

**CABLE TELEVISION
FRANCHISE AGREEMENT**

**Between the
CITY OF SALEM**

**AND
COMCAST OF OREGON I, INC.**

TABLE OF CONTENTS

SECTION 1.	DEFINITIONS	1
SECTION 2.	GRANT OF FRANCHISE.....	7
SECTION 3.	FRANCHISE FEE AND FINANCIAL CONTROLS.....	10
SECTION 4.	ADMINISTRATION AND REGULATION	12
SECTION 5.	FINANCIAL AND INSURANCE REQUIREMENTS	14
SECTION 6.	CUSTOMER SERVICE.....	17
SECTION 7.	REPORTS AND RECORDS.....	20
SECTION 8.	PROGRAMMING	23
SECTION 9.	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS	24
SECTION 10.	GENERAL STREET USE AND CONSTRUCTION	30
SECTION 11.	SYSTEM DESIGN AND STANDARDS	35
SECTION 12.	PEG ACCESS GRANT FUND.....	36
SECTION 13.	SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION	37
SECTION 14.	FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE.....	39
SECTION 15.	ABANDONMENT	45
SECTION 16.	FRANCHISE RENEWAL AND TRANSFER	46
SECTION 17.	SEVERABILITY.....	47
SECTION 18.	MISCELLANEOUS PROVISIONS.....	48
ATTACHMENT A	TELEPHONE ACTIVITY RESPONSE REPORT (SAMPLE).....	50
ATTACHMENT B	ORIGINATION POINTS.....	51

SECTION 1. DEFINITIONS

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

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

- 1.8 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.9 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.10 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.11 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").
- 1.12 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.13 **Demarcation** means up to and including the device (as of the Effective Date known as the "modulator") where the DAP Signal is converted into a format to be transmitted over a fiber connection to Grantee.
- 1.14 **Designated Access Provider ("DAP")** means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider; however, any entity designated by the Grantor shall not be a third party beneficiary under this Agreement.
- 1.15 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.16 **Effective Date** means the date defined in Section 2.4 herein.
- 1.17 **FCC** means the Federal Communications Commission.
- 1.18 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 1.19 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement,

whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

1.20 **Franchise Area** means the area within the legal jurisdictional boundaries of the City of Salem as the City is now or may change during the term of this Agreement.

1.21 **Grantee** means Comcast of Oregon, I, Inc. or its permitted successors, transferees or assignees.

1.22 **Grantor** means the City of Salem, Oregon.

1.23 **Gross Revenue** means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
- Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
- Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; (3) the FCC user fee and (4) PEG fees if included on Subscriber billing statements;
- Revenues from program guides; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.
- Gross Revenues shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. Gross Revenues, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Agreement. Gross Revenues shall include

amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. Gross Revenues shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, Gross Revenues shall not include bad debt.

- (A) "Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Comcast Spotlight or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.
- (B) "Gross Revenues" shall **not** include:
- Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
 - Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee, the FCC user fee and PEG fee shall not be regarded as such a tax or fee;
 - Launch fees and marketing co-op fees; and,
 - Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.
- (C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Revenues from Late Fees shall be allocated in the same manner as described above. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which

Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

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

- (D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.
 - (E) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.
- 1.24 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.
- 1.25 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.
- 1.26 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.
- 1.27 **Origination Point** means a location other than an Access Center, where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.
- 1.28 **Parent Corporation** means Comcast Communications, Inc. or successors and assigns and includes any other existing or future corporations with greater than fifty percent (50%) ownership or control over Grantee.
- 1.29 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization, and includes any natural person.

- 1.30 **Programmer** means any Person responsible for PEG Access Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides PEG Access Programming for transmission on the Cable System.
- 1.31 **Programming** means television programs, audio, video or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted, or capable of being transmitted, on the Cable System.
- 1.32 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).
- 1.33 **Record** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.
- 1.34 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 1.35 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 1.36 **Section** means a provision of this Agreement, unless specified as part of another document.
- 1.37 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 1.38 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.
- 1.39 **Subscriber** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.
- 1.40 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement.
- (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law. The use of Rights of Way by Grantee for the provision of services other than Cable Service is not regulated, authorized, or prohibited by this agreement, and any such use may be governed by a separate authorization as consistent with applicable law. While Grantee currently utilizes the Public Rights of Way for the provision of services other than Cable Service, Grantee agrees that such utilization does not constitute a waiver, or otherwise limit, Grantor's exercise of its rights, or its ability to seek any legal or equitable remedies against Grantee.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable

Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

2.3 Duration

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this Agreement, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The Effective Date of this Agreement shall be July 1, 2018, unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder by Section 5.4, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 Franchise Nonexclusive

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

2.6 Grant of Other Franchises

- (A) The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 2.6 will apply. If the Grantor or other government agencies or affiliates provides comparable video services, it may be considered a competitor under this Section.

- (B) As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise to a wireline competitor: a 5% (five percent) Franchise fee, PEG funding, PEG Access Channels, customer service obligations, and complimentary services (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors.
- (C) Within one (1) year of the adoption of a wireline competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the wireline competitor's Franchise or similar authorization. The Grantor shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
- (D) Nothing in this Section 2.6 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- (E) Section 2.6(C) does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon one hundred eighty (180) days' notice to Grantee.
- (F) This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than five percent (5%) of the geographic area of the Grantor; or to systems that only provide video services via the public Internet.

