of costly chronic disease among both children and adults are correlated to environments with few or no options for healthy eating and active living; and

WHEREAS, the City of Sherwood is a member of the League of Oregon Cities; and

WHEREAS, in 2010, the League of Oregon Cities Board of Directors resolved to partner with and support the national *Let's Move!* Campaign headed by the First Lady of the United States, and has encouraged Oregon cities to adopt preventive measures to fight obesity; and

WHEREAS, in 2012, the League of Oregon Cities Board of Directors resolved to partner with the Oregon Public Health Institute (OPHI) in the *Healthy Eating Active Living (HEAL) Cities Campaign*, and encouraged all Oregon cities to join the *HEAL Cities Campaign* and qualify as a HEAL City by accepting information, training and technical assistance from OPHI staff on policies to support healthier eating and increased physical activity levels for all residents, create more livable communities, and create a culture of wellness at municipal workplaces, and adopting at least one recommended HEAL policy; and

WHEREAS, the City of Sherwood is committed to expanding opportunities for active transportation and connectivity to improve access for all residents to resources, including parks and recreation areas; and

WHEREAS, the City of Sherwood prioritizes bike and pedestrian safety and access, and will update the Comprehensive Plan to set goals and objectives to provide Complete Streets that includes universal access for all residents; and

WHEREAS, the City supports Community Gardens to provide healthy food for residents; and

WHEREAS, the City is committed to providing a healthy work environment for employees and supporting healthy behaviors.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Council hereby recognizes that joining the HEAL Cities Campaign has the potential to improve local livability and have a positive impact on the community's health and well-being. To that end, the City of Sherwood adopts this HEAL Resolution;

Section 2. The City of Sherwood Staff shall work with HEAL Cities Campaign Staff to explore HEAL policies and to identify those policies that are suitable for the City's unique local circumstances.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 6th day of September, 2016.

Krisanna Clark, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

City Council Meeting Date: September 6, 2016

Agenda Item: Public Hearing, 2nd Reading

TO: Sherwood City Council

FROM: Michelle Miller, AICP, Senior Planner

Through: Julia Hajduk, Community Development Director, Josh Soper, City Attorney and Joseph Gall, ICMA-CM, City Manager

SUBJECT: **Ordinance 2016-012, amending multiple sections of the Zoning and Community Development Code including Divisions I, II, and III as it relates to the regulation of Recreational Marijuana Facilities**

Issue:

Shall the City Council adopt an ordinance amending the Zoning and Community Development Code (SZCDC) in order to establish reasonable time, place and manner restrictions for recreational marijuana facilities?

Summary:

The proposal would amend Chapters 16.10 (Definitions), 16.12 (Residential Land Use Districts), 16.22 (Commercial Land Use Districts), 16.31 (Industrial Land Use Districts), 16.38 (Special Uses), 16.72 (Procedures for Processing Development Permits) of the Sherwood Zoning and Community Development Code (SZCDC) in order to regulate recreational marijuana facilities in Sherwood.

Specifically, the proposed Code amendments:

- Add definitions for the five recreational marijuana license facilities types: processing, production, retail sales, testing laboratories, and wholesale operations
- Add the approved location for the five license types to the “Use Table” categories in the Commercial and Industrial zones, and prohibit them within the Residential zones
- Add that recreational marijuana facilities be subject to the Type II review process - staff level decision with posting onsite and notice to property owners within 1,000 feet
- Add criteria for the five license types in the Special Use Chapter 16.38 that creates standards for indoor production and storage of marijuana, compliance with State licensing requirements, odor mitigation measures, public access restrictions, proximity to residential and mixed use zones for all recreational marijuana facility operations
- Add criteria for retail marijuana facilities that includes limiting hours and size, additional restrictive buffers around public parks and plazas, and other retail marijuana and medical dispensaries

- Add limitations on mobile and drive through businesses and specific security measures, size and site requirement for retail outlets
- Prohibit recreational marijuana facilities from locating within the Old Town overlay

The Planning Commission held a public hearing on July 26, 2016 and forwarded a recommendation of approval to the City Council. The Planning Commission recommendation is included as Attachment 1 to this report.

At the first reading on August 16, 2016, staff noted that within the Residential Use Table of Chapter 16.12, the proposed Code language should also include, “Recreational Marijuana Processing or Production” as not permitted within all residential zones with the “or Production” added to the table. Exhibit 1 now reflects this change.

Ordinance 2016-012 has been changed since the August 16, 2016 to reflect the Oregon Revised Statute authority granted to local jurisdictions for time, place and manner regulations pertaining to recreational marijuana. (ORS 475B.340)

City Council approved the proposed ordinance at the first reading on August 16, 2016, with the second reading scheduled for September 6, 2016.

Previous Council Action:

Public Hearing: January 5, 2016 approving Ordinance 2016-002, initiating a Ballot Measure to Prohibit Recreational Marijuana Facilities in Sherwood

Work Session: November 15, 2015, update on legislative changes

Background:

Oregon voters passed Measure 91 in 2014, legalizing recreational marijuana. Over the past two years, the Oregon legislature and the Oregon Liquor Control Commission (OLCC) have developed statewide regulations and processes in order to implement this measure.

During the 2015 session, the Oregon Legislature made provisions that include the ability of local jurisdictions to “opt out” or ban all types of recreational marijuana licenses within a particular jurisdiction. The Sherwood City Council decided to place this issue on the November ballot and let Sherwood voters decide whether to ban all of the recreational marijuana license types within the City (Ord. 2016-002). Because the issue is on the upcoming ballot, there is a moratorium in place, restricting all recreational marijuana facilities from locating in Sherwood until the issue is resolved by the Sherwood voters with the November 8, 2016 election.

If the voters decide not to make the ban permanent, the Sherwood community has this opportunity with these proposed code and plan amendments to provide additional marijuana related regulations and to confirm the permitted locations for particular facility types beyond the state regulations. If the Council approves the proposed changes, they would take effect if and when, the permanent ban is not approved at the November 8th election.

During March 2016, the City initiated an online survey to gauge the community's level of support for time, place and manner restrictions for regulating recreational marijuana facilities. The Planning Commission and the Police Advisory Board hosted Public Work Sessions on March 10, 2016 and April 26, 2016 concerning regulation of recreational marijuana facilities in Sherwood. Staff attended public events like the Community Service Fair and Music on the Green to inform and gauge opinion from the community on the proposed amendments. The proposed language reflects the issues raised during the public process.

Financial Impacts:

It is likely that there will be a minimal cost associated with making the Code updates available online and providing informational materials to the public.

Recommendation:

This is the second reading of this ordinance which was approved at the first reading. Staff respectfully recommends City Council adopt Ordinance 2016-012 amending multiple sections of the Zoning and Community development code including divisions I, II, and III as it relates to the regulation of recreational marijuana facilities.

