



**Sue Hildick**

*Director*

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September 23, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

A Board Order Approving the Renewal of the Cable Television  
Franchise Agreement for use of the County Rights-of-Way  
By Beaver Creek Cooperative Telephone Company

<b>Purpose/Outcome</b>	Approve the renewal of the cable television franchise agreement for a ten (10)-year term.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Effective September 23, 2021 through September 23, 2031.
<b>Previous Board Action/Review</b>	The original franchise was approved for a ten (10)-year agreement by the BCC in March 2008. Franchise negotiations began in April 2018 and have been extended for six months to one-year intervals to continue negotiations. The final franchise extension was submitted to the BCC in May 2020, with an expiration date of May 7, 2021.
<b>Strategic Plan Alignment</b>	Building public trust through good government.
<b>Counsel Review</b>	This Franchise Agreement has been reviewed and approved by County Counsel on 8-12-21. JM
<b>Procurement Review</b>	No, because this item is a franchise agreement.
<b>Contact Person</b>	Sue Hildick, Public and Government Affairs, 503-742-5900
<b>Contract No.</b>	N/A

**BACKGROUND:**

The County has concluded negotiations with Beaver Creek Cooperative Telephone Company (Beaver Creek), with terms and conditions for use of the County's rights-of-way to provide a cable communications system to residents in unincorporated Clackamas County. A map of the area to be served is represented as Exhibit A in the Franchise Agreement. Beaver Creek will pay franchise fees, the same as other cable providers, of 5% of gross revenues.

Provisions of the Franchise Agreement include broadcast of the following Public, Educational and Government (PEG) Access Channels: Clackamas County Government Channel, Clackamas

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Community College Channel, and Willamette Falls Studios Channel in the Beaver Creek service area. The cable company has also agreed to support PEG Access Channels with a monthly contribution of \$1.00 per subscriber. Customer service standards and interconnection requirements with all other contiguous cable systems in Clackamas County are included.

The franchise document is current with recent FCC standards. Beaver Creek has agreed to all terms and conditions of the franchise grant with the County.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the Cable Television Franchise Renewal Agreement with Beaver Creek, for a term of ten (10) years from the effective date of September 23, 2021. County Counsel has reviewed and approved the attached Board Order.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sue Hildick".

Sue Hildick, Director  
Public and Government Affairs

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Renewal of the Cable  
Television Franchise Agreement for Use of  
The County Rights-of-Way by Beaver  
Creek Cooperative Telephone Company



Order No. \_\_\_\_\_

This matter coming on at this time, and it appearing that Beaver Creek Cooperative Telephone Company (Beaver Creek) has been providing cable television service utilizing the County rights-of-way pursuant to a Franchise Agreement Extension, approved by the BCC, that expired on May 7, 2021 and;

It further appearing that the County and Beaver Creek have conducted negotiations as provided by federal law concerning the franchise renewal; and

It further appearing that the issuance of a renewal subject to the terms and conditions of the attached Franchise Agreement would be in the best interests of the citizens of the County;

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Franchise Agreement be approved and executed, and be subject to the terms and conditions as specified in the Agreement for a term of ten (10) years as specified in Section 3.3.

DATED this \_\_\_\_\_ day of September, 2021.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**CABLE TELEVISION  
FRANCHISE AGREEMENT**  
**between**  
**CLACKAMAS COUNTY, OREGON**  
**and**  
**BEAVER CREEK COOPERATIVE TELEPHONE COMPANY**

**September 23, 2021**

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**1. PURPOSE AND INTENT.**

- 1.1 Clackamas County, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Beaver Creek Cooperative Telephone Company (BCT), (hereafter Grantee) a non-exclusive 10-year Franchise, revocable as provided herein, to offer cable services over the Grantee's Cable System in the County, in the service area depicted on the attached map, marked as Exhibit A.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.
- 1.3 Implementation of Reserved Rights - The parties acknowledge that certain rights have been reserved by Grantor in the event it subsequently obtains jurisdiction over the several matters and, in such event, Grantor agrees to provide Grantee not less than 60 days prior written notice of the first reading of any proposed modification to the County Code that effects this franchise.

**2. DEFINITIONS.**

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

- a. "Access" or "Community Access" or "Public, Educational and Government (PEG) Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.

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



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

"Public Access Channel" means any channel or portion of a channel where any member of the general public or any non-commercial organization may be a programmer on a non-discriminatory basis, subject to operating rules formulated by the Grantor or its designee. Such rules shall not be designed to control the content of public access programming.

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

- c. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. "Availability of Service" means the ability of a subscriber to obtain a service within 7 business days by requesting the service and paying applicable installation and/or usage charges.
- e. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels. Basic Cable Service includes video service over Grantee's Cable System
- f. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system and retransmitted to subscribers, regardless of the means used by Grantee to receive the signal (off-the-air, microwave link, fiber optically, satellite receiver, by other means, etc.).
- g. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- h. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- i. "Cable Service" means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the

selection or use of such video programming or other programming service covered by the Cable Act.

- j. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Cable System constructed and operated by the Grantee in the County under this Franchise.
- k. "Channel" means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video and audio and may include other non-video subcarriers and digital information.
- l. "County" means Clackamas County, an Oregon statutory County, and all of the territory within its boundaries.
- m. "County Commission" means the governing body of the Grantor.
- n. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.
- o. "Converter" means a consumer electronic interface device for changing the television signal, transported by the Cable System, to a suitable channel or format which the television receiver is able to tune.
- p. "FCC" means the Federal Communications Commission.
- q. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- r. "Franchise Area" means all territory within Clackamas County, depicted on the attached Exhibit A.
- s. "Grantee" or "Franchisee" means Beaver Creek Cooperative Telephone Company (BCT) and its lawful and permitted successors, transferees, or assignees thereof.
- t. "Grantor" means Clackamas County, a statutory County in the State of Oregon.