2.7 **Police Powers**

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

Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law. In the event there is a conflict between this agreement and Grantor's cable ordinance, the ordinance shall prevail, unless conflicts are a result of changes made to the cable ordinance after the effective date of this agreement and the Grantor has not found an emergency exists constituting a danger to health, safety, property, or general welfare, or such exercise is mandated by law. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or law.

2.8 Relations to Other Provisions of Law

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

2.9 Effect of Acceptance

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

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

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

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

3.2 **Payments**

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

3.3 **Acceptance of Payment and Recomputation**

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

3.4 **Monthly Franchise Fee Reports**

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

3.5 **Annual Franchise Fee Reports**

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

3.6 **Audit/Reviews**

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

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

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

3.7 Interest on Late Payments

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

3.8 Additional Commitments Not Franchise Fees

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

3.9 Costs of Publication

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

3.10 Tax Liability

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

3.11 Payment on Termination

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

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

4.2 **Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card). Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status, or physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.

4.3 **Filing of Rates and Charges**

Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.4 **Time Limits Strictly Construed**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.6, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.5 **Mid-Term Performance Evaluation Session**

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

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

4.6 **Force Majeure**

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

4.7 **Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 **Insurance Requirements**

- (A) General Requirement. Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
 - (1) Commercial General Liability: Four million dollar (\$4,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a four million dollar (\$4,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability;
 - (2) Automobile Liability: Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage;
 - (3) Employer's Liability: Two million dollar (\$2,000,000) limit; and
 - (4) Worker's compensation coverage as required by law.

- (5) Property Loss: Fire insurance with coverage for extended perils on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

5.2 **Deductibles and Self-Insured Retentions**

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

(A) Endorsements.

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

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

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

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

Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

5.3 **Indemnification**

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

issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

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

5.4 **Performance Bond**

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

SECTION 6. CUSTOMER SERVICE

6.1 Customer service obligations are set forth below:

- (A) Grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal operating conditions:
 - (1) Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety percent (90%) of all calls received, measured Quarterly, will not be required to wait more than thirty (30) seconds before being connected to a service representative. For the

avoidance of doubt, Grantee may utilize interactive voice response or similar technology to fulfill its obligations hereunder; however, callers must be able to opt out of the interactive voice response system and access a service representative within thirty (30) seconds of opting out.

- (2) Emergency telephone line capacity on a 24-hour basis, including weekends and holidays.
- (3) A local customer service center and bill payment location open during normal business hours at least eight hours daily, and at least four hours weekly on evenings or weekends, and adequately staffed to accept Subscriber payments and respond to service requests and complaints. Upon the fifth anniversary of this agreement, or any subsequent anniversary of this agreement, if Grantee has demonstrated to Grantor's satisfaction that for a three (3) month period, the customer use of the service center has gone down to a level fifty percent (50%) or less from the average customer use over the full calendar year immediately preceding the effective date of this Agreement, Grantee shall have the option to substitute the local customer service center requirements by providing for pick-up or drop-off of equipment free of charge, for example: (a) by having a Grantee representative go to the customers' residences, or (b) by using a prepaid mailer. Grantee also has the option to provide payment drop-off locations within the Franchise Area. Grantee shall provide Grantor and Subscribers with at least sixty (60) days' notice of election to discontinue the customer service center.
- (4) A system maintenance and repair staff, who shall respond to and repair major Cable System malfunctions on a 24-hour-per-day basis.
- (5) An installation staff, who shall install service to any Subscriber within seven days after receipt of a request, in all areas where trunk and feeder cable have been activated and within 125 feet of the existing distribution system. For those service extensions exceeding 125 feet, installation shall be in accordance with Grantee's regular and nondiscriminatory construction and billing practices, wherein the Subscriber shall be responsible for an incremental cost of the installation.
- (6) At the Subscriber's request, Grantee shall schedule, within a specified four-hour time period, all appointments with Subscribers for installation of service.

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

For purposes of this Agreement, "normal business hours" mean those hours during which most similar businesses in the franchise area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

- (B) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the Cable System, preferably between midnight and 6:00 a.m.
- (C) The Grantee shall maintain a repair force of technicians normally capable of responding to Subscriber requests for service within the following time frames:
 - (1) For a system outage: within two hours, including weekends, of receiving Subscriber calls or requests for service which by number identify a system outage of sound or picture of one or more Channels, affecting at least 10 percent of the Subscribers of the Cable System.
 - (2) For an isolated outage: within 24 hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more Channels that affects three or more Subscribers. On weekends, an outage affecting fewer than three Subscribers shall result in a service call no later than the following Monday morning.
 - (3) For inferior signal quality: within 48 hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

In accordance with FCC rules, an operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to Subscribers. In the event Grantee determines that the Subscriber has damaged the equipment, Grantee shall be entitled to charge the rate permitted by the FCC.