Attachments:

Ordinance

Attachment 1: Planning Commission Recommendation to the City Council with Exhibits

Attachment 2: Citizen Comments from John and Judy Carter sent via email on July 30, 2016

**ORDINANCE 2016-012****AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE
INCLUDING DIVISIONS I, II, AND III AS IT RELATES TO THE REGULATION OF RECREATIONAL
MARIJUANA FACILITIES**

WHEREAS, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, testing, wholesale, and retail sale of recreational marijuana; and

WHEREAS, the Oregon Legislature approved HB 3400 and HB 2041, which allowed recreational marijuana facilities to be located in areas zoned for commercial, industrial, or mixed use, and marijuana producers to also be allowed within the residential zones; and

WHEREAS, ORS 475B.340 authorizes local jurisdictions to regulate recreational marijuana facilities by imposing reasonable time, place and manner restrictions on their operations; and

WHEREAS, the City Council adopted an ordinance referring the question of whether to prohibit recreational marijuana facilities within the City of Sherwood to voters at the November 8, 2016 election, and that ordinance also imposes a moratorium on the siting of recreational marijuana facilities within the City of Sherwood pending the outcome of the November 8, 2016 election; and

WHEREAS, the City Council believes it is in the best interest of the health, safety and welfare of the citizens of Sherwood to establish reasonable time, place and manner regulations concerning recreational marijuana facilities in the event that voters do not ban recreational marijuana facilities in Sherwood in November; and

WHEREAS, the Planning Commission conducted a public hearing on July 26, 2016, and after testimony from the public and staff, voted unanimously to forward a recommendation of approval to the City Council for the proposed Zoning and Community Development Code amendments regulating recreational marijuana facilities; and

WHEREAS, the proposed amendments were reviewed for compliance and consistency with the Comprehensive Plan, regional and state regulations and found to be fully compliant; and

WHEREAS, the proposed amendments were subject to full and proper notice and review and a public hearing before the Planning Commission on July 26, 2016; and

WHEREAS, the analysis and findings to support the Planning Commission recommendation are identified in the City Council Staff Report; and

WHEREAS, the City Council held public hearings on August 16, 2016 and September 6, 2016 and determined that the proposed changes to the Development Code met the applicable Comprehensive Plan criteria and continue to be consistent with regional and state standards.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and evidence presented at the public hearings, the City Council adopts the findings of fact contained in the Planning Commission recommendation, finding that the text of the SZCDC shall be amended as documented in attached Exhibit 1.

Section 2. Approval The proposed amendment for Recreational Marijuana Facilities Plan Text Amendment (PA) 16-05 identified in Exhibit 1 is hereby **APPROVED**.

Section 3. Manager Authorized The Planning Department is hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCD and necessary updates to Chapter 16 of the Municipal Code in accordance with City ordinances and regulations.

Section 4. Applicability The amendments to the City of Sherwood Zoning and Community Development Code by Sections 1 to 3 of this Ordinance apply to all land use applications submitted beginning on the effective date of this Ordinance.

Section 5. Effective Date This ordinance shall become effective upon certification of the November 8, 2016 elections results, if and only if the results are such that the measure prohibiting the establishment of recreational marijuana facilities in Sherwood does not receive the affirmative majority of the total number of votes cast thereon.

Duly passed by the City Council this 6th day of September 2016.

Krisanna Clark, Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Brouse	_____	_____
Robinson	_____	_____
Kuiper	_____	_____
King	_____	_____
Henderson	_____	_____
Harris	_____	_____
Clark	_____	_____

Note: footnotes are excluded in the following use tables. No changes are proposed to the footnotes as they currently exist in the City's code.

CHAPTER 16.10 DEFINITION

Exhibit 1

16.10.020 Definitions

ADD the following:

Marijuana Processing: A building or structure used in whole or in part for processing marijuana as defined in Chapter 614, Oregon Laws 2015 as the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts, and which is licensed by the Oregon Liquor Control Commission. Processing does not include packaging or labeling.

Marijuana Production: A building or structure used in whole or in part for producing marijuana as defined in Chapter 614, Oregon Laws 2015, as the manufacture, planting, cultivation, growing or harvesting of marijuana, and which is licensed by the Oregon Liquor Control Commission. Producing does not include drying or cultivation of immature plants received from a producer, or the cultivation and growing of an immature marijuana plant by a processor, wholesaler, or retailer if that party purchased or otherwise received the plant from a licensed producer.

Marijuana Retail Sales: A building or structure used in whole or in part for retail sales to a consumer of marijuana, cannabinoid products, and miscellaneous items, and which is licensed by the Oregon Liquor Control Commission.

Marijuana Testing Laboratories: A building or structure used in whole or in part for testing of marijuana items, and which is licensed by the Oregon Liquor Control Commission.

Marijuana Wholesale Operations: A building or structure used in whole or in part for wholesale distribution of marijuana, cannabinoid products, and miscellaneous items to a person other than a consumer, and which is licensed by the Oregon Liquor Control Commission.

CHAPTER 16.12 RESIDENTIAL LAND USE DISTRICT

16.12.020 - Allowed Residential Land Uses

A. Residential Land Uses

The table below identifies the land uses that are allowed in the Residential Districts. The specific land use categories are described and defined in Chapter 16.10.

RESIDENTIAL LAND USES	VLDR	LDR	MDRL	MDRH	HDR
RESIDENTIAL					
• Single-Family Attached or Detached Dwellings	P	P	P	P	P
• Two Family Dwelling Units	N	N	P	P	P
• Multi-family Dwellings	N	N	N	P	P
• Townhomes-subject to Chapter 16.44	N	N	N	P	P
• Planned Unit Developments (PUDs)-subject to Chapter 16.40	P	P	P	P	P
• Manufactured Homes on Individual Lots	P	P	P	P	P
• Manufactured Home Park-subject to Chapter 16.46	N	N	P	P	N
• Accessory Dwelling Unit-subject to Chapter 16.52	P	P	P	P	P
• Group Homes	P	P	P	P	P
• Government-Assisted housing	P	P	P	P	P

Whereas P=Permitted, C=Conditional, N=Not Allowed

**VLDR=VERY LOW DENSITY RESIDENTIAL, LDR=LOW DENSITY RESIDENTIAL, MDRL=MEDIUM DENSITY
RESIDENTIAL, MDRH=MEDIUM DENSITY RESIDENTIAL, HDR=HIGH DENSITY RESIDENTIAL**

RESIDENTIAL LAND USES	VLDR	LDR	MDRL	MDRH	HDR
ACCESSORY USES					
• Home Occupations-subject to Chapter 16.42	P	P	P	P	P
• Temporary Uses-subject to Chapter 16.86	P	P	P	P	P
• Amateur Radio Tower-subject to § 16.12.060	P	P	P	P	P
• Family Daycare Providers	P	P	P	P	P
COMMERCIAL USES					
• Agricultural Uses	P	P	P	P	P
• Residential Care Facilities	P	P	P	P	P
• Special Care Facilities (such as hospitals, sanitariums, and specialized living facilities)	C	C	C	C	P
• Plant Nurseries	C	C	C	C	C
• Public and Private Schools	C	C	C	C	C
• Daycare Facilities	C	C	C	C	C
• Any business, service, processing, storage, or display not conducted entirely within an enclosed building that is essential or incidental to any permitted or conditional use	C	C	C	C	C
• Raising of Animals other than Household Pets	C	C	C	C	C
• Recreational Marijuana Processing or Production- not for personal use or consumption	N	N	N	N	N
Whereas P=Permitted, C=Conditional, N=Not Allowed					
VLDR=VERY LOW DENSITY RESIDENTIAL, LDR=LOW DENSITY RESIDENTIAL, MDRL=MEDIUM DENSITY RESIDENTIAL LOW, MDRH=MEDIUM DENSITY RESIDENTIAL HIGH, HDR=HIGH DENSITY RESIDENTIAL					

