

ORDINANCE NO.

Grant a franchise to Qwest Broadband Services, Inc. to operate a Cable System.

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) The City of Portland does hereby grant to Qwest Broadband Services, Inc. who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and Institutional Services in the Streets of the City.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and Qwest Broadband Services, Inc. shall be referred to as the "Grantee."

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining hereto, shall expire six years from the Effective Date hereof, or on December 31, 2013, unless terminated sooner as provided in this Franchise or extended as provided in Section 1.3.

1.3 Franchise Term Extension.

(A) The term of the Franchise under Section 1.2 hereof, and all rights privileges, obligations and restrictions pertaining thereto, shall be extended:

- (1) an additional two (2) years to December 31, 2015 if, at the end of the third year after the Effective Date, or by December 31, 2010, Grantee offers Cable Services to twenty percent (20%) or more of the Dwelling Units in the Franchise Area and duly notifies the City with reasonable documentation; and
- (2) an additional three (3) years to December 31, 2018 if, at the end of the sixth year after the Effective Date, or by December 31, 2013, Grantee offers Cable Services to an additional thirty percent 30% or more of the Dwelling Units in the Franchise Area and duly notifies the City with reasonable documentation.

(B) The extensions of the term of this Franchise under Sections 1.3(A)(1) and (2) shall not become effective until after the City Council has accepted, by resolution, the Cable Regulatory Commission's report of Grantee's completion of the requirements of Section 1.3(A)(1) or Section 1.3(A)(2), as applicable.

1.4 Effective Date. The effective date of this Franchise shall be on the later of either January 1, 2008, or 60 days after the passage date of this Franchise by the City Council, unless the Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 26.1, in which event this

Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original of this Franchise, as stamped by the Council Clerk.

1.5 Franchise Not Exclusive.

(A) This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder.

(B) Competing Cable Systems

(1) The parties acknowledge that there is an incumbent cable operator already providing cable services within the City. The incumbent cable operator provides capacity on its cable system for PEG Access Channels, has existing assignments for the PEG Access Channels, provides PEG Access Capital funding and provides I-Net capacity and support. The parties acknowledge that this Agreement reflects their best, good faith efforts to reflect the PEG Access and I-Net obligations set forth in the incumbent cable operator's franchises with the City. The parties agree that the obligations set forth in Sections 7, 8 and 9 are intended to require Grantee to provide PEG Access Channels, PEG Access Capital funding and I-Net capacity that is substantially equivalent to that required by the incumbent franchised cable operator.

(2) If, after the effective date of this Franchise, there are changes as to franchise requirements for the incumbent franchised cable operator relating to PEG Access Channels, PEG Access Capital funding and I-Net capacity, the parties agree that the corresponding obligations in this Franchise will be modified to substantially reflect the franchise obligations of the incumbent franchised cable operator. The parties agree that they will attempt in good faith to negotiate these modifications. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation in accordance with Section 25.2 or by arbitration in accordance with Section 25.3.

(C) Additional Provisions

(1) Grantee agrees and acknowledges that, solely for the purposes of Subsection 1.5(B), the provisions of any other franchise issued or administered by the City with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.

(2) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other Person.

1.6 Charter and General Ordinances This Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise shall be deemed

to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

1.7 Cable Services by Affiliates. Any Affiliate of the Grantee directly involved in the offering or delivery of Cable Services in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, shall comply with the obligations of this Franchise. However, the City and Grantee acknowledge that Qwest Corporation (“QC”), an Affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Services to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC’s installation and maintenance of facilities in the Rights-of-Way shall otherwise be subject to applicable laws and permit requirements. To the extent Grantee uses any third-parties (whether or not affiliated with the Grantee) to fulfill its obligations under this Franchise, Grantee will insure such parties comply with the terms and conditions of this Franchise. To the extent Grantee constructs and installs Facilities in the Rights-of-Way, such installations and Facilities will be subject to the terms and conditions contained in this Franchise.

1.8 City Does Not Regulate Telecommunications. City’s regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of QC’s telecommunications network to the extent the telecommunications network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending QC’s existing telecommunications network for the provision of non-cable services.