- (D) Unless excused, Grantee shall determine the nature of the problem within 48 hours of beginning work and resolve all Cable System related problems within five business days unless technically infeasible.
- (E) Upon request from affected Subscribers, Grantee shall provide appropriate credits to Subscribers whose service has been interrupted for four or more hours.
- (F) Upon five calendar days' notice from Grantor, Grantee shall verify its compliance with any or all of the standards set forth in this section. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

- (G) A repeated and verifiable pattern of non-compliance with the consumer protection standards of this section is a material breach of the Agreement, provided, however, that Grantee shall receive written notice and an opportunity to cure consistent with the procedures for remedying violations in section 14.1 of this Agreement prior to Grantor imposing any remedy or other sanction against Grantee.
 - (H) Grantor shall have the right to review Grantee's response to Subscriber complaints and that require a service call in order to determine Grantee's compliance with the Agreement requirements, subject to the Subscribers' right to privacy. Grantee shall provide the requested records to the Grantor within 72 hours of transmittal of the request by the Grantor where the Subscriber complaint is pending, and within ten (10) business days where the complaint(s) in question has been resolved.
 - (I) A verified and continuing pattern of noncompliance of the service standards and standards governing consumer protection established by law, ordinance, and this Agreement is a material breach of the Agreement; provided, that Grantee shall receive written notification and an opportunity to cure for a period not to exceed thirty (30) days, prior to any sanction being imposed, consistent with the procedures for remedying violations in section 14.1 of this Agreement.
- 6.2 Emergency Broadcast. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.
- 6.3 ADA Accessible Equipment. Grantee shall comply with the Americans with Disabilities Act ("ADA"), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 6.4 Discriminatory Practices. Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Parent Corporations and Affiliates that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Parent Corporation, Affiliate or a third party. Grantor may, in writing, request copies of any such Records or books and for those books and Records not related to pending Subscriber complaints, Grantee

shall provide such copies within ten (10) business days of the transmittal of such request. For those books and Records associated with an audit, Grantee shall provide said books and Records within thirty (30) calendar days of the transmittal of such request. One copy of all books and Records required under this Section shall be furnished to Grantor at sole expense of Grantee. If the requested books and Records not related to Subscriber complaints are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within seven (7) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office and are not made available to Grantor upon written request as set forth above, and if Grantor determines that an examination of such books and records is necessary or appropriate to the performance of any of Grantor's duties under this agreement, then all reasonable travel expenses incurred by Grantor in making such examination shall be paid by Grantee. Grantor and Grantee may mutually agree in writing to waive or modify the schedule in individual cases where compliance with the schedule is infeasible due to circumstances beyond the control of Grantee.

- (B) Grantee shall at all times maintain a full and complete set of plans, Records and "as built" maps showing the location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantee shall allow Grantor access and the right to view these plans, Records and maps within 5 business days of receiving notice from Grantor.

7.2 Confidentiality of Books and Records

Grantee acknowledges that information submitted to the Grantor is open to public inspection under the Oregon Public Records Law, ORS 192.410 through 192.505. Grantee is responsible for becoming familiar with, and understanding the provisions of the Oregon Public Records Law. Grantee may identify certain information in its books and Records as confidential or proprietary. Grantee shall clearly and conspicuously stamp the word "Confidential" on each page of its books and Records that Grantee determines contains confidential or proprietary information prior to submitting such information to the Grantor. Grantee shall also provide a brief written explanation as to why such information is confidential under state or federal law. Grantor shall treat any information so identified as confidential until Grantor receives a request for disclosure of such information and grantor makes a determination that such information is disclosable in accordance with applicable laws. Grantor will make reasonable efforts to provide Grantee with not less than five (5) days' advance notice of any request for information identified as confidential. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person. Grantor shall retain sole discretion to determine whether to release any information identified as confidential by Grantee, in accordance with applicable laws.

7.3 Copies of Federal and State Documents

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

7.4 Complaint File and Reports

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, and that require a service call, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during normal business hours.
- (B) Upon written request, Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
 - (1) Nature and type of customer complaints.
 - (2) Number, duration, general location and customer impact of unplanned service interruptions.
 - (3) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (4) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Service Subscribers, and "Pay" Subscribers.
 - (5) Total disconnections and major reasons for those disconnections.
 - (6) Total number of service calls.
 - (7) Video programming changes (additions/deletions).
 - (8) A Telephone Response activity report provided in a manner consistent with the requirements of Section 6 showing Total Calls Answered within thirty (30) seconds, Average Hold Time, Percent of Calls Answered within thirty (30) Seconds, Percent of Abandoned Calls, and the Percent of Lines Available. A sample of an acceptable report pursuant to this Section is attached to this Agreement as Attachment A

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

(C) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 Inspection of Facilities

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

7.6 False Statements

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

7.7 Report Expense

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

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

(A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:

- (1) Educational Programming.
- (2) Sports.
- (3) General entertainment (including movies).
- (4) Children/family-oriented.
- (5) Arts, culture and performing arts.
- (6) Foreign language.
- (7) Science/documentary.
- (8) Weather information.

(9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and

(10) National, state, and local government affairs.

(B) Grantee shall not delete any broad category of Programming within its control.

8.2 **Parental Control Devices**

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

8.3 **Leased Access Channels**

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

8.4 **Continuity of Service**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.6 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 **Management and Control of Access Channels**

(A) Grantor may authorize a DAP to control and manage the use of any and all Access Centers provided by Grantee under this Agreement, including, without limitation, the operation of Access Channels. To the extent of such designation by Grantor, as between the DAP and Grantee, the DAP(s) shall have sole and exclusive responsibility for operating and managing such Access Centers. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Agreement; such rules shall not be designed to control the content of Public Access Programming except as necessary to ensure compliance with state or federal laws and regulations. Nothing herein shall prohibit the Grantor from authorizing itself to be a DAP.