- u. “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:
    - Basic Service fees and on all service tiers above Basic Service;
    - Fees charged for digital video tiers and on optional, per-channel, such as pay or premium services or per-program Cable Service such as Video-on-Demand and Pay-per-View;
    - Broadcast retransmission fees;
    - Regional sports programming fees;
    - Fees for any and all Cable music services
  - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
  - Inside wiring service plans and maintenance charges;
  - Convenience fees related to Cable Service;
  - Early termination fees on Cable Services;
  - 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, Non-sufficient funds 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 in the Franchise Area 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.

"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 similarly affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

"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.

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.

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"). 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.

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

selecting what information shall be transmitted to the subscriber or for any other purpose; or  
(b) transmits signals to any other location for any purpose.

- z. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- aa. "Monitoring" means observing a one-way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- bb. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.
- cc. "Pay Channel" or "Premium Channel" means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.
- dd. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity doing business in the State of Oregon, or any natural person.
- ee. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the cable communications system.
- ff. "Programming" means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.
- gg. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.
- hh. "Resident" means any natural person residing within the Franchise Area.
- ii. "Residential Service" means services delivered on the residential subscriber network.
- jj. "Residential Subscriber" means a subscriber who receives services on the residential subscriber network.

- kk. "Residential Network" means a cable communications network designed principally for the delivery of entertainment, community access, or interactive services to individual dwelling units.
- ll. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.
- mm. "Section" means any section, subsection, or provision of this Franchise Agreement.
- nn. "Streets and Public Ways" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- oo. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable communications system whether or not a fee is paid for such service.
- pp. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- qq. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

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

#### **3.1 Grant.**

Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a 10-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a Cable System within the Franchise Area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Cable System as required by the provisions of this Franchise Agreement.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general ordinances of the Grantor affecting matters of general County concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. In

particular, this Agreement supersedes any of Grantor's subsequently adopted Ordinances in any matter in which this Agreement and the Ordinance are in conflict. The Grantor shall make a good faith effort to notify the Grantee of any County proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any County laws or regulations affecting Grantee's operations.

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

### **3.2 Use of Streets and Public Ways.**

For the purpose of constructing, operating and maintaining a cable communications system in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the cable communications system. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantee of the obligations of Section 4.6 regarding the trimming of trees and other vegetation.

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.

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

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 10 years from the effective date of this agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be September 23, 2021, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

During the six-month period beginning five (5) years after the effective date of this Franchise,



the Grantor may, and Grantee shall actively participate in a review of Grantee's system and performance to date, in order to determine whether the Franchise should continue in effect for the full ten (10) year term or should terminate early at the end of five (5) years from the effective date. The Grantor may terminate the Franchise early if the Grantee has been guilty of a pattern of material violations of the Franchise; or refuses by the end of the six-month period to make provision for the effective resolution of any evident patterns of customer service problems unanticipated in provisions of the Franchise.

Any proposal by the Grantor to terminate the Franchise early shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the Franchise early as provided herein, the Franchise shall continue for its full ten (10) year term.

### **3.4 Franchise Area**

The franchise area shall be that area designated on the attached map, Exhibit A. Any future expansions of franchise area as shown on Exhibit A must be approved by the Board of Commissioners, as an amendment to this franchise.

Except for any annexations or incorporations of the franchise area, any future modifications of the franchise area must be approved by the Board of Commissioners, as an amendment to this franchise. Any expansion area beyond that shown in Exhibit A, as granted must include terms for initiation of construction within twelve (12) months and coverage of area with complete service availability by eighteen (18) months after initial construction.

### **3.5 Franchise Not Exclusive.**

The Franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise, subject to the provisions of Section 13.11 herein.

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

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

of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within thirty (30) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

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

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and

having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an Affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

### **3.7 Change in Control.**

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee or of Grantee's interest in the Cable System. There shall be no change of control of the Cable System without prior approval of the Grantor. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

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

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

### **3.8 Franchise Acceptance.**

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

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

### **4.1 General.**

As of the Effective Date of this Agreement, the Cable System utilizes a Hybrid Fiber Coaxial (HFC) system architecture. 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.

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.

#### **4.2 Right of Inspection of System Construction and Maintenance.**

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area, The County or its agents may, at the County's cost, inspect the Cable System at any time to ensure compliance with this Agreement and applicable law. If a condition creating a serious, clear, and immediate danger to the health, welfare, or safety of the public is found to exist, the County, in addition to taking any other action permitted under applicable law, may alert Grantee, verbally or in writing, of the unsafe condition and require Grantee to make the necessary repairs and alterations to correct the unsafe condition immediately or within a reasonable time established by the County.

#### **4.3 Right to Conduct Compliance Review.**

Not more than once every thirty-six (36) months during the term of this Agreement, the County or its representatives may conduct a full compliance review with respect to whether Grantee has complied with the material terms and conditions of this Agreement, so long as it provides Grantee with sixty (60) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that Grantee may organize the necessary records and documents for appropriate review by the County. The period for any such review shall be for not more than thirty-six (36) months immediately previous to the notice. Within thirty (30) days of a written request, Grantee shall provide the County with copies of records and documents reasonably requested and related to the cable compliance review. Any confidential or proprietary information provided by Grantee shall be subject to the conditions set forth in Section 12.1 below. Within thirty (30) days after the conclusion of the cable compliance review, the County shall provide Grantee with its written determination, including substantiating documentation, regarding Grantee's compliance with the terms and conditions of this Agreement.

#### 4.4 Provision of Residential Service.

- a. In General. It is the County's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this section, Grantee shall provide Cable Service within 7 business days of a request by any Person within its Franchise Area that can be connected by a standard installation. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request.