Section 2. INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

2.1 Intergovernmental Agreement. The City has provided for regulation of this Franchise through a Cable Regulatory Commission (“Commission”) created through an Intergovernmental Agreement (attached as Exhibit A). The City has agreed to be bound by the decisions and actions taken by the Commission pursuant to powers, duties, and responsibilities delegated to the Commission under the Intergovernmental Agreement. Unless specifically stated otherwise in this Franchise, the Commission shall be the representative and agent of the City in dealing with Grantee under the terms of this Franchise. In fulfilling the terms of this Franchise, Grantee is expected to rely upon, look to, communicate with, and comply with the decisions and orders of the Commission, its agents, and employees on all cable matters with respect to which the City has lawfully delegated the exercise of the City’s authority under this Franchise. Nothing in this Franchise is intended to empower the Commission to act contrary to the provisions of the Intergovernmental Agreement or this Franchise. The City retains all powers not expressly delegated to the Commission.

Section 3. DEFINITIONS

3.1 (A) Captions. Throughout this Franchise, captions to Sections are intended solely to facilitate reading and to reference the Sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

(B) Definitions. For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.

3.2 “Access” means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community to acquire, create and distribute Non-Commercial Programming not under the Grantee’s editorial control, 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 or designated Programmers or users having editorial control over their Programming;

(B) “Educational Access” means Access where schools are the primary or designated Programmers or users having editorial control over their Programming;

(C) “Government Access” means Access where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming; and

(D) “PEG Access” means Public Access, Educational Access, and Government Access, collectively.

3.3 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit PEG Access Programming.

3.4 “Access Facilities” means the Channels, services, facilities, equipment, and/or technical components used or useable by and for PEG Access.

3.5 “Access Resources” means all operating support and other financial means by which PEG Access may be funded.

3.6 “Activation” or “Activated” means the status of any Capacity or part of the Cable System in which any Residential, Access or Institutional Service requiring the use of that Capacity or part may be made available without further installation of Cable System equipment, whether hardware or software.

3.7 “Affiliated Entity” means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee’s Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

3.8 “Basic Service Tier” is the level of Programming service which includes, at a minimum, all Broadcast Channels, all PEG Access Channels required in this Franchise, and any additional Programming added by the Grantee.

3.9 “Broadcast Channels” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 (1996 Supp.).

3.10 “Cable Programming Service Tier” is any video Cable Services, other than Basic Service Tier or Pay Services.

3.11 “Cable Regulatory Commission” (“Commission”) means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the City Council.

3.12 “Cable Services” means (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

3.13 “Cable System” means a system of plant, Facilities, equipment, and closed Signal transmission paths, including, without limitation, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all other conductors, home terminals, converters, remote control units, and all associated equipment or Facilities used to distribute Cable Services and Institutional Services and of producing, receiving, amplifying, storing, processing or distributing Signals, whether owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of the Grantee.

3.14 “Capacity” means the capability of the Cable System to carry Signals.

3.15 “Capital” or “Capital Costs” means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one year or longer.

3.16 “Channel” means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video, stereo or SAP (second audio pair) audio, and may include other non-video sub-carriers and digital information.

3.17 “City” means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

3.18 “City Council” means the Council of the City of Portland.

3.19 “Designated Access Provider” means the entity or entities designated by the City under Section 7.1 to provide Access in the Franchise Area, and whose duties may include the management of certain Access Facilities and Resources.

3.20 “Downstream” means the direction of Signals from the Headend to Subscribers or Interconnect points served by the Cable System.

3.21 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is lawfully occupied for residential purposes. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

3.22 “Facility” means any tangible component of the Cable System.

3.23 “FCC” means the Federal Communications Commission.

3.24 “Fiber” means a transmission medium of optical fiber cable capable of carrying Cable Services by means of lightwave impulses.

3.25 “Franchise” means this franchise agreement, as fully executed by the City and the Grantee.

3.26 “Franchise Area” means the area of the City within which the Grantee is authorized to provide Cable Services, as set forth in Section 4, and as may be modified from time to time.