(B) Grantee shall cooperate with Grantor and DAPs in the use of the Cable System and Access Centers for the provision of PEG Access.

(C) All Subscribers shall receive the PEG channels without additional charges for the service or equipment regardless of the tier of service they subscribe to.

- (D) Except as provided in this Agreement, the Grantor shall allocate Access resources to DAPs only.
- (E) The Grantee shall, at Grantee's expense, continue to provide current connections, including all necessary terminal equipment for the transmission, of all PEG Access Channels required in this Agreement to and from the Grantee's Headend and the DAP headend as of the Effective Date of this Agreement. If the Grantor designates new Access providers, or if a current DAP moves its site or location at its own instigation after the Effective Date of this Agreement, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the PEG capital fee under Section 12 of this Agreement.

9.2 **Channel Capacity and Use**

- (A) Upon the Effective Date of this Agreement, all Access Channels provided for herein are administered by the Grantor or a DAP.
 - (1) Existing Access Channels: Grantee shall provide three (3) standard definition ("SD") Downstream Channels of Public, Educational, and Governmental Access Programming, for distribution on Grantee's Basic Service tier, which will be shared with Marion County, Oregon. The Channel designations of those Channels as of the Effective Date of this Agreement shall be: Channel 21; Channel 22; and Channel 23. Grantee does not relinquish its ownership of or ultimate right of control over Cable System capacity or a Channel position by initially designating it for PEG Access use.
 - (2) Grantor may require Grantee to provide one (1) additional Access Channel for Chemeketa Community College Channel 27 under this Section, which must maintain the criteria set forth below in order to continue this requirement. The Grantor shall give Grantee at least one hundred twenty (120) days prior notice of the required additional Access Channel. If the requirements are not maintained as set forth below, Grantee shall give Grantor one hundred twenty (120) days' notice that said Channel will be removed from its channel lineup.
 - (a) Grantor must show that during any eight (8) consecutive weeks, the Chemeketa College Channel 27 is in use for Locally Produced, Locally Scheduled Original Programming for an average of at least four hours per day between noon and midnight.

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

"Locally Produced" means programming produced in Marion County or produced specifically for Chemeketa Community College; and

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

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

- (3) Throughout the term of this Agreement, Grantee shall, at Grantee's expense and free of charge to the Grantor and any DAP, maintain existing Fiber Upstream links to enable character generated, pre-recorded, and live cablecasts between the Origination Points provided pursuant in Section 9.8 and any DAP headend facility to enable the distribution of PEG Access Programming to Subscribers on PEG Channels.
- (4) If at any time during the term of this agreement Grantee's Basic Service Tier is no longer available to Subscribers, Grantee shall make reasonable effort to make every Access Channel required under this Section 9 available to every Subscriber in the Franchise Area, without additional charge of any kind.

9.3 **Standard Definition Channels**

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

9.4 **High Definition Channels**

- (A) Upon the Effective Date of this Agreement and within one hundred twenty (120) days following written notice by the Grantor, Grantee shall activate one (1) of the existing Access Channels, as designated by the Grantor, in high definition ("HD") format and simultaneously carry that SD Access Channel Signal provided under Section 9.2.
- (B) Grantee shall carry all components of the HD format Access Channel Signals provided by the DAP including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The DAP shall be responsible for the costs associated with providing the Access Channel Signal in an HD format to the Demarcation point at the designated point of origination for the Access Channel. Grantee shall be responsible for actual costs associated with the transport and distribution of the HD Access Channel on its side of the

Demarcation point, except that Grantee may offset its actual costs in an amount not to exceed Eight Thousand Dollars (\$8,000) per PEG Channel against the PEG capital fee in Section 12 for the one-time purchase of network equipment associated with the provision of HD PEG Programming.

- (C) Additional HD PEG Access Channels.
 - (1) No earlier than three (3) years after the Effective Date of this Agreement, and upon one hundred twenty (120) days written notice from Grantor, which notice may be sent prior to the thirty-sixth (36th) month after the Effective Date, Grantee shall provide and activate one (1) more of the existing SD Access Channels provided under Section 9.2, as designated by written notice of the Grantor, in an HD format, and simultaneously carry the SD Signal of that Channel for a total of two (2) HD format Access Channels.
 - (2) Grantee shall make best efforts to ensure that HD PEG channels are placed sequentially or as close thereto as possible.
- (D) Grantee shall have no more than one hundred twenty (120) days from the date of the written notices in this Section 9.4 to fully activate the Access Channels from the DAP to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the DAP. Upon request, Grantor shall provide documentation to confirm that the criteria set forth above has been met.
- (E) At such time as all other Basic Service Channels (or its equivalent tier) excluding Access Channels, are carried in HD, all remaining SD Access Channel Signals will also be carried by Grantee in HD, at which time the SD Channels will be discontinued and the maximum number of PEG Access Channels shall be four (4) HD Channels.
- (F) The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.4.