Except as otherwise provided in Section 10.1(e), Grantee shall provide such service:

At non-discriminatory monthly rates for Residential Subscribers; and

- i. Notwithstanding Section 4.4.(a), Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers. For the purposes of Section 4.4.(a), "Commercial Subscribers" means any Subscribers other than Residential Subscribers.
- ii. At a non-discriminatory installation charge for a standard installation, consisting of a 125-foot drop connecting to an outside wall for Residential Subscribers and a 125-foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the County;
- iii. The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over 125 (one-hundred twenty-five) feet but less than five hundred (500) feet.
- iv. The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.
- v. The amount of cable extension as measured in feet, which is the basis for the cost sharing, will be computed as follows:
- vi. The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, provided that the Grantee shall make a reasonable effort to secure and use private rights of way if the use of such rights of way reduces

the cost of the line extension to the subscriber. The actual length of cable needed from the starting point to the subscriber's home shall be the total number of feet. The cost of the project from the starting point to the home shall be divided by the total number of feet. The resultant cost per foot shall be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting subscriber's side of the street shall be included as part of any line extension greater than 125 (one-hundred twenty-five) feet, otherwise these costs shall not be charged to the subscriber.

- b. Transferred Franchising Jurisdiction. In the event that cable franchising jurisdiction is transferred to the County from another jurisdiction, then the terms of this Franchise shall apply within the area, so long as the application of this Franchise in that area is acknowledged in the governmental actions which implement the transfer of franchising authority. In the event that cable franchising jurisdiction is transferred from the County to another jurisdiction (e.g., annexation into a municipality), then the terms of this Franchise shall only apply if the area in question is not covered by a franchise agreement with the new jurisdiction. If the area in question is covered by a franchise agreement with the new jurisdiction, this Franchise shall no longer apply to such area, but shall continue to apply to all areas outside of such jurisdiction.
- c. New Subdivisions. In new subdivisions, service will be made available no more than 60 days from first occupancy or from the date of completion of final construction grading, whichever comes first.

#### **4.5 Erection of Poles.**

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

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

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

deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

#### **4.7 Repair and Restoration of Streets and Public Ways.**

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, or other public way for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee, at Grantee's cost and expense, provided that Grantor first notifies and provides Grantee five (5) business days to cure. The cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

#### **4.8 Construction Codes.**

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

#### **4.9 Reservations of Street Rights.**

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

#### **4.10 Street Vacation and Abandonment.**

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such damage. The Grantor may do such work or cause it to be done provided that Grantor first provides Grantee five (5) business days to cure, unless additional time is granted by Grantor. The cost incurred by Grantor, including cost of inspection, supervision and administration in conducting such work, shall be paid by the Grantee.

#### **4.11 Movement of Facilities.**

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. 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.

If public funds, other than the funds of the Grantor, including pass through funds, are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the relocation of facilities as provided under Sections 4.8, 4.9 and 4.10, hereof. Grantee shall be afforded equal treatment subject to applicable law and regulations and Grantor shall, upon written request of the Grantee, use commercially reasonable efforts to support Grantee's application for such funds; provided, however, that (1) Grantor may decline if such application would compete with Grantor or a component unit thereof for such monies, and (2) such efforts will be at Grantee's sole cost and expense, including Grantor's staff time.

#### **4.12 Easements.**

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor



upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

#### **4.13 Undergrounding.**

- a. Cable must be installed underground where:
  - i. all existing utilities are placed underground,
  - ii. statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground,
  - iii. overhead utility lines are moved underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise),
  - iv. Grantee is unable to get pole clearance,
  - v. underground easements are obtained from developers of new residential areas, or
  - vi. utilities are overhead but residents prefer underground (service to be provided at cost to resident).
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

#### **4.14 As-Builts.**

Grantee shall maintain strand map drawings or the functional equivalent of the Cable System and make them available to the Grantor for inspection upon request. Said drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall provide the Grantor, on request, a copy of as-builts or GIS map layers showing the location and nature of Grantee's facilities in the streets and public ways.

#### **4.15 Emergency.**

In the event of an emergency, or when the cable system creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable system without prior notice. Subject to the limits of the Oregon Torts Claims Act and the Oregon Constitution, and exemptions available for emergency actions, Grantor will defend, indemnify and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.15.

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

#### **5.1 System Configuration.**

- a. Grantee has designed, constructed and shall maintain a Cable System that has been built for digital television standards. Grantee's Cable System shall remain at least equivalent to the existing HFC 750 MHz two-way activated\_capability for all programming services throughout all parts of the system. The Cable System shall be capable of supporting video and audio, including HD and SD video, on the Effective Date of the Agreement. The Cable System shall be two-way activated and able to support two-way interactive services such as Video On Demand (VOD) and high speed internet access via the Cable System. Grantee's Cable System shall provide consistent, high-quality reception to Subscribers in the System in accordance with the FCC technical standards and other technical standards contained in this Agreement.
- b. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards, as amended. The Cable System shall meet or exceed any and all technical performance standards of the FCC and shall comply with all current applicable codes including the National Electrical Safety Code, the National Electrical Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Oregon and the generally applicable laws, ordinances and construction standards of the County.

#### **5.2 Satellite Earth Stations.**

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

### 5.3 Interconnection.

- a. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise, including the interconnections listed in Exhibit B.
- b. Initially, Grantee shall Interconnect the Cable System with all other major, contiguous cable systems in Clackamas County, specifically including but not limited to Oregon City, unincorporated Clackamas County and Clackamas Community College. The Grantor shall not direct interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Grantee shall not be required to interconnect with the other cable systems unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect to the demarcation point, which shall be at a meet point located at or near the border of the neighboring jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost effective and technically viable interconnections of the PEG Access Channel signals. Grantee agrees to not object to or impede any connection established by a Grantor designated access provider, whether on the property of the Grantor, a designated access provider, or another cable operator, by means of which another cable operator obtains access to the PEG Access Channels, and not to object or impede the transmission of such signals by any other cable operator. The Grantee shall not charge the other party a fee for PEG programming in connection with transporting PEG signals or programming on Grantee's Cable System to the meet point or other location agreed upon between Grantee and the other cable operator if Grantee is not required to pay a fee to obtain such programming

The system shall provide the capability to transmit Upstream Channels and Downstream Channels, in a capacity, format and quality to ensure no degradation across the Interconnect, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Local Origination Programming produced by Grantor and other major, contiguous cable systems in Clackamas County; selected Access Programming carried on those cable systems; and the exchange of selected Institutional Network video and data communications applications by local and state public and nonprofit organizations, including forward and reverse applications between and among the Grantee and contiguous cable systems as shall in the future have significant institutional network capacity or services determined by the Grantor through an ascertainment of community needs and interests to warrant interconnection.