RESIDENTIAL LAND USES	VLDR	LDR	MDRL	MDRH	HDR
CIVIC					
• Religious Institutions, Private Fraternal Organizations and Lodges, Country clubs or other similar clubs	C	C	C	C	C
• Public Recreational Facilities	P	P	P	P	P
• Cemeteries and crematory mausoleums	C	C	C	N	N
• Civic Buildings-(such as police and fire stations, post office)	C	C	C	C	C
• Public Use Buildings-(such as libraries, and community centers)	C	C	C	C	C
• Golf Courses	C	C	C	C	C
• Basic Utilities (such as electric substations, public works yard)	C	C	C	C	C
• Radio and communications stations, on lots with a minimum width and depth equal to the height of any tower in conformance	C	C	C	C	C
Whereas P=Permitted, C=Conditional, N=Not Allowed					
VLDR=VERY LOW DENSITY RESIDENTIAL, LDR=LOW DENSITY RESIDENTIAL, MDRL=MEDIUM DENSITY RESIDENTIAL LOW, MDRH=MEDIUM DENSITY RESIDENTIAL HIGH, HDR=HIGH DENSITY RESIDENTIAL					

CHAPTER 16.22 COMMERCIAL LAND USE DISTRICTS

16.22.020 - Uses

- A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.
- B. Uses listed in other sections of this code, but not within this specific table are prohibited.
- C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.
- D. Additional limitations for specific uses are identified in the footnotes of this table.

COMMERCIAL LAND USES

OC NC RC GC

RESIDENTIAL

- Multi-family housing, subject to the dimensional requirements of the High Density Residential (HDR) zone in 16.12.030 when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings.

P P P P

- Residential care facilities

N N C C

- Dwelling unit, including a manufactured home, for one (1) security person employed on the premises and their immediate family, and other forms of residence normally associated with a conditional use, as determined by the City.

P P P P

CIVIC

- Hospitals

N N C C

- Correctional institutions

N N N C

- Cemeteries and crematory mausoleums.

N N C C

- Police and fire stations and other emergency services

N C C C

- Vehicle testing stations

N N N C

- Postal services - Public

N C C C

- Postal substations when located entirely within and incidental to a use permitted outright.

P P P P

- Public use buildings, including but not limited to libraries, museums, community centers, and senior centers, but excluding offices

C C C C

Whereas P=Permitted, C=Conditional, N=Not Allowed

**OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL,
GC=GENERAL COMMERCIAL**

COMMERCIAL LAND USES	OC	NC	RC	GC
• Small-scale power generation facilities.	P	P	P	P
• Large-scale power generation facilities.	N	N	N	C
• Public recreational facilities including parks, trails, playfields and sports and racquet courts on publicly owned property or under power line easements	C	N	C	C
• Religious institutions, private fraternal organizations, lodges and secondary uses	C	N	P	P
• Public and private schools providing education at the elementary school level or higher	C	C	C	C
COMMERCIAL				
• Commercial trade schools, commercial educational services and training facilities	C	N	P	P
Entertainment/recreation				
• Adult entertainment business, subject to Section 16.54.010	N	N	N	P
• Drive-in motion picture theaters	N	N	N	N
• Motion picture and live theaters within enclosed building	N	N	P	P
• Country clubs, sports and racquet clubs and other similar clubs.	N	N	C	C
• Golf courses	N	N	N	N
• Indoor recreation facilities such as arcades, mini-golf, or bounce house facilities	N	N	P	P
• Hotels and motels	C	N	P	P
Whereas P=Permitted, C=Conditional, N=Not Allowed				
OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL, GC=GENERAL COMMERCIAL				

COMMERCIAL LAND USES	OC	NC	RC	GC
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Motor Vehicle-related

• Motorized vehicle and sport craft repairs and service	N	C	C	P
• Motorized vehicle and sport craft repair and service clearly incidental and secondary to and customarily associated with a use permitted outright or conditionally	C	C	P	P
• Motorized vehicle, sport craft and farm equipment rental or sales and display area with more than 5% external sales and display area, up to a maximum of 5,000 square feet.	N	N	N	C
• Motorized vehicle, sport craft and farm equipment rental or sales and display area primarily within entirely enclosed building with no more than 5% or 5,000 square feet of outdoor display area, whichever is less.	N	N	C	P
• Automotive, boat, trailer and recreational vehicle storage	N	N	N	N
• Vehicle fueling stations or car wash facilities	N	N	C	P
• Junkyards and salvage yards	N	N	N	N
• Manufactures home sales and display area	N	N	N	N

Office and Professional Support Services

• Business and professional offices.	P	P	P	P
• Medical and dental offices and urgent care facilities	P	P	P	P
• Business support services such as duplicating, photocopying, mailing services, fax and computer facilities	P	P	P	P

Whereas P=Permitted, C=Conditional, N=Not Allowed

**OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL,
GC=GENERAL COMMERCIAL**

COMMERCIAL LAND USES	OC	NC	RC	GC
• Any incidental business, service, processing, storage or display, not otherwise permitted, that is essential to and customarily associated with a use permitted outright, provided said incidental use is conducted entirely within an enclosed building	C	C	C	C
Childcare				
• Day cares, preschools, and kindergartens, when clearly secondary to a permitted use	P	P	P	P
• Day cares, preschools, and kindergartens as a stand-alone use.	N	P	P	P
General Retail - sales oriented				
• General retail trade, not exceeding 10,000 square feet of gross square footage.	P	P	P	P
• General retail trade greater than 10,000 square feet of gross square footage	N	P	P	P
• Tool and Equipment Rental and Sales, Including Truck Rental	N	N	C	P
• Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries)	N	N	P	P
• Wholesale building material sales and service	N	N	N	P
• Retail building material sales and lumberyards.	N	N	C	P
• Recreational Marijuana Wholesale Operations- subject to Chapter 16.38.030	N	N	N	P
• Recreational Marijuana Retail Sales- subject to Chapter 16.38.030	N	N	N	P