9.5 **Quality of SD and HD Access Channel Signals.**

The Grantee shall not unreasonably discriminate against SD and HD Access Channels with respect to accessibility, functionality and to the application of any applicable FCC Rules and Regulations, including without limitation Subpart K Channel Signal standards. With respect to Signal quality, Grantee shall not be required to carry an Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall distribute the Access Channel Signal without degradation. There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD Signals so long as the requirements of this Agreement are otherwise met. Grantee may implement HD carriage of PEG Access Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a Signal quality for the Subscriber that is reasonably comparable and functionally equivalent to similar commercial HD Channels carried on the Cable System. In the event the Grantor believes and provides evidence that Grantee fails to meet this standard,

Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner. Disputes under this Section 9.5 shall be addressed through the Franchise enforcement procedures set forth in Section 14. Upon reasonable written request by a DAP, Grantee shall verify that Access Channel Signal delivery to Subscribers is consistent with the requirements of this Section 9.5.

9.6 **Relocation of Access Channels**

- (A) Grantee shall make reasonable efforts to coordinate the cablecasting of all Programming on the Cable System on the same Channel designations as such Programming is currently cablecast in the Franchise Area as set forth in Section 9.2 herein. If at any time during the duration of this Agreement, Grantee reassigns the location of an Access Channel on its Cable System, Grantee shall provide at least sixty (60) days advance notice to the Grantor and the DAP(s). Grantee shall make best efforts in the event of Channel relocation, to place the Access Channels within reasonable proximity from the Channel location for network affiliate. Grantee shall also make best efforts to assign the HD PEG Access Channel a number near the other HD local broadcast stations if such Channel positions are not already taken, or if that is not possible, near HD news/public affairs Programming Channels if such Channel positions are not already taken, or if not possible, as reasonably close as available Channel numbering will allow. Grantee shall ensure that Subscribers are notified of such reassignment in accordance with the notice requirements in Section 6 that include its customer messaging function, for at least fifteen (15) days prior to the change and fifteen (15) days after the change. In conjunction with any reassignment of any SD Access Channels, Grantee shall provide either (1) a reimbursement up to Five Thousand Dollars (\$5,000) to the Grantor, collectively with Marion County, Oregon for actual costs associated with the change, or (2) Nine Thousand Dollars (\$9,000) of in-kind airtime on advertiser supported Channels to the Grantor collectively with Marion County, Oregon for the purpose of airing multiple thirty (30) second public service announcements produced by DAP. The Grantor shall cooperate with the DAP and Grantee for such airing. All reimbursement, whether in cash or in-kind, shall be paid or provided on a per-event basis, regardless of the number of Channels affected by the change.
- (B) If, during a reassignment of Access Channels, Grantee is unable to assign the HD PEG access channels a number near the other HD local broadcast stations, then Grantee shall make best efforts to assigned the HD PEG access channels with sequential channel numbers.

9.7 **Access Interconnections**

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

9.8 **Origination Points**

- (A) The existing Origination Points listed in Attachment "B" will remain available, at the expense of Grantee, for use by the DAP to enable the distribution of PEG Access Programming on the Cable System during the term of this Agreement.
- (B) Additional permanent Origination Points requested by the Grantor or DAP in writing shall be provided by Grantee as soon as reasonably possible at the expense of Grantor or DAP. Such costs may be paid for from the PEG capital fee in Section 13.
- (C) There shall be no charge to the Grantor, to any other DAP, or to any other Person for the use of the Upstream Capacity from the program origination locations described in this Section, so long as the transmissions are designed for re-routing and distribution on any PEG Channel(s).

9.9 **Changes in Technology**

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

9.10 **Technical Quality**

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

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

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will not restrict Grantor or the DAP from making arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Grantor or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service. The cost for this service may be funded by the PEG capital fee as set forth in Section 12.

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System to provide Cable Services. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 10.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.
- (C) Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area as it shall find necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by the Grantor.
- (D) In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than forty-eight (48) hours after discovery of the emergency. Grantee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permit or license fees.
- (E) Whenever possible, to avoid additional wear and tear on the Public Rights of Way, Grantee shall utilize existing poles and conduit. Grantee may charge for use of the conduit consistent with all applicable laws. Notwithstanding the foregoing, this Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

10.2 Location of Facilities

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

10.3 Relocation

- (A) Relocation for Grantor.
 - (1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.
 - (2) If public funds, other than the funds of Grantor, including passed-through funds, are available to any Person using such Public Rights of Way for the purpose of defraying the cost of any of the relocation of facilities as provided under this Section, Grantee shall be afforded equal treatment subject to applicable law and regulations.
- (B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, and no charge shall be made by the Grantee against the Grantor for restoration and repair. Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.
- (C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action regarding the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated.
- (D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building,

vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

10.4 **Restoration of Public Rights of Way**

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

10.5 **Maintenance and Workmanship**

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

10.6 **Reservation of Grantor Public Rights of Way**

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

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

10.7 Use of Conduits by Grantor

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor if such installation by Grantor results in no additional cost to Grantee, and to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 10.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

10.8 Public Rights of Way Vacation

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

10.9 Discontinuing Use of Facilities

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

10.10 **Hazardous Substances**

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

10.11 **Undergrounding of Cable**

- (A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the Grantor or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, (2) statute, ordinance, policy, or other regulation of the Grantor requires utility lines to be placed underground, or (3) all overhead utility lines are placed underground.
- (B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.
- (C) For purposes of this Section 10.11, "utility lines" and "utility wiring" does not include high voltage electric lines.