- c. Grantee shall ensure that all interconnections on its own property are securely housed and maintained and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for Institutional Network and PEG access signals.

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

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

- d. Grantee's interconnect obligation is partially conditioned upon the consent of the cable operators in the affected neighboring jurisdictions. Grantee shall not charge a fee for the transmission of programming from adjacent systems if Grantee is not required to pay a fee to obtain such programming.

#### **5.4 Emergency Alert Capability.**

Grantee shall provide Emergency Alert capability in full compliance with applicable FCC requirements. Grantee and the County shall establish procedures to override video and audio on all Channels of the Cable System to provide emergency messages consistent with the FCC's directives.

#### **5.5 Standby Power.**

Grantee acknowledges that it was not compliant with the standby power requirements of the previous franchise. Within three years of the Effective Date of this Franchise Grantee shall provide continuous standby power generating capacity at the Cable System control center or headend, capable of powering all headend equipment for at least twenty-four (24) hours and

indefinitely with a continuous or replenished fuel supply. Grantee shall maintain standby power system supplies, rated with six (6) hours or more of standby capability at each node or remote location. In addition, Grantee shall have in place and have filed with the Grantor throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than six hours.

#### **5.6 Parental Control Lock.**

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

#### **5.7 Technical Standards.**

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

#### **5.8 Performance Testing.**

- a. Grantee shall be responsible for ensuring that its Cable System is designed, installed, and operated in a manner that fully complies with 47 C.F.R. §76.640 and other applicable FCC standards as amended. Pursuant to this Section 5.8, Grantee shall conduct and document complete performance tests of its Cable System, to show the level of compliance with applicable FCC standards, upon request by the Grantor as needed to resolve consumer complaints or issues, or issues raised by County Commissioners or staff. . The performance tests shall be directed at determining the extent to which the Cable System complies with applicable FCC technical standards regarding the transmission and reception capabilities of digital Cable Systems.
- b. All testing required in this Section 5.8 may be observed by representatives of the Grantor. Grantee shall provide reasonable notice to the Grantor in advance of the scheduled testing date(s), and the Grantor shall then notify Grantee before such testing is scheduled to occur if it desires to observe such test(s).
- c. Copies of system performance tests shall be maintained by the Grantee and made

available to the Grantor upon request within ten (10) days. In addition, the Grantee shall retain written reports of the results of any tests required to demonstrate compliance with FCC standards, and such reports shall be submitted to the Grantor upon the Grantor's request.

- d. If any test required hereunder indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the Grantor, shall take corrective action, retest the locations and advise the Grantor of the action taken and results achieved.

## **6. SERVICES AND PROGRAMMING**

### **6.1 Programming Categories.**

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

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

The Grantor acknowledges that identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable System.

### **6.2 Changes in Video Programming Services.**

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

Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

**6.3 Interactive Residential Services.**

The Grantee shall make Interactive Services available to residential subscribers consistent with other cable systems in the Portland metropolitan area.

**6.4 Leased Channel Service.**

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

**6.5 Obscenity.**

The Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Oregon, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

**6.6 Community Access and Local Programming.**

**a. Designated PEG Access Providers.**

- i. The County may designate Public, Educational and Government “PEG” Access Providers, including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the County, as between the Designated Access Provider and the 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 Public Access Channel, consistent with this Franchise; such rules shall not be designed to control the content of public access programming.
- ii. Grantee shall cooperate with Designated PEG Access providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with designated PEG Access providers as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

- iii. Except as provided in this Franchise, the County shall allocate Access Resources to Designated Access Providers only. Grantee shall cooperate with the County in such allocations, in such manner as the County shall direct.
- iv. For the purpose of Section 6.6:
  - 1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by PEG Access; and
  - 2. "Access Resources" means all operating support and other financial means by which PEG Access is exercised, including, but not limited to, Access Capital Cost support under Section 6.5.
- v. The requirements of this Section 6.6 shall be subject to the Franchise Review provided for in Section 13.11.

**b. Channel Capacity.**

- i. Downstream Channels. Grantee shall provide 4 Downstream Video Channels for distribution of PEG Access programming to all Residential Subscribers. Grantee shall simultaneously carry each Access Channel in both a high definition (HD) format and a standard digital (SD) format, unless and until Grantee ceases to carry channels on its system in SD, at which time the Access Channels may be provided in only an HD format, for a total of 8 Activated PEG Access Channels, four SD Access Channels and four HD Access Channels. Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to pay additional HD charges applicable to receiving other comparable HD programming services.

**c. Access Programming Information in Programming Guides.**

- i. Grantee shall include the PEG Access Channels and programming information in any program guides, navigation systems and search functions accessible through Grantee's set-top box and remote controls, or their successor technologies, provided to its Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and programming information in the programming guides.



- ii. Inclusion of PEG channels on the programming menu, and subsequent provision of program information by the entity(s) responsible for providing the information, shall then afford all functionality offered for all other services on the system. This includes, specifically, the ability to record PEG programming via the Digital Video Recording (DVR) system in place and auto-tuning abilities.
- iii. The Designated Access Providers shall provide to the Grantee's designee, the Access Channel programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

**d. Support for Access Costs.**

- i. Grantee Financial Support

Beginning with the effective date of this Agreement, and continuing throughout its term, Grantee shall provide \$1.00 per subscriber per month as support for PEG access. This contribution shall be payable to Grantor or its designated access provider, at Grantor's discretion, beginning 60 days after the effective date of this agreement. Grantee shall provide 30 days' prior notice to Grantee's Subscribers of the contribution. The content of such notice shall be provided to the Grantor for review.

The Grantee shall make such payments quarterly, following the effective date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. The Grantor recognizes that these commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement, and that the Grantee has the right to include these costs on the bills of cable customers.