Whereas P=Permitted, C=Conditional, N=Not Allowed

OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL,
GC=GENERAL COMMERCIAL

COMMERCIAL LAND USES	OC	NC ¹	RC	GC
Personal Services				
• Health clubs and studios less than 5,000 square feet in size.	P	P	P	P
• Health clubs and studios greater than 5,000 square feet in size	N	N	C	P
• Personal services catering to daily customers where patrons pay for or receive a service rather than goods or materials, including but not limited to financial, beauty, pet grooming, and similar services.	N	P	P	P
• Public or commercial parking (non-accessory)	C	C	P	P
• Veterinarian offices and animal hospitals.	N	N	C	P
• Animal boarding/Kennels and daycare facilities with outdoor recreation areas ⁶	N	N	C	C
Eating and Drinking establishments				
• Restaurants, taverns, and lounges without drive-thru	P	C	P	P
• Restaurants with drive-thru services	N	N	P	P
INDUSTRIAL				
• Limited manufacturing entirely within an enclosed building that is generally secondary to a permitted or conditional commercial use	N	C	C	P
• Recreational Marijuana Processing or Production- subject to Chapter 16.38.030	N	N	N	N
• Recreational Marijuana Laboratory or Testing Facility- subject to Chapter 16.38.030	N	P	P	P
• Medical or dental laboratories	N	N	C	P
Whereas P=Permitted, C=Conditional, N=Not Allowed				
OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL, GC=GENERAL COMMERCIAL				

COMMERCIAL LAND USES	OC	NC ¹	RC	GC
WIRELESS COMMUNICATION FACILITIES				
• Radio, television, and similar communication stations, including associated transmitters.	N	N	N	C
• Wireless communication towers and transmitters ⁸	C	C	C	C
• Wireless communication facilities on City-owned property	P	P	P	P
• Wireless communication antennas co-located on an existing tower or on an existing building or structure not exceeding the roof of the structure	P	P	P	P
OTHER				
Agricultural uses including but not limited to:				
• Farm equipment sales and rentals	N	N	P	P
• Farming and horticulture				
• Truck and bus yards	N	N	N	P
Whereas P=Permitted, C=Conditional, N=Not Allowed				
OC=OFFICE COMMERCIAL, NC=NEIGHBORHOOD COMMERCIAL, RC=RETAIL COMMERCIAL, GC=GENERAL COMMERCIAL				

Chapter 16.31 - INDUSTRIAL LAND USE DISTRICTS

16.31.020 - Uses

- A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C) and not permitted (N) in the industrial zoning districts. The specific land use categories are described and defined in Chapter 16.88.
- B. Uses listed in other sections of this Code, but not within this specific table are prohibited.
- C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the industrial zones or contribute to the achievement of the objectives of the industrial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88.
- D. Additional limitations for specific uses are identified in the footnotes of this table.

INDUSTRIAL LAND USES

LI GI EI¹**RESIDENTIAL**

- Single Dwelling unit, including a manufactured home, for one (1) security person employed on the premises and their immediate family

P P P

CIVIC

• Hospitals	C	N	N
• Police and fire stations and other emergency services	C	C	C
• Vehicle testing stations	C	C	C
• Postal services - Public	C	C	C
• Postal substations when located entirely within and incidental to a use permitted outright	C	C	C
• Public and private utility structures, including but not limited to telephone exchanges, electric substations, gas regulator stations, treatment plants, water wells, and public work yards	P	P	C
• Small-scale power generation facilities	P	P	P
• Large-scale power generation facilities	C	P	C
• Public recreational facilities including parks, trails, playfields and sports and racquet courts on publicly owned property or under power line easements	C	C	C

COMMERCIAL

- Commercial Trade Schools, commercial educational services and training facilities

P P C

Entertainment/Recreation

- Country Clubs, sports and racquet clubs and other similar clubs

C C C

- Indoor Recreation facilities such as arcades, mini-golf, or bounce house facilities

C C C

Whereas P=Permitted, C=Conditional, N=Not Allowed**LI=LIGHT INDUSTRIAL, GI=GENERAL INDUSTRIAL, EI=EMPLOYMENT INDUSTRIAL**

INDUSTRIAL LAND USES

LI GI EI¹

Motor Vehicle Related

• Motorized vehicle and sport craft repairs and service	C	C	N
• Motorized vehicle and sport craft repair and service clearly incidental and secondary to and customarily associated with a use permitted outright or conditionally	P	P	P
• Automotive, boat, trailer and recreational vehicle storage	C	C	C
• Vehicle fueling stations or car wash facilities	C	C	C
• Junkyards and salvage yards	N	N	N
• Manufactured home sales and display area	N	N	N

Office and Professional Support Services

• Business and professional offices	P	P	P
• Business support services such as duplicating, photocopying, mailing services, fax and computer facilities ³	P	P	P
• Any incidental business, service, processing, storage or display, not otherwise permitted, that is essential to and customarily associated with a use permitted outright, provided said incidental use is conducted entirely within an enclosed building	P	P	P

Childcare

• Day cares, preschools, and kindergartens, when clearly secondary to a permitted use	P	P	P
• Day cares, preschools, and kindergartens as a stand-alone use	C	C	C

Whereas P=Permitted, C=Conditional, N=Not Allowed

LI=LIGHT INDUSTRIAL, GI=GENERAL INDUSTRIAL, EI=EMPLOYMENT INDUSTRIAL

INDUSTRIAL LAND USES
LI GI EI¹
General Retail - sales oriented

• Incidental retail sales or display/showroom directly associated with a permitted use and limited to a maximum of 10% of the total floor area of the business	P	P	P
• Medical marijuana dispensary, not exceeding 3,000 square feet of gross square footage	P ⁶	P ⁶	N
• Tool and equipment repair, rental and sales, including truck rental ⁷	P	P	P
• Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries)	P	P	N
• Wholesale building material sales and service	C	P	N
• Retail building material sales and lumber yards	C	P	N
• Recreational Marijuana Retail Sales- subject to Chapter 16.38.030	P	P	P

Personal Services

• Health clubs and studios less than 5,000 square feet in size	P	P	P
• Personal services catering to daily customers where patrons pay for or receive a service rather than goods or materials, including but not limited to financial, beauty, pet grooming, and similar services	C	C	C
• Public or commercial parking (non- accessory)	N	N	N
• Veterinarian offices and animal hospitals	C	C	C
• Animal boarding/Kennels and pet daycare facilities with outdoor recreation areas	C	C	C

Whereas P=Permitted, C=Conditional, N=Not Allowed

LI=LIGHT INDUSTRIAL, GI=GENERAL INDUSTRIAL, EI=EMPLOYMENT INDUSTRIAL

INDUSTRIAL LAND USES	LI	GI	EI ¹
Eating and Drinking Establishments			
• Restaurants, taverns, and lounges without drive-thru	C	C	C
• Restaurants with drive-thru services	N	N	N
• On-site cafeteria that is secondary to, and serving employees of, a permitted use	P	P	P
INDUSTRIAL			
• Manufacture, compounding, processing, assembling, packaging, treatment, fabrication of products contained wholly within an enclosed building provided exterior odor and noise is consistent with municipal code standards and there is no unscreened storage and not otherwise regulated elsewhere in the code	P	P	P
• Manufacture, compounding, processing, assembling, packaging, treatment, fabrication of products not otherwise prohibited elsewhere in the code provided other off-site impacts are compliant with local, state and federal regulations.	C	P	C
• Manufacture, compounding, processing, assembling, packaging, treatment, or fabrication of acids, paints, dyes, paints, soaps, ammonia, chlorine, sodium compounds, fertilizer, herbicides, insecticides and similar chemicals	N	C	N
• Distribution, warehousing and storage associated with a permitted use operating on the same site	P	P	P
• Distribution and warehousing up to 150,000 square feet, provided product(s) are stored within an enclosed building ⁹	P	P	P
• Distribution and warehousing greater than 150,000 square feet provided product(s) are stored within an enclosed building	N	P	C
• Recreational Marijuana Laboratory or Testing Facility subject to Chapter 16.38.030	P	P	P
• Recreational Marijuana Wholesale Operations- subject to Chapter 16.38.030	P	P	P
• Recreational Marijuana Processing- subject to Chapter 16.38.030	P	P	P
• Recreational Marijuana Production- subject to Chapter 16.38.030	P	P	N