10.12 **Tree Trimming**

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor

so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

10.13 **Construction, Building and Zoning Codes**

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

10.14 **Standards**

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

SECTION 11. SYSTEM DESIGN AND STANDARDS

11.1 **Subscriber Network**

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

11.2 **Test and Compliance Procedures**

- (A) Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) To the extent required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

11.3 Standby Power

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

SECTION 12. PEG ACCESS GRANT FUND

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

12.1 Fund Payments

During the term of this Agreement, Grantee agrees to collect and pay Grantor one and one-half percent (1.5%) of gross revenues per month to support the Capital equipment and facility needs of PEG Access, which funds shall be used in accordance with applicable federal law. Nothing in this Section 12 shall be viewed as a waiver of Grantor's rights to use the funds provided to Grantor in this Section 12.1 for any lawful purpose permitted under applicable federal law. Grantee shall make such payments monthly, following the Effective Date of this Agreement. Each payment shall be due and payable no later than forty-five (45) days after the end of each month.

12.2 Annual Grant Award Report

- (A) Grantor shall provide a report annually to the Grantee on the use of the funds provided by to the Grantor under this Section. Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of Grantor's fiscal year.
- (B) Grantee may reasonably review Records of the Grantor (and of the DAP) related to the use of funds in such reports to confirm that funds are used in accordance with federal law and this Agreement. Grantee will notify the Grantor in writing at least thirty (30) days prior to the date of such a review and identify the relevant financial Records of Grantor (and the DAP) that Grantee wants to review. The time period of the review shall be for the fund payments received no more than thirty-six (36) months prior to the date the Grantee notifies Grantor of its intent to perform a review. The Grantor shall make such Records available for inspection and copying during normal business hours at the office of the Grantor (or the DAP).

12.3 PEG Access Not Franchise Fees

- (A) Grantee agrees that financial support for PEG Access and all other Grantee PEG obligations set forth in this Agreement shall in no way modify or otherwise affect Grantee's obligations to pay Franchise fees to Grantor. Grantee agrees that although the sum of Franchise fee and the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise

credited in any way against any past, present or future Franchise fee payments under this Agreement so long as such fees are used in a manner consistent with this Agreement and federal law.

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

SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

13.1 Equivalent Service

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

13.2 Service Availability

- (A) **Service to New Subdivisions.** Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following receipt of a request from a resident. For purposes of this Section, a request from a resident shall be deemed to be received upon the signing of a service agreement, receipt of funds by the Grantee, receipt by Grantee of a written request for Cable Service, or receipt by Grantee of a verified verbal request for Cable Service.
- (B) Grantee shall provide such service:
 - (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
 - (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor upon written request; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) **Required Extensions of Service.** Whenever the Grantee receives a request for service from at least ten (10) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers, within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.

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

13.3 **Connection of Public Facilities**

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

With the exception of outlets provided to schools and libraries, fire stations, emergency response locations (e.g., police stations, emergency operations centers (EOC), 9-1-1 dispatch center, etc.), and all other outlets provided to Grantor on the effective date of this Agreement, Grantee does not waive any rights it may have regarding complimentary service under Federal law or regulation for any outlets as provided for in this section. Subject to the applicable law, should Grantee elect to offset governmental complimentary services for any outlets, not included in this Section, against franchise fees, Grantee shall first provide the Grantor with ninety (90) days' prior notice.

SECTION 14. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

14.1 Procedure for Remedying Franchise Violations

- (A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation and Grantor's preferred remedy.
- (B) Grantor must provide written notice of a violation of this Agreement to Grantee. Upon receipt of the notice, Grantee will have a period of thirty (30) calendar days to do one of the following:
 - (1) Contest, in writing, Grantor's assertion that a violation has occurred, and request a hearing before Grantor's hearings officer in accordance with subsection (E) below;
 - (2) Cure the violation;
 - (3) Notify Grantor, in writing, that Grantee cannot cure the violation within thirty (30) calendar days, and set forth all steps Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. At Grantor's sole discretion, Grantor may allow Grantee up to an additional 60 calendar days to cure the violation or Grantor may set a hearing before its hearing officer in accordance with subsection (C) below. If Grantor allows for an additional period of time for Grantee to cure the violation and Grantee does not cure the violation within the extended period of time, Grantor shall set a hearing before its Hearings Officer as in accordance with subsection (C) below; or,
 - (4) Notify Grantor, in writing that Grantee concurs with Grantor's assertion that a violation has occurred but contesting Grantor's preferred remedy, and request a hearing before Grantor's hearings officer in accordance with subsection (E) below.
- (C) If, pursuant to the provisions of subsection(B)(3), a hearing is to be set before the Grantor's hearings officer, the hearing shall be set in accordance with Salem Revised Code (SRC) 20J.250 and shall be conducted as set forth in SRC Chapter 20J. At the hearing, the hearings officer shall determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by the hearings officer to be reasonable, the plan and completion date may be approved by the hearings officer, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection 14.2(B) below. If the hearings officer determines the Grantee's proposed plan and completion date are not reasonable, the hearings officer shall impose remedies as set forth in subsection (G) below.
- (D) In the event that the Grantee fails to cure the violation within any cure period approved by Grantor's hearings officer pursuant to subsection (C), Grantor shall

set a hearing before its hearings officer. If the hearings officer determines that Grantee has not cured the violation within the cure period previously approved by the hearings officer, the hearings officer shall impose remedies as set forth in subsection (G) below; however, the hearings officer shall not allow Grantee additional time to remedy the violation without the agreement of Grantor. The hearing shall be set in accordance with SRC 20J.250 and shall be conducted as set forth in SRC Chapter 20J.