The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under this Section 6.5.d. The annual report shall be submitted to Grantee within 120 days of the close of the Grantor's fiscal year, which fiscal year runs for twelve consecutive months from July 1 to and including June 30. Grantee may review records of Grantor regarding the use of funds described in such report. The Grantor agrees that the report shall document the amounts spent or encumbered for operating support for PEG access.

- ii. If requested, the Grantee shall provide both the institutional network service and connections for institutional purposes at Grantee's sole expense within six (6) months of a request for interconnection by each public facility to the extent the facility is within the service area outlined in Exhibit A and including areas of expanded service during the term of the franchise.
- iii. PEG Access Support Not Franchise Fees

Grantee agrees that although the sum of Franchise fees and the payments set forth in this section may total more than five percent (5%) of Grantee's Gross Revenue in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any Franchise fee payments due under this Franchise.

The Grantor recognizes franchise fees and financial support for PEG Access are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement and, in accordance with federal law, the Grantee has the right and ability to include franchise fees and financial support for PEG Access on the bills of customers.

**e. Hardwired Origination Points.**

Grantor shall install, maintain and activate a hardwired programming origination point using digital fiber optic-based signal transport for each facility listed in Exhibit B. Grantor shall ensure that Access channel origination signals are delivered to its headend and on to Subscribers without deterioration in quality.

**f. Cable Service to Public Facilities.**

The Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet of Basic Cable, expanded Basic Service, and Internet access services to those administrative buildings owned and occupied by the County, fire station(s), police station(s), and K-12 public school(s) that are within the Service Area including areas of expanded service during the term of the Franchise and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations or already served by another cable provider shall be excluded. Initially, such installations shall be provided to facilities to the extent the facility is within the service area outlined in Exhibit A within sixty (60) days of Grantee's commercial launch of Cable Services. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee provided, however, Grantor may distribute the Cable Service throughout the building for County purposes at Grantor's cost including necessary equipment to

maintain signal quality so long as Grantor's use does not adversely affect Grantee's signals outside of any such building. The Cable Service provided shall not be used for commercial or public viewing purposes of any channels except PEG channels.

Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the County or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation.

**g. Access Interconnections.**

- i. The Grantee shall install and maintain all access interconnections of PEG access channels in accord with the requirements of Section 5.3.
- ii. In addition, Grantee shall, continue to cooperate with the Grantor, other cable franchisees, and Designated Access Providers to establish an interconnection point at Clackamas Community College, to allow for the receipt and delivery of programming from participating access centers. Grantor shall coordinate with the Designated Access Provider for distribution on the existing access channel.

**h. Impact of Technology Change on Programmers.**

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 substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, not including customer premises equipment, to ensure that the capabilities of Access Providers or Access Programmers are not diminished or adversely affected by such change. Changes in technology shall not require subscribers to obtain equipment not otherwise needed for receiving any other channels on the system.

**i. Technical Quality.**

- i. Grantee shall maintain all Upstream and Downstream Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability provided for local Broadcast Channels and as required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.

- ii. Grantee shall have no responsibility for the technical production quality of the Access Programming distributed on the Access Channels.
- iii. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

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

### **7.1 Intent.**

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

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

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

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b. Coordination of the operation of public, government, and educational access channels.
- c. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as County departments, schools and health care institutions;
- d. Formulating and recommending long-range cable communications policy for the Franchise Area;
- e. Disbursing and utilizing Franchise revenues paid to the Grantor.
- f. Regulating rates, to the extent permitted by law.
- g. Customer service, to the extent permitted by law.
- h. Planning and facilitating development of public uses of the cable system on the residential and institutional networks, both within the County and through interconnection with adjacent systems;

### 7.3 Rate regulation.

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all subscribers within the Franchise Area at least thirty (30) day notice of proposed rate changes, as required by the FCC. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns.
- c. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

### 7.4 Remedies for Franchise Violations.

- a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day, per incident, not to exceed a total of \$50,000 per incident, in the event Grantee violates any other material provision of this Franchise Agreement, subject to Section 7.4(c), below. In addition to any other remedies as specified in this Franchise and in the event that Grantor determines that Grantee has violated any material provision of this Agreement, subject to Section 7.4(c) below, Grantor may impose as liquidated damages, and not as a penalty, up to five hundred dollars (\$500) per incident for non-continuing violations and up to one thousand dollars \$1,000 per incident for continuing violations, not to exceed a total of ten thousand dollars \$10,000 per incident. For purposes of this Section, the term "per incident" means a single occurrence of a violation without regard to number of customers.

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

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

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

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
  - ii. Cure the violation, or;
  - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. 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 found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (f) of this section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
  - 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 penalties, 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)(i) 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 penalties 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 may be provided an opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- g. The penalties set forth in this section 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:
  - i. Whether the violation was unintentional;
  - ii. The nature of any harm which resulted;
  - iii. Whether there is a history of overall compliance, and/or;
  - iv. Whether the violation was voluntarily disclosed, admitted or cured.
- h. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
  - i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
  - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
  - iii. Revoke this Agreement, and/or
  - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor and shall be reviewable only consistent with the dispute resolution provisions of this Agreement.

- j. Notwithstanding other language to the contrary in this agreement:
  - i. In cases where either intermittent or repeated violations of any single franchise standard occur, Grantor may in its discretion give one initial thirty (30) day notice and opportunity to cure and no subsequent notices of each individual violation; and

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

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

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

The following customer service and consumer protection standards shall apply. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

##### **a. Customer Service and Telephone Responsiveness.**

- i. The Grantee shall maintain an office within the area of the County served under this Franchise. The office must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, with a minimum of nine (9) hours per day on weekdays and five (5) hours on Saturdays. consistent with federal law.
- ii. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- iii. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.
- iv. The Grantee shall maintain:
  - 1. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under



normal operating conditions, the customer will receive a busy signal less than 3% of the time.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds. Grantee may use an Automated Response Unit ("ARU") or Voice Response Unit ("VRU") in answering and distributing calls from customers and the wait time not to exceed thirty (30) seconds will commence once the ARU or VRU forwards the call to a queue for a live representative. If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

**b. Service and Repair Calls.**

- i. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be acknowledged by the Grantee within 24 hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within 24 hours under normal circumstances. All other repairs should be completed within 72 hours under normal circumstances.
- ii. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request the Grantee shall offer either a specific appointment time or else a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, or, during daylight savings time, after 5:00 p.m. (repair only).