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INDUSTRIAL LAND USES	LI	GI	EI ¹
• Mini-warehousing or self-storage	N	P	N
• Medical or dental laboratories, including biomedical compounding	P	P	P
• Laboratories (not medical or dental)	P	P	P
• Research and development and associated manufacturing	P	P	P
• Contractors' storage and equipment yards,	C	P	C ⁴
• Building, heating, plumbing or electrical contractors and suppliers, building maintenance services, and similar uses ¹⁰	P	P	P
• Industrial laundry, dry cleaning, dyeing, or rug cleaning plants	C	P	N
• Sawmills	C	C	N
• Sand and gravel pits, rock crushing facilities, aggregate storage and distribution facilities or concrete or asphalt batch plants	N	C	N
• Solid waste transfer stations	N	C	N

Whereas P=Permitted, C=Conditional, N=Not Allowed

LI=LIGHT INDUSTRIAL, GI=GENERAL INDUSTRIAL, EI=EMPLOYMENT INDUSTRIAL

Chapter 16.38 –Special Uses

16.38.010 - General Provisions

Special uses included in this Section are uses which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These conditions and standards may differ from the development standards established for other uses in the same zoning district. When a dimensional standard for a special use differs from that of the underlying zoning district, the standard for the special use shall apply.

16.38.020 - Medical Marijuana Dispensary

A. Characteristics

1. A medical marijuana dispensary is defined in Section 16.10.020.
2. Registration and Compliance with Oregon Health Authority Rules. A medical marijuana dispensary must have a current valid registration with the Oregon Health Authority under ORS 475.314. Failure to comply with Oregon Health Authority regulations is a violation of this Code.

B. Approval Process

Where permitted, a medical marijuana dispensary is subject to approval under Section 16.72.010.A.2, the Type II land use process.

C. Standards

1. Hours of Operation. A medical marijuana dispensary may not be open to the public before 10:00 a.m. and not later than 8:00 p.m. all days of the week.
2. Security Measures Required
 - a. Landscaping must be continuously maintained to provide clear lines of sight from a public right of way to all building entrances.
 - b. Exterior lighting must be provided and continuously maintained.
 - c. Any security bars installed on doors or windows visible from a public right of way must be installed interior to the door or window, in a manner that they are not visible from the public right of way.
3. Co-location Prohibited
 - a. A medical marijuana dispensary may not be located at the same address as a marijuana manufacturing facility, including a grow operation.
 - b. A medical marijuana dispensary may not be located at the same address with any facility or business at which medical marijuana is inhaled or consumed by cardholders.
4. Mobile and Delivery Businesses Prohibited
 - a. A dispensary may not operate as a mobile business as defined in Section 16.10.020.
 - b. A dispensary may not operate to deliver medical marijuana.
5. Drive-Through and Walk-Up. A medical marijuana dispensary may not engage in product sales outside of the facility or building through means of a walk-up window or drive-through access.
6. Proximity Restrictions

A medical marijuana dispensary may not be located within 1,000 feet of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between the property lines of the affected properties:

 - a. An educational institution: public or private elementary, secondary, or career school that is attended primarily by children under 18 years of age.
 - b. Another medical marijuana dispensary.
 - c. A public park or plaza.

(Ord. No. 2015-005, § 2, 5-5-2015)

16.38.030 Recreational Marijuana Facilities.

A. Characteristics:

1. Five types of recreational marijuana facilities are defined in Section 16.010.20.
2. Recreational marijuana facilities must be licensed by the Oregon Liquor Control Commission. A facility not licensed by the Oregon Liquor Control Commission is not permitted in any zone.

B. Approval Process. Where permitted, recreational marijuana facilities are subject to approval under 16.72.010.A2, a Type II process in addition to any other required land use review process required by this Code. Applications for approval shall include detailed responses to the applicable standards listed in this section.

C. General Standards for Recreational Marijuana Facilities

1. All new construction of marijuana facilities shall comply with Chapter 16.90, Site Planning.
2. Public Access Prohibited. Access to any production, processing, testing laboratory and wholesale facility shall be limited to employees, personnel, and guests over the age of 21, authorized by the facility operator.
3. Security Measures Required
 - a. Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances.
 - b. Exterior lighting shall be provided and continuously maintained per Chapter 16.154, Heat and Glare.
 - c. Any security bars installed on doors or windows visible from the public right-of way shall be installed interior to the door or window, in a manner that they are not visible from the public right-of-way.
 - d. No outdoor storage of marijuana, processed marijuana or marijuana waste is allowed at any recreational marijuana facility.
4. Proximity Restrictions. A recreational marijuana production, processing, retail, testing, laboratory or wholesale sales facility shall not be located within 100 feet of any single-family residential or multi-family residential zone. For purposes of this paragraph, the distance specified is measured from the closest points between property lines of the affected properties.
5. No recreational marijuana facility may be located within the Old Town Overlay District.

D. Standards for Marijuana Production and Processing Facilities

1. In production facilities, views from the exterior of the building into the area where marijuana is being grown are prohibited. Views of interior lighting in the production area from the exterior of the building are also prohibited.

2. Only indoor recreational marijuana production is allowed. Exterior growing is prohibited for commercial distribution.
3. Odor Mitigation Measures Required. Production and processing facilities shall install and maintain enhanced ventilation systems sufficiently designed to prevent detection of marijuana odor from adjacent properties and the public right-of-way. Such systems shall include the following features:
 - a. Installation of activated carbon filters on all exhaust outlets to the building exterior;
 - b. Location of exhaust outlets a minimum of 10 feet from the property line and 10 feet above finished grade; and
 - c. Maintenance of negative air pressure within the facility; or
 - d. An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the system described in subsections a-c above.

E. Standards for Recreational Marijuana Retail Sales Facilities

1. All new construction of retail marijuana facilities shall comply with Chapter 16.90 Site Planning.
2. Access to a retail marijuana sales facility shall be limited to people over the age of 21.
3. Hours of Operation. Retail sales facilities shall operate only between the hours of 10:00 a.m. to 8:00 p.m. all days of the week. An individual facility may set hours within those specified, but may not be open outside those parameters.
4. Security Measures Required.
 - a. Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances.
 - b. Exterior lighting shall be provided and continuously maintained consistent with Section 16.154.
 - c. Any security bars installed on doors or windows visible from the public right-of way shall be installed interior to the door or window, in a manner that they are not visible from the public right-of-way.
5. Mobile or Temporary Businesses Prohibited. A retail sales facility may not operate as a mobile or temporary business as defined in Section 16.10.020.
6. Drive-in or Drive-Through Facilities Prohibited. A retail sales facility shall not have a drive-in or drive-through facility, as defined in Section 16.10.020.