- (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, or concurs that a violation has occurred but contests Grantor's preferred remedy, and requests a hearing in accordance with subsection (B)(1) or (B)(4) above, Grantor shall set a hearing before its hearings officer. The hearing shall be set in accordance with SRC 20J.250 and shall be conducted as set forth in SRC Chapter 20J. If Grantee is contesting whether a violation has occurred, the hearings officer shall determine whether the violation has occurred. If the hearings officer determines that a violation has occurred or Grantee concurs that a violation has occurred and is only contesting Grantor's preferred remedy, the hearings officer shall impose remedies as set forth in subsection (G) below.
- (F) In the event that Grantee is believed to be simultaneously in violation of its Agreements with both the City of Salem, Oregon and Marion County, Oregon, the City and County may, but are not required to, choose to have the violations of both agreements addressed in one proceeding before one hearing officer. If the City and County choose to have the violations addressed in one proceeding, the City and County may choose which jurisdiction's franchise agreement's "Section 14.1 Procedure for Remedying Franchise Violations" shall apply to the proceeding.
- (G) If, after the hearing, a remedy is to be imposed in accordance with subsections (C), (D) or (E), unless otherwise provided, the hearings officer may impose any one or more of the following remedies:
 - (1) Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - (2) Impose penalties as set forth in Section 14.2, taking into consideration the criteria provided for in subsection (B) of Section 14.2;
 - (3) Recommend revocation of this Agreement, and/or;
 - (4) Impose any other legal or equitable remedy available under this Agreement or any applicable law.
 - (5) Penalties in excess of fifty thousand dollars (\$50,000) shall not be imposed within any consecutive twelve (12) month period.
- (H) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of Grantor or its hearings officer, provided that any such final determination or order shall be subject to review as set forth in SRC 20J.420.

- (I) Grantor may institute any appropriate suit or legal action in a court of competent jurisdiction to enforce the decision or order of the hearings officer, and, notwithstanding any determination by the hearings officer, may pursue any legal or equitable remedy available under this Agreement or any applicable law.
- (J) Grantor's failure to pursue a remedy under this section for Grantee's violation of this Agreement shall not constitute consent to any subsequent breach of the Agreement or a waiver of Grantor's ability to seek a remedy for any violation of this agreement, or a waiver of Grantee's obligation to pay Grantor's expenses for Grantee's failure to perform as set forth in this Agreement.
- (K) Grantor's exercise of right granted in this Agreement (including by way of illustration but not by way of limitation, Grantor's right to refill or repave an opening in the Public Rights of Way and bill Grantee for Grantor's expenses therefor under section 10.4 of this Agreement) is not itself a remedy subject to this section. Grantor's exercise of rights granted in the Agreement does not waive Grantor's right to a remedy pursuant to this section. Grantor's right to a remedy under this section is in addition to Grantor's exercise of rights granted elsewhere in this agreement.
- (L) Nothing in this section shall be interpreted as limiting the ability of Grantor and Grantee to agree that a violation of this Agreement has occurred and to the appropriated remedy.
- (M) Nothing in this section shall be construed as limiting Grantor's ability to seek, in a court of competent jurisdiction, injunctive relief or any remedy which would be impacted by allowing the cure period set out in section 14.1(B) or any other procedure in this section.

14.2 **Penalties**

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantor for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein.
 - (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
 - (a) \$5,000 for the first such violation, or any subsequent violation that has been cured;
 - (b) \$10,000 for the second such violation, unless the violation has been cured;
 - (c) \$15,000 for any and all subsequent violations, unless the violation has been cured;

A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods immediately following the quarter in which the violation occurred;

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

14.3 **Revocation**

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 14.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days

prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

- (B) At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

14.4 **Relationship of Remedies**

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 14.2. By way of example and not limitation, the collection of penalties by Grantor shall in no respect affect:
 - (1) Refunds or credits owed to Subscribers; or
 - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for penalties or otherwise, except as provided in Section 14.2; or an excuse of faithful performance by Grantee.

14.5 **Removal**

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment. However, Grantee shall not be required to remove the facility if the facility is used to provide non Cable services not regulated under this Agreement and Grantee has appropriate authority from Grantor.
- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

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

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:
 - (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
 - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.
- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
 - (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

- (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

14.7 **No Recourse Against Grantor**

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

14.8 **Nonenforcement By Grantor**

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

SECTION 15. ABANDONMENT

15.1 **Effect of Abandonment**

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

15.2 **What Constitutes Abandonment**

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
 - (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.6; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 16. FRANCHISE RENEWAL AND TRANSFER

16.1 Renewal

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

16.2 Transfer of Ownership or Control

- (A) The Cable System, nor a portion thereof, and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of more than fifty percent (50%) of the shares or the general partnership interest in the Grantee (Comcast of Oregon, I, Inc.), except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a fifty-one percent (51%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to revocation unless and until the Grantor shall have consented thereto.
- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 17. SEVERABILITY