The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

- iii. As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of

converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

- iv. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this section, shall mean those that are located up to 125 feet from the existing distribution system.

**c. Disconnection.**

- i. The Grantee may disconnect a subscriber if:
  - 1. At least 30 days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
  - 2. The Grantee has provided at least ten (10) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.
- ii. Regardless of subsection 1. hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, is abusive or threatening to employees or representatives, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.
- iii. The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, within thirty days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any undisputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

**d. Credits Upon Outage.**

Except for planned outages where subscribers are provided reasonable notification in advance, power outages caused by Grantee, acts of God and vehicular damage to

facilities, upon a subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the subscriber's account for any period of four hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

**e. Downgrade Charges.**

Grantee may impose Downgrade Charges only if:

- i. The Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and
- ii. The Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

**f. Billing Information Required.**

The Grantee bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefor. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

**g. Information to Subscribers.**

- i. Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
  1. The equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
  2. The amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;
  3. The Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
  4. The toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
  5. The company's practices and procedures for protecting against invasions of subscriber privacy; and

6. The notice and referral information, as set forth in subsection 2. hereof.
  7. Clearly explained billing procedures and in addition, the Grantee's phone number for information, complaints, and inquiries shall be placed on the part of the bill retained by customers;
  8. liability specifications;
  9. converter/subscriber terminal policy; and
  10. Breach of agreement policy.
- ii. Notice to Subscribers.
1. The Grantee shall inform the Grantor and subscribers within 30 days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
  2. All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.
  3. The Grantee shall, upon request by the Grantor and no more often than annually, send written notice approved by the Grantor to all subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement. The Grantor or its designee shall bear the cost of the printing and production of such notice; the Grantee shall be responsible for inserting and mailing out the notice.

iii. **Written Complaint Acknowledgment.**

Within ten (10) days following receipt of a formal complaint, as defined in subsection (h)(ii) below whether received by telephone, email, in writing or any other means, from a subscriber. The Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the County, such as the FCC.

**h. Complaint Resolution.**

- i. The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not attempted to reasonably settle the complaint.
- ii. For purposes of this section, a "complaint" is a grievance related to the service of the cable communications system within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

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

**8.1 Compensation.**

**a. Franchise Fee.**

As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the Gross Revenues generated in any manner through the operation of the cable system to provide cable services as defined in this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible

amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

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

The Grantee shall at all times during the term of this Franchise maintain on file with the County an up-to-date list of all entities receiving Gross Revenues as such revenues are defined in this Franchise.

In the event the obligation of Grantee to compensate Grantor through franchise fees is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to Grantor compensation equivalent to the compensation paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

**b. Bundling.**

If Grantee's subscribers are offered a pricing discount for Cable Services, information services, or Telecommunications Services offered over Grantee's Cable System where the Subscriber requests and receives more than one of these services, then the calculation of the discount of Gross Revenues for Cable Services shall be applied in a reasonably proportionate manner to Cable Services and other services. The existence and amount of a discount shall be determined on the basis of the sum of the lowest generally available standalone rates for each of the services. This apportionment of revenues shall apply only for the purpose of calculation of franchise fees payable to Grantor pursuant to the franchise agreement.

Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise fee obligations to Grantor.

**c. Payment of Franchise Fees.**

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. At the time of quarterly payment, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee

payments.

- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.
- iii. In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.
- iv. Payment of the franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

## **8.2 Faithful Performance Bond.**

- a. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the County with good and sufficient surety approved by the County, in the penal sum of Fifty Thousand Dollars (\$50,000.00), or the deposit of \$50,000 in a restricted account satisfactory to the County, conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.
- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a) and unless the County Commission specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
  - i. The remaining term of this Franchise; or
  - ii. If required by the County, the removal of all of Grantee's system installed in the County's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the County. The bond shall be subject to the approval of the County Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the County a duplicate copy of the bond along with written evidence of payment of the

required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the County.

- d. In a form approved by the County, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the County substantially the same rights and guarantees provided by a faithful performance bond.

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

- a. The Grantee shall defend, indemnify and hold harmless the County, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, as a result of any actions of the Grantee under this Franchise. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the Franchise or the construction, operation, maintenance or reconstruction of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.
- b. If the Grantee fails to defend as required in Section 8.3(a), above, then the Grantee agrees to and shall pay all expenses incurred by the County and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in section 8.3(a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

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

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



during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

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

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

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

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to the County. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e. Grantee shall file prior to the effective date of this Franchise and shall maintain on file with the County a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of Section 13.2. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.  
The certificate shall show that the general liability portion of the insurance includes:
  - i. Broad form property damage;
  - ii. Products and completed operations;

- iii. Explosion, collapse, and underground exposures;
  - iv. Contractual liability; and
  - v. Owner's and contractors' protective coverage.
- f. Failure to maintain adequate insurance as required under Section 13.2 shall be cause for immediate termination of this Franchise by the County.
- g. The Grantee shall also indemnify, defend and hold harmless the County and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

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

### **9.1 Right to Purchase the System.**

Grantor shall have the right to purchase the Cable System, consistent with applicable law.

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise Agreement, or in the event of expiration of the initial term of this Franchise Agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise Agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor.

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

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

### **9.2 Condemnation.**

The County may condemn all of any portion of Grantee's Cable System only consistent with applicable law.

### **9.3 Right of Inspection of Records.**

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

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

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

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

In addition to all rights granted under section 9.3, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise enforcement effort, the books and records of any parent or Affiliate company, for the purpose of determining the Gross Receipts of the Grantee generated in any manner through the operation of the cable system under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of three percent (3%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit up to \$15,000.

**9.5 Right of Inspection of Construction.**

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement.