3.27 “Gross Revenues” means all amounts, in whatever form and from all sources, earned-either by the Grantee from the operation of Grantee’s Cable System within the City, or by any Affiliated Entity only to the extent such amounts are earned from the operation of Grantee’s Cable System to provide Cable Services within the City. “Gross Revenues” shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues derived from the operation of Grantee’s Cable System to provide Cable Services. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues” shall also include amounts earned during any period regardless of whether: (1) the amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity; (2) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and (3) the amounts are initially recorded by the Grantee or an Affiliated Entity. “Gross Revenues” shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment. Notwithstanding the previous sentence, actual bad debt amounts written off, net of any amounts subsequently collected, may be deducted from Gross Revenue. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, 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 Affiliated Entity and which may otherwise constitute revenue of the Affiliated Entity, shall not constitute additional Gross Revenues for purposes of this Franchise. “Gross Revenues” shall include amounts earned by Affiliated Entities 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 and recorded such types of revenue in its books and Records directly but for the existence of Affiliated Entities. “Gross Revenues” shall not include sales or other similar taxes imposed by law on Subscribers which the Grantee is obligated to collect, nor amounts received from PEG Institutions for use of the Institutional Network.

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3.29 “Hazardous Substances” has the meaning given by ORS 465.200(16) (2005).

3.30 “Headend” means Grantee’s Facility for reception and dissemination of Signals on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, 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.

3.31 “Incremental” costs means the amount actually expended by Grantee in meeting an obligation under this Franchise which Grantee would not otherwise have expended in order to operate and conduct the business of its Cable System or to meet another obligation of this Franchise.

3.32 “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 Access Facility, cable system or other separate communications network so that Cable Services and I-Net services of technically adequate quality may be sent to and received from such other systems.

3.33 "Institutional Network" or "I-Net" means dedicated capacity to provide one-way and bi-directional communication services to and among PEG Institutions and/or resources necessary to facilitate PEG Institutions' effective use of I-Net capacity for conducting their business.

3.34 "Leased Access Channel" means any Channel or portion of a Channel commercially available for a fee or charge by Persons other than the Grantee, under the requirements of 47 USC § 532 (1996 Supp.).

3.35 "Non-Commercial" means use of the Cable System by any public, tax-exempt organization or by any other user for a purpose that is not intended to generate income for the user which may be subject to federal, state, or local income taxes.

3.36 "Pay Service" means video Signals delivered to Subscribers for a fee or charge over and above the regular charges for Basic Service Tier and Cable Programming Tier, on a per program, per Channel, or other subscription basis.

3.37 "PEG Institution" means any School; agency of government, excluding federal governments; public library; or not-for-profit organization, with at least one physical site located within the Franchise Area.

3.38 "Penalties" means any and all monetary penalties provided for in this Franchise.

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

3.40 "Programmer" means any Person responsible for Programming on the Cable System, including, without limitation, any Person who produces or otherwise provides Programming for transmission on the Cable System.

3.41 "Programming" means the process of causing television programs 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.

3.42 "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, summaries or accounts of personal conversations or interviews, reports, notebooks, sketches, summaries or accounts of meetings or conferences, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, photographs and any other writings or recordings of every kind and description, including magnetic media, and all sound recordings, to the extent related to the enforcement or administration of this Franchise.

3.43 "Remote Terminal" or "RT" means a Digital Subscriber Line Access Multiplexer installed by Grantee and capable of providing Cable Services to Subscribers.

3.44 “Residential Services” means Cable Services delivered to single or multiple Dwelling Units.

3.45 “Residential Subscriber” means any Subscriber receiving Residential Services.

3.46 “School” means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies.

3.47 “Service Date” means the date that Grantee first offers, or plans to offer, Cable Services on a commercial basis to one or more Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise.

3.48 “Section” or “Subsection” means a provision of this Franchise, unless specified as part of another document.

3.49 “Signal” means any analog or digital electrical or light impulses carried on the Cable System, which includes any combination of audio, video, voice or data.

3.50 “Standard Video Channel” means a portion of the electromagnetic frequency spectrum which is capable of delivering both the audio and video portions of a television signal at an acceptable level of quality to Residential Subscribers.

3.51 “Streets” means the surface of any public street, road, alley or highway, within the City, used or intended to be used by the general public for general transportation purposes to the extent the City has the right to allow the Grantee to use them, and the space above and below.