7. Proximity Restrictions. A retail facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between property lines of the affected properties.
 - a. Schools. Within 1,000 feet of a public or private elementary or secondary school attended primarily by children under 19 years of age.
 - b. Other Retail Facilities. Within 1,000 feet of another retail recreational marijuana facility or any medical marijuana dispensary.
 - c. Public Plazas and Active Use Parks. Within 1,000 feet of a public plaza or active use park. As used in this paragraph, an active use park includes a park which includes features such as playground equipment, athletic courts or fields, active use water features, or skating or skateboard features that is generally open to the public for park use.
8. No marijuana retail facility may be over 3,000 square feet in area used for the display of retail marijuana and marijuana related products.

16.72.010 - Generally

A. Classifications

Except for Final Development Plans for Planned Unit Developments, which are reviewed per Section 16.40.030, all quasi-judicial development permit applications and legislative land use actions shall be classified as one of the following:

2. Type II

The following quasi-judicial actions shall be subject to a Type II review process:

- a. Land Partitions
- b. Expedited Land Divisions - The Planning Director shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the Planning Director if necessary to fulfill the requirements of the adopted Comprehensive Plan, Transportation System Plan or the Zoning and Community Development Code.
- c. "Fast-track" Site Plan review, defined as those site plan applications which propose less than 15,000 square feet of floor area, parking or seating capacity of public, institutional, commercial or industrial use permitted by the underlying zone, or up to a total of 20% increase in floor area, parking or seating capacity for a land use or structure subject to a Conditional Use Permit, except as follows: auditoriums, theaters, stadiums, and those applications subject to Section 16.72.010.A.4.

- d. "Design Upgraded" Site Plan review, defined as those site plan applications which propose between 15,001 and 40,000 square feet of floor area, parking or seating capacity and which propose a minimum of eighty percent (80%) of the total possible points of design criteria in the "Commercial Design Review Matrix" found in Section 16.90.020.D.6.d.
- e. Industrial "Design Upgraded" projects, defined as those site plan applications which propose between 15,001 and 60,000 square feet of floor area, parking or seating capacity and which meet all of the criteria in Section 16.90.020.D.7.b.
- f. Homeowner's association street tree removal and replacement program extension.
- g. Class B Variance
- h. Street Design Modification
- i. Subdivisions between 4—10 lots
- j. Medical Marijuana Dispensary Permit
- k. Recreational Marijuana Facilities

Sherwood Public Library
Monthly Management Report
June 2016

Submitted by: Adrienne Doman Calkins, Library Manager



Contents:

- 1) Statistics
- 2) Programs & Activities
- 3) Service Stories

Statistics

Monthly Circulation	Last month	This month	This month last year	% Change from same month last year	% Change from last month
Total check outs (includes digital)	30,260	31,252	31,314	-0.2%	3.3%
Physical check outs & renewals	28,266	29,122	29,839	-2.4%	3.0%
Self-checkouts only	8,451	8,808	8,707	1%	4.2%
% @ self-check	30%	30%	29%	4%	1.2%
Digital checkouts (Library2Go)	1,282	1,359	1,064	28%	6.0%
Digital checkouts (Cloud Library)	712	771	411	88%	8.3%
Total digital checkouts	1,994	2,130	1,475	44%	6.8%
% of total checkouts	6.6%	6.8%	4.7%	45%	3%
Check ins	20,091	20,992	20,606	2%	4.5%
Service Area population	22,485	22,485	22,172	1%	0.0%
Checkouts per capita	1.35	1.39	1.41	-2%	3.3%
Checkouts per card holder	2.76	2.79	2.77	1%	1.0%

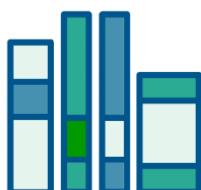
Sherwood Library patrons checked out an average of nearly 3 items per person in June. Digital checkouts now comprises nearly 7% of all checkouts.

Over 3,100 patrons accessed a free service with their library cards in June.

Monthly Patrons	Last month	This month	This month last year	% Change from same month last year	% Change from last month
New library cards	93	120	176	-32%	23%
Total registered users	11,055	11,208	11,314	-1%	1%
Active this month	2,870	3,129	2,963	6%	8%
% of patrons active this month	26%	28%	26%	7%	7%

NOTE: Annual database purge March 6, 2016. Pre-purge total was 12,203. Purged 1,398 Sherwood accounts inactive for 3 years.

Collection Development	Last month	This month	This month last year	% Change from last year	% of budget available	% of ordering window for FY left
Count of items added	338	184	945	-81%	2.6%	0%
Count of items withdrawn (including periodicals)	452	856	555	54%		
Total collection size	48,222	47,550				



This year we implemented an ordering schedule to cease ordering by the end of May and have fewer items still pending at the end of the fiscal year. We improved our workflow and successfully managed spending funds for books, multimedia and periodicals.

Volunteers	June Hours	Equivalent FTE	# of volunteers
Checkin (returns)	80.75	0.47	19
Checkin (tasket processing & holds)	56	0.32	7
Requests to fill	22	0.13	4
Shelving	13.5	0.08	3
Clerical/office asst	11.25	0.06	1
Program/outreach asst	7.25	0.04	4
Grand Total	190.75	1.10	46
Last month	229.25	1.32	46
% change	-20%	-20%	0%
This month last year	211.5	1.22	31
% change from last year	-10%	-10%	48%



Library visits have held near constant compared to June last year, despite more programs being offsite at the Center for the Arts or as part of outreach in the community.

Visits last month	This month	% Change from last month	Visits this month last year	% Change from last year	Open hours this month	Open days	Visits per hour	Visits per day	Avg physical checkouts & renewals per hour
22,238	23,519	5.8%	23,582	-0.3%	260	30	90	784	112

Programs & Activities

Programs & outreach	Mar-16	Apr-16	May-16	Jun-16
# of Adult Programs/Outreach	7	6	4	3
# of Teen Programs/Outreach	29	21	15	3
# of Youth Programs/Outreach	55	43	40	36
<i>School-aged</i>	41	31	27	22
<i>Storytimes</i>	26	21	24	25
# of Programs/Outreach for All Ages	3	4	4	7
TOTAL # of Programs/Outreach	70	57	54	46
TOTAL participation	1,680	1,358	1,660	2,022
Participation per FTE	167	135	165	201
Participation per capita	0.07	0.06	0.07	0.09
<i>Participation: adult programs</i>	120	105	57	30
<i>Participation: teen programs</i>	141	59	72	20
<i>Participation: youth programs</i>	1,441	1,020	1,144	1,705
<i>Participation: all age programs</i>	172	209	393	538
<i>Participation: school-aged</i>	592	373	617	1,075
<i>Participation: storytimes</i>	1,117	903	1,013	1,201

Outreach:

- Tualatin Park Outreach—12 participants
- Saturday Market Outreach—84 participants
- Edy Ridge 1st graders—72 participants
- Phoenix Academy Outreach—66 participants
- Altered Arts Festival—75 participants
- Helping Hands Library Newsletter distribution (Liz Myer)

Summer is our big outreach season and this year we participated in the Saturday Market and increased visits to schools to promote Summer Reading.