**9.6 Intervention.**

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

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

Grantor shall not have the right to require the removal of any portion of the Cable System in the event of a forfeiture or revocation as provided herein to the extent that Grantee continues to use the Cable System to provide Telecommunications Services pursuant to a lawful grant of authority from the appropriate jurisdiction.

**9.8 Inspection of Facilities.**

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

**10. RIGHTS OF INDIVIDUALS PROTECTED.**

**10.1 Discriminatory Practices Prohibited.**

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis or race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to non-discrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all subscribers, regardless of disability, including the

provision of a remote-control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.

- c. For hearing impaired customers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, The Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d. Upon request by a subscriber or potential subscriber, the Grantee shall make a reasonable effort to provide information required under Section 7.6(e) and 7.6(f), or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e. Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

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

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without the subscriber's written consent or a valid court order permitting the tapping.

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

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

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

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

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

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

#### **10.6 Landlord - Tenant.**

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

- a. To Grantee's providing of the services to units of the facility;
- b. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
- e. However, Grantee shall have no obligation to provide service if the average cost of installation per unit exceeds the Grantee's standard per foot rate for line extension construction multiplied by one hundred twenty-five (125) feet. To determine unit costs, the total project cost is divided by the number of units. The total project cost

shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

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

### **11.1 Revocation.**

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

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

Upon the occurrence of one of the events set out above, following 10 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In a hearing of the Grantee, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether

the Grantor properly has declared a forfeiture. If a forfeiture is lawfully declared, all rights of the Grantee shall immediately be divested without a further act upon the part of the Grantor.

### **11.2 Receivership.**

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

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

### **11.3 Expiration.**

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

### **11.4 Continuity of Service Mandatory.**

It shall be the right of all subscribers to receive all available services available for the section of the Cable System that the subscriber's connection to the Cable System is located within 24 months of the effective date of this franchise agreement insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to upgrade, overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its commercially reasonable best efforts to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise.

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 the security provided by the Grantee.

## **12. OPERATION AND MAINTENANCE.**

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

The Grantee shall maintain a business office within the County for managing the cable system, and, subject to the provisions of Section 10 of this Franchise and, to such privileges as may be established under Oregon law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon five (5) business days' notice, all records of the Grantee and also of any parent company, Affiliate or any Cable Operator, which relate to the operation of the Franchise. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information," nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the greatest extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. The franchisee shall not be required to maintain books and records for Franchise compliance purposes longer than six (6) years.

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

- a. Grantee shall upload the file to a secure, password-protected site that Grantor or its representatives or agents may access to view; or
- b. print the file.

### **12.2 Communications with Regulatory Agencies.**

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate or any Cable Operator of the system authorized by this Franchise, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized

pursuant to this Franchise agreement, shall be submitted to the Grantor each year with Grantee's annual report, and copies of any such documents and their replies from respective agencies shall also be made available to the Grantor. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting operations within the Franchise Area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate or Cable Operator of the Cable System authorized by this Franchise.

### **12.3 Reports.**

- a. Quarterly Reports. Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken, if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide trouble call and outage reports and summary statistics on patterns of complaints or service problems, installation requests and other customer service information, provided that such information may be reasonably generated by the Grantee.
- b. Annual Report. No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:
  - i. Audited financial reports (or if audited reports are not available, then reviewed reports) for the previous fiscal year, including Gross Revenues from all sources, gross subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet; a financial report for the metropolitan area system of which the Franchise is a part with reviewed Gross Revenues and receipts as well as statements of expenses, balance sheet and capital expenditures reviewed by an independent certified public accountant; and a financial report for the Franchise Area with audited Gross Revenues and receipts. In the event any audited financial report has not been published by the date due under this section, then the audited financial report and, if the audited financial report is for the Grantee then also the accompanying reviewed report and the audited report for the Franchise Area, shall be deemed presented on time if presented within thirty (30) days after publication.

All financial reports required under this section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be

limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at Gross Receipts for the calculation of franchise fees to be paid to the Grantor.

- ii. A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.
- c. Monitoring and Compliance Reports. No later than April 15 of each year, the Grantee shall provide a written report of any technical performance tests for the residential network required to show that Grantee is meeting the standards provided in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests.
- d. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this Franchise.
- e. All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee.
- f. In addition to what is specified herein, Grantee shall only be required to develop or create reports that are not a part of its normal business procedures and reporting or that have not been defined specifically within this Franchise, if needed in order to meet the requirements of this Franchise.

#### **12.4 Safety.**

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code, National Electrical Code, and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.

- c. All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

### **13. MISCELLANEOUS PROVISIONS.**

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

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder. The Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise.

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

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

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

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

without the requirement of further action on the part of the County, and any amendments to this Franchise negotiated pursuant to this section as a result of such provision being preempted shall no longer be of any force or effect.

### **13.3 Captions.**

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

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

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

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

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

### **13.6 Force Majeure.**

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; floods; washouts; restraint of government and people; civil disturbances; explosions; entire failure of utilities; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

**13.7 Entire Agreement.**

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

**13.8 Consent.**

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

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

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

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

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, as amended in 1992 and 1996.

**13.11 Comparability of Other Cable Franchises.**

- a. If the Grantor issues a franchise to a Cable Operator to enter upon the streets and public ways for the purpose of operating a Cable System to provide Cable Service to any part of the Franchise Area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise; providing, however, that the Grantor shall not be prohibited from granting any franchise containing requirements which are, taken together, greater than those of this Franchise, nor from granting any franchise containing individual requirements which are greater or lesser than the requirements of this Franchise.
- b. The Grantee agrees that its sole remedy under this provision, other than testimony before the County Commission, is to seek injunctive relief to prevent the issuance of a franchise which would violate the first paragraph.

### **13.13 Notice.**

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

If to the County:       Administrative Services Manager  
Public and Government Affairs Department  
2051 Kaen Road, 4<sup>th</sup> Floor, Suite 426  
Oregon City, Oregon 97045

If to the Grantee:       President  
Beaver Creek Cooperative Telephone Company  
15223 S Henrici Road  
Oregon City, Oregon 97045

### **13.14 Future Changes in Law.**

If future changes to binding federal or state law affect any material provision of the Franchise, including but not limited to the scope of Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within sixty (60) days, either party may seek appropriate legal remedies to amend the Franchise. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

### **13.15 Public Disclosure.**

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.