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

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Preferential or Discriminatory Practices Prohibited

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

18.2 Dispute Resolution

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

18.3 Notices

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

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

with copy to:

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

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

Franchise Administrator
City of Salem
555 Liberty Street SE, Room 220
Salem, OR 97301
Fax: 503-588-6354

with copy to:

City Attorney
City of Salem
555 Liberty Street SE, Room 205
Salem, OR 97301
Fax: 503-361-2202

18.4 **Binding Effect**

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

18.5 **Authority to Amend**

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

18.6 **Governing Law**

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

18.7 **Captions**

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

18.8 **Entire Agreement**

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

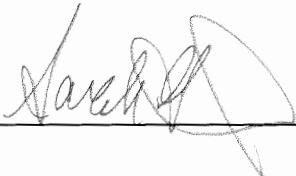
18.9 **Construction of Agreement**

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

Agreed to this _____ day of _____, 2017

COMCAST OF OREGON I, INC.

CITY OF SALEM, OREGON

By: 

By: 

ATTACHMENT A

TELEPHONE RESPONSE ACTIVITY REPORT (Sample)

LFA - Franchise	Oct-16	Nov-16	Dec-16	4th QTR
% of Calls Answered within 30 seconds with IVR	94%	95%	97%	95%
Number of IVR Calls	18,189	18,358	18,950	55,497
Number of Calls Offered	31,133	28,132	26,114	85,379
Number of Calls Handled	30,793	27,846	25,925	84,564
Number of Calls Answered within 30 seconds	28,199	25,665	24,616	78,480
Average Speed of Answer (Seconds)	21	13	9	15
Average Handle Time (Seconds)	616	606	591	605
Number of Abandon Calls	340	287	189	815

ORINATION POINTS

1. CCTV Building, 575 Trade St SE
2. Salem City Hall, 555 Liberty St SE
3. Marion County Courthouse Square, 555 Court St NE
4. Salem-Keizer Schools Support Services Building, 2575 Commercial St SE
5. Anderson Room, Salem Public Library, 585 Liberty St SE
6. Elsinore Theatre, 170 High St SE
7. State Capitol, 900 Court St NE (Legislative Media office in the basement)
8. Willamette University, 900 State St (Smith Auditorium backstage)
9. Willamette University, 900 State St (Hudson Hall)
10. Salem Center 50+, 2615 Portland Rd NE
11. Chemeketa Community College, 4000 Lancaster Dr NE
12. Salem Library, 585 Liberty St SE (Loucks Auditorium)

Side Letter Agreement

Between Comcast of Oregon I, Inc. and the City of Salem

The purpose of this Side Letter Agreement is to set forth commitments between Comcast of Oregon I, Inc. ("Comcast") and the City of Salem ("City"), that are in addition to the obligations contained in the Cable Television Franchise Agreement between Comcast and the City to take effect July 1, 2018 (hereinafter the "Agreement"). These items set forth herein: 1) have been negotiated in good faith and mutually agreed upon by the parties as part of the informal Franchise renewal process pursuant to 47 U.S.C. 546(h); 2) are provided by Comcast in consideration of the grant of the Franchise by the City; and 3) specifically relate to the unique community needs that exist in the City.

Dark Fiber Return: The City is currently utilizing one hundred eighty-two (182) strands of fiber, as reflected in Attachment A, owned by Comcast, for use in the transmission of data at no cost. The City will return one hundred fifty (150) strands of fiber to Comcast within thirty (30) days of the effective date of the Agreement. The City will stop using and return twenty-three (23) additional strands of fiber to Comcast within sixty (60) months of the effective date of this Agreement. The City will stop using and return the remaining nine (9) strands of fiber to Comcast by the end of the Agreement term. Any strands of fiber not returned by the City after sixty (60) months of the effective date of the Agreement will be subject to the following fees per City site:

100 MBPS Site(s)	\$360.00 Per Month
1 GBPS Site(s)	\$846.00 Per Month
10 GBPS Site(s)	\$4,585.00 Per Month

The City will provide Comcast with written notice of which strands of fiber identified in Attachment A are being returned to Comcast each time the City returns fiber to Comcast pursuant to this Side Letter Agreement. Those strands of fiber listed within said notice shall be deemed returned to Comcast on the date the City sends the notice.

PEG Capital Funds: Under Section 12 of the Agreement, Comcast is required to provide support for capital requirements for PEG access. Subject to, and in conjunction with any restrictions regarding the expenditure of restricted PEG capital funds according to federal laws, rules or regulations, Comcast shall not object to the use of these PEG funds for the capital costs related to the continued development of the City and County's joint institutional network, so long as the network is used in part to transport PEG programming. The City agrees that the sections of the joint institutional network developed using PEG funds and used to transport PEG programming shall be readily identifiable, for their exclusive use for internal, institutional purposes only, and shall not be made available to any other public or private entity. The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. Enforcement of the terms of this Side Letter Agreement shall be consistent with the enforcement procedures set forth in the Agreement.

COMCAST OF OREGON I, INC.

By: 

Title: SVP Finance

Date: 7/17/18

CITY OF SALEM

By: 

Title: CITY MANAGER

Date: JULY 25, 2018