All Age Programs:

- Art Walk: Susan Kent, Artist Trading Cards Exhibit—42 participants
- Summer Reading Frozen Treat Kick-off—84 participants

Youth & Family Programs:

- Summer Reading Tuesday @ 2: Huitzilopochtli Danza Azteca—210 participants
- Paperback Pals—14 participants
- Coders' Academy—12 participants
- Cardboard Box Car Drive-In—28 participants
- Read to the Dogs—0 participants (1 sessions)
- Larger-than-Life Games—31 participants
- Storytimes
 - Baby Time: 80 participants (4 storytimes)
 - Toddler Storytimes, Tuesdays & Wednesdays: 447 participants (9 storytimes)

- Preschool Storytimes, Tuesdays & Wednesdays: 420 participants (9 storytimes)
- Saturday Family Storytime – 14 participants
- Storytime with Irma the Police Dog—70 participants
- Storytime in the Park (bilingual English & Spanish)—170 participants

Teen:

- Fiction Friends—12 participants
- TeenLAB— 4 participants
- Stop-motion Animation Class—4 participants

Two new storytime events this summer were hugely popular and are already planned to repeat. Storytime with Irma the Police Dog was presented with Sherwood Police Chief and officers and included a tour of a police car. The Storytime in the Park series was a partnership offering with Sherwood School District, YMCA, Helping Hands, and other local agencies.

Adult Programs:

- Spring Author Series: Tonya Russo—7 participants
- No time book club—4 participants
- Art Journaling Workshop—19 participants

Other Activities:

- Displays: LGBTQ/Pride Month, Father's Day, Self-Help, Adult Summer Reading, Genres for Kids
- Tours: Tour for a 5th grade St. Francis class—26 participants
- Washington County Cooperative Library Services Meeting attendance:
 - Policy Group (Adrienne)
 - Cataloging (Mary)
 - CircUs (Jenny)
 - Latino Services (Crystal)
 - Adult Services Committee (Pinn Crawford)
- Other meetings (abbreviated):
 - City Council (Adrienne)
 - Library Advisory Board (Adrienne & Crystal)
 - Art Walk (Crystal)
 - Bilingual storytime planning
 - Records Management software demonstration in Tigard (Adrienne)
 - All Library Staff meeting (All)
 - Main Street meeting (Adrienne)
 - Rotary Peace Committee (Adrienne)
 - Annual Chamber Awards Dinner (Adrienne)
- Year-end purchasing and financial analysis
- Relay for Life fundraising for City of Sherwood
- Staff trainings:
 - Management training—Mary & Jenny
 - New volunteers—Jenny

Service Stories

A patron had lots of questions about the stories in the park program. She said she'd wanted to visit similar programs in other cities, but hadn't had a chance, so was very glad to have it here in Sherwood. She expressed her thanks to Jaime about all the wonderful programs going on this Summer. In particular, she loved getting the books at the start of the program as her kids were able to get started reading right away. *Submitted by Jenny Swanson, Public Services Supervising Librarian.*

[Pinn] and Jenny are AWESOME!!! I already knew this, of course, but I wanted to make sure that I told you as well. :) This is so incredibly helpful. I searched and searched for solid information about these microphotographs and kept running into walls. Now I can finish writing about the photographs and I can use the microscope scene that I already wrote, hoping we'd be able to verify that one could be used to view a microphotograph. :) I can't tell you how much I appreciate all of this. It's exactly what I need. *Submitted by a patron and local author.*

A patron shared the book selection was excellent there were very good well written books and there was a nice variety for kids and adults. She especially loved one of the cook books that had gluten-free recipes because her sister in law had the book and made yummy meals from it. She was also very happy that they got a book and [Summer Reading] pamphlets in the beginning so everyone could get started reading right away. She also said she is sending her husband to sign up because there are lots of good history books her husband might enjoy choosing from. Good job guys!
Submitted by Christie Surprise-Tolj, Library Assistant.

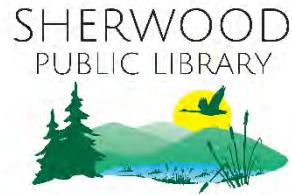
A huge thank you to all of you that were a part of our 1st ever Story Time at Sherwood PD. As always Irma was a big hit and the kids loved the stories read by police officers...It was a huge success with 40 kids and 70 people overall in attendance, not counting city staff! Thank you Jaime, for working with us to make this happen. Stay safe and keep making a difference. *Submitted by Chief Groth, Sherwood Police Department.*

Respectfully submitted,



Sherwood Public Library
Monthly Management Report
July 2016

Submitted by: Adrienne Doman Calkins, Library Manager



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Monthly Circulation	Last month	This month	This month last year	% Change from same month last year	% Change from last month
Total check outs (includes digital)	31,252	31,309	33,817	-7.4%	0.2%
Physical check outs & renewals	29,122	29,219	32,011	-8.7%	0.3%
Self-checkouts only	8,808	9,133	8,692	5.1%	3.7%
% @ self-check	30%	31%	27%	15.1%	3.3%
Digital checkouts (Library2Go)	1,359	1,299	1,306	-0.5%	-4.4%
Digital checkouts (Cloud Library)	771	791	500	58.2%	2.6%
Total digital checkouts	2,130	2,090	1,806	15.7%	-1.9%
% of total checkouts	6.8%	6.7%	5.3%	25.0%	-2%
Check ins	20,992	20,629	22,339	-7.7%	-1.7%
Service Area population	22,485	22,485	22,485	0.0%	0.0%
Checkouts per capita	1.39	1.39	1.50	-7.4%	0.2%
Checkouts per card holder	2.79	2.76	2.95	-6.5%	-1.0%

While the nation-wide trend in Libraries is that checkouts are going down, we are seeing an increase with library card registrations, up 10% compared to July 2015 and up 21% compared to last month.

Monthly Patrons	Last month	This month	This month last year	% Change from same month last year	% Change from last month
New library cards	120	152	138	10%	21%
Total registered users	11,208	11,341	11,452	-1%	1%
Active this month	3,129	3,020	3,098	-3%	-4%
% of patrons active this month	28%	27%	27%	-2%	-5%

NOTE: Annual database purge March 6, 2016. Pre-purge total was 12,203. Purged 1,398 Sherwood accounts inactive for 3 years.

Collection Development	Last month	This month	This month last year	% Change from last year	% of budget available	% of ordering window for FY left
Count of items added	184	354	595	-41%	90%	91%
Count of items withdrawn (including periodicals)	856	394	596	-34%		
Total collection size	47,550	47,510	48,722	-2%		

WCCLS currently has over 16,000 e-books available through Library2Go and Cloud Library (was 3M Cloud Library)

72% of the collection is in and available--the rest is checked out, in transit, or otherwise unavailable



Last year's focus was on weeding out old, outdated and unpopular items from the collection, while filling in the highest priority gaps in the collection. This year we will continue adding new and popular materials, as well as deliberately add more emerging authors, expand world languages, and develop a more robust Blu-ray collection.