### **13.16 Time is of the Essence.**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, 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 force majeure, Grantee's performance shall be excused during the affected time periods 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 agents.

IN WITNESS WHEREOF, the COUNTY has caused these presents to be executed by its Board of County Commissioners and Beaver Creek Cooperative Telephone Company has caused these presents to be signed by its CEO/President.

BOARD OF COUNTY  
COMMISSIONERS

BEAVER CREEK COOPERATIVE  
TELEPHONE COMPANY

\_\_\_\_\_  
Tootie Smith, Chair

\_\_\_\_\_  
Paul Hauer, President

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Title:

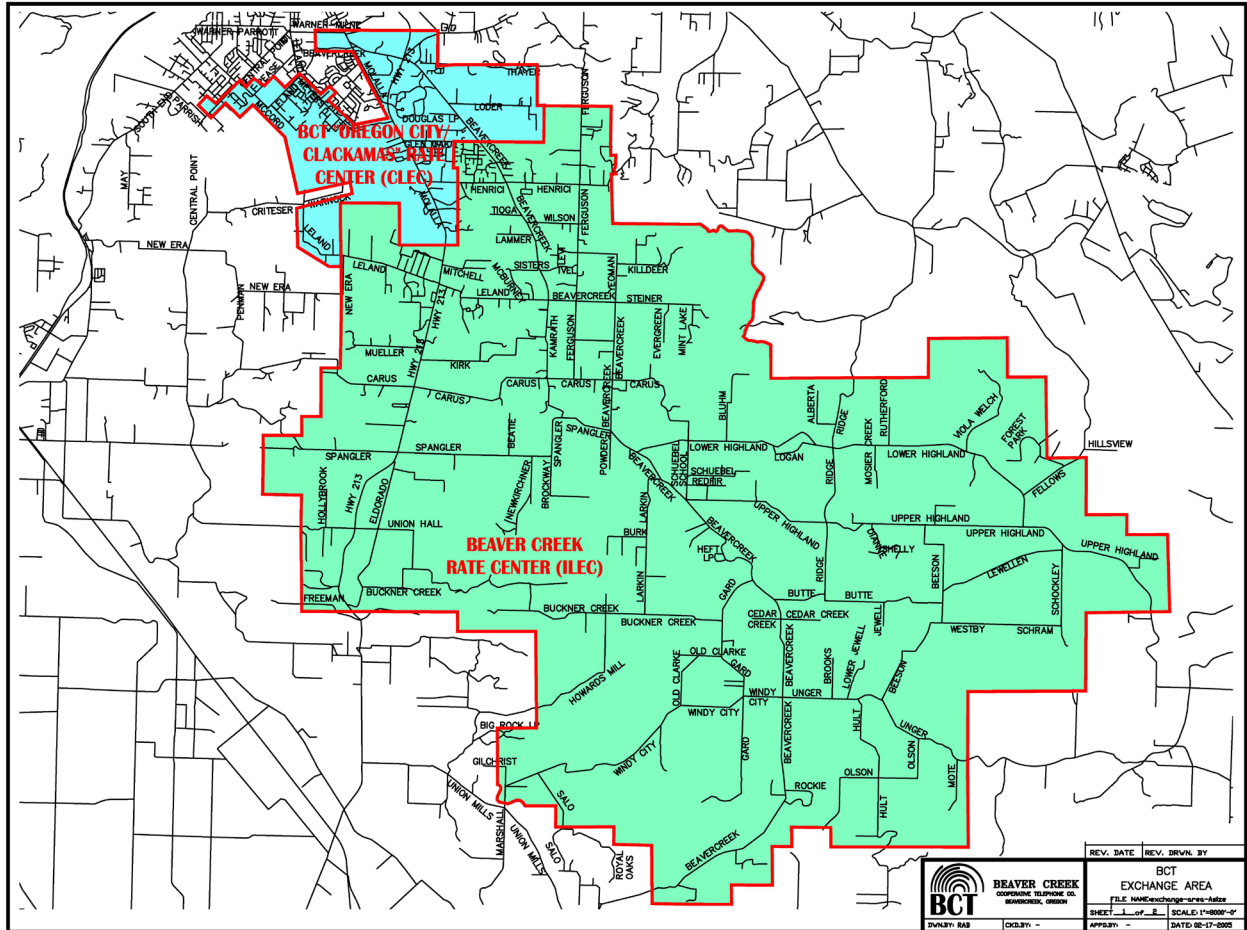
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Date

\_\_\_\_\_  
Date



# EXHIBIT A

## SERVICE AREA MAP



**EXHIBIT B**

**HARDWIRED PROGRAMMING 2-WAY  
ORINATION POINTS**

Clackamas Community College

19600 S. Molalla Avenue  
Oregon City, OR 97045

Clackamas County  
PGA/Cable Communications

2051 Kaen Road, Suite 426  
Oregon City, OR 97045

Willamette Falls Media Center

1101 Jackson Street  
Oregon City, OR 97045

**EXHIBIT C**  
**ACCEPTANCE**

Administrative Services Manager  
Public and Government Affairs Department  
Clackamas County  
2051 Kaen Road, 4<sup>th</sup> Floor, Suite 426  
Oregon City, OR 97045

This is to advise the County that Beaver Creek Cooperative Telephone Company (the "Grantee") hereby accepts the terms and provisions of Order No. \_\_\_\_\_, passed by the County Commission on \_\_\_\_\_, 2021 (the Franchise) granting a Franchise for ten (10) years to Beaver Creek Cooperative Telephone Company. The Grantee agrees to abide by each and every term of the Franchise.

BEAVER CREEK COOPERATIVE TELEPHONE COMPANY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT D**

**Public Facilities**

Fire Station# 10 (Beavercreek)

22310 South Beavercreek Road

Fire Station# 13 (Clarkes)

25675 South Beavercreek Road.