Volunteers	July Hours	Equivalent FTE	# of volunteers
Checkin (returns)	81	0.47	17
Checkin (tasket processing & holds)	56.75	0.33	8
Summer Reading Program Asst	34.5	0.20	10
Requests to fill	21.75	0.13	4
Youth Services Asst	19.75	0.11	4
Shelving	13.75	0.08	3
Clerical/office asst	13.75	0.08	1
Outreach	6	0.03	3
Grand Total	247.25	1.43	41
Last month	190.75	1.10	46
% change	23%	23%	-12%
This month last year	222.54	1.28	34
% change from last year	10%	10%	17%



We had nearly 500 more visits this month compared to July, last year.

Visits last month	This month	% Change from last month	Visits this month last year	% Change from last year	Open hours this month	Open days	Visits per hour	Visits per day	Avg physical checkouts & renewals per hour
23,519	23,481	-0.2%	22,983	2.2%	250	30	94	784	117

Programs & Activities

Programs & outreach	Jul-16
# of Adult Programs/Outreach	2
# of Teen Programs/Outreach	4
# of Youth Programs/Outreach	32
School-aged	23
Storytimes	25
# of Programs/Outreach for All Ages	9
TOTAL # of Programs/Outreach	46
TOTAL Participation	4,699
Participation per FTE	466.17
Participation per capita	0.21
Participation: adult programs	561
Participation: teen programs	429
Participation: youth programs	2,299
Participation: all age programs	1,436
Participation: school-aged	2,134
Participation: storytimes	1,102

Outreach:

- Music on the Green—252 (2 events)
- Helping Hands Library Newsletter distribution (Liz Myer)

All Age Programs:

- Movie Matinee: Robin Hood—40 participants
- Larger-than-Life Games—15 participants (2 sessions)
- Knights of Veritas—140 participants

Youth & Family Programs:

- Summer Reading—1,139 youth
- Summer Reading Tuesday @ 2:
 - Henrik Bothe—156 participants
 - Reptile Man—534 participants
 - Lucky Diaz and the Family Jam Band—138 participants
 - Teatro Calamari—164 participants
- Paperback Pals—11 participants
- Coders' Academy—26 participants
- Woo-hoo Wii-U—14 participants
- Read to the Dogs—4 participants (2 sessions)
- Larger-than-Life Games—15 participants (2 sessions)



Over 2,000 youth and adults received a free book during Summer Reading this year—with 1,524 youth from birth to seventeen signed up to read (or be read to) a collective 1,380,600 minutes this summer.

Our Adult Summer Reading program saw 535 participants this year—an 82% increase from last year and 4th in the County.

Sherwood is also one of the leading libraries in Washington County for book reviews from our adult

- Storytimes
 - Baby Time: 50 participants (4 storytimes)
 - Toddler Storytimes, 245 Tuesdays & Thursdays: participants (8 storytimes)
 - Preschool Storytimes, Tuesdays & Thursdays: 211 participants (8 storytimes)
 - Saturday Family Storytime –0 participants
 - Storytime in the Park (bilingual English & Spanish)— 596 participants (4 sessions)

Teen:

- Fiction Friends—12 participants
- Felted Sushi Art—6 participants
- Summer Reading—385 teens

Adult Programs:

- Adult Summer Reading Program—535 registrations. (Book reviews are accepted through August.)
- DIY Craftshop: Flower Crowns—26 participants

Other Activities:

- Displays: Adult Summer Reading, Genres for Kids, Shark Week, Robin Hood Festival, Garden Bounty, Poetry.
- Installed new Community Bulletin Boards—procedures coming soon.
- Hosted Sherwood High School chess club for summer sessions.
- Recruitments for Librarian I (Youth Services), 0.5 FTE, and two On-Call Library Assistants.
- Washington County Cooperative Library Services Meeting attendance:
 - Policy Group (Adrienne)
 - Adult Services Committee (Pinn Crawford)
 - Publicity Committee (Jenny Swanson)
 - WCCLS Users Group (Jenny)
 - CircUs (Jenny)
- Other meetings (abbreviated):
 - City Council (Adrienne)
 - Friends of the Library (Adrienne)
 - Knighting Ceremony (Adrienne was knighted)
 - Records Management software demonstration (Adrienne)
 - Announcements about upcoming storytime changes (Adrienne)
 - All Library Staff meeting (All)
 - Main Street meeting (Adrienne)
 - Rotary Peace Committee (Adrienne)

Service Stories

[About Storytime in the Park] The service story for me is a family who happened upon the program on the first day. Maria was able to communicate with her about the series and she has brought her

kiddos to both events. Her kiddos sit in the front row and you can see the pride of recognition in their faces when we ask the audience if they know the Spanish word for objects and numbers.—
Submitted by Jaime Thoreson, Youth Services Librarian

A patron came into the library as I was unlocking the door this morning and said “Let the learning begin..”—*Submitted by Annette Steury, Library Assistant*

Respectfully submitted,

A handwritten signature in black ink that reads "Admen Callas". The signature is fluid and cursive, with "Admen" on the first line and "Callas" on the second line.

Sherwood Field House Monthly Report August 2016					
<u>August-16</u>	<u>Aug-16</u>		<u>YTD</u>		<u>Aug-15</u>
Usage		People		People	People
	Count	Served*	Count	Served*	Served*
Leagues	3	336	3	672	221
Rentals	70	910	85	1120	480
Other (Classes)					
[1] Day Use	4	39	8	90	81
Total Usage		1285		1882	782
Income FY 16 17	<u>Aug-16</u>	<u>YTD</u>			
Rentals	\$4,290	\$5,360			
League fees (indoor)	\$5,370	\$7,562			
Card fees (indoor)	\$70	\$70			
Day Use	\$106	\$249			
Advertising					
Snacks	\$558	\$902			
Classes					
Total	\$10,394	\$14,143			
FY 15 16					
Income	<u>Aug-15</u>	<u>YTD</u>			
Rentals	\$1,965	\$6,730			
League fees (indoor)	\$5,807	\$6,982			
Card fees (indoor)	\$70	\$90			
Day Use	\$224	\$382			
Advertising					
Snacks	\$73	\$137			
Classes					
Total	\$8,139	\$14,321			

*Estimated number of people served.



Fields and Gyms

- Youth soccer has started all of their practices on almost every field in town.
- Youth football is practicing at SMS, Archer Glen and Laurel Ridge.
- Youth volleyball and Youth cheer will both be in the gyms as soon as school starts.
- Requests have started coming in for fall basketball gym time.
- Youth Baseball has started their fall ball games on Sundays at Hopkins, LRMS, SMS and Snyder Park.

Field House

- The three adult leagues are going well.
- Requests have started coming in for fall/ winter rentals.

Respectfully Submitted

August 31, 2016

Lance Gilgan.