3.52 “Subscriber” means any Person who is lawfully receiving, for any purpose or reason, any Cable Services provided by Grantee by means of or in connection with the Cable System, whether or not a fee is paid for such service.

3.53 “Tier” means any package or cluster of Standard Cable Services offered by Grantee to Subscribers.

3.54 “Upstream” means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

3.55 “Year,” “Annual” or “Annually” means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 4. FRANCHISE AREA

4.1 Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the corporate boundaries of the City, as such boundaries may change from time to time.

4.2 Service Date. Grantee shall notify the City, within eighteen (18) months from the Effective Date of this Franchise, of a Service Date as provided in Section 3.47.

4.3 Redlining Prohibited. Grantee shall not deny Cable Services to any group of subscribers or potential residential subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or Facilities based upon the income level of residents of the local area in which such group resides.

Section 5. PROGRAMMING AND CHANNEL CAPACITY

5.2 Channel Capacity.

(A) Grantee shall provide a minimum Downstream Channel capacity of 175 Standard Video Channels to all Residential Subscribers.

5.3 Broad Programming Categories.

(A) Grantee shall provide or enable the provision of at least the following broad categories of Programming:

- (1) Arts, culture and performing arts;
- (2) Foreign languages;
- (3) Programming addressed to diverse ethnic and minority interests in the City;
- (4) National, state and local government affairs; and
- (5) PEG Access Programming.

5.4 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any Programming which is obscene under applicable law. Grantee shall be deemed to have transmitted or permitted a transmission of obscene Programming only if a court of competent jurisdiction has found that Grantee's officers or employees, acting in their authorized capacity, have knowingly permitted Programming which is obscene under applicable law to be transmitted over any Channel that is subject to Grantee's editorial control.

5.5 Parental Control Device. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device 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.

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

5.7 Broadcast Channels. To the extent required by federal law, Grantee shall provide Broadcast Channels to all Residential Subscribers.

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Section 7. PEG ACCESS

7.1 Designated PEG Access Providers.

(A) The City may designate up to six (6) Non-Commercial PEG Access providers, including itself, to control and manage the use of any or all Access Facilities and Resources provided by the Grantee under this Franchise. To the extent of such designation by the City, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

(B) Grantee shall cooperate with Designated Access Providers in the use of the Cable System and Access Facilities for the provision of PEG Access Programming. Grantee shall enter into operating agreements as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.

7.2 Access Channel Capacity on the Residential Network.

(A) Initial Access Channels. Grantee shall provide eight Downstream Channels for distribution of Access Programming to all Residential Subscribers, with such Channel assignments as are set forth in Section 7.3(A).

(B) Additional Access Channels. Grantee shall Activate up to a total of 36 Channels, inclusive of the Access Channels under Section 7.2(A), upon request by the City for PEG Access use in order to meet a community need identified by a Designated Access Provider. These Channels shall have the capacity to carry entertainment quality and motion equivalent Channels, but may be reconfigured, at the City's direction, to carry Channels which require less capacity.

(C) Stereo Audio Channel. Grantee shall designate and provide for PEG Access use of one Upstream and one Downstream FM or digital stereo audio Channel for PEG Access audio Programming or audio simulcast with PEG Access video Programming. PEG Access use of these channels shall have priority over all other uses, so long as Grantee is notified 90 days in advance of each use.

7.3 Access Channel Assignments and Programming Information

(A) PEG Channel Assignments. Grantee shall provide the following Channel assignments for PEG Access and narrowcast, in accordance with Section 7.3(C):

- | | |
|-------------------------------------|-------------------------------------|
| (1) Channel 11 - public access | (Franchise Area) |
| (2) Channel 21 - public access | (Franchise Area) |
| (3) Channel 22 – public access | (Franchise Area) |
| (4) Channel 23 – public access | (Franchise Area) |
| (5) Channel 27 - educational access | (community college boundaries) |
| (6) Channel 28 - educational access | (public school district boundaries) |
| (7) Channel 29 – government access | (Franchise Area) |
| (8) Channel 30 - government access | (Franchise Area) |

(B) Alteration of PEG Channel Assignments. PEG Access Channel assignments, as provided under this Section, may be adjusted or altered only with the written approval, in advance, by the City. Access Channel types, (i.e. Public, Educational, Government), as provided under this Section, may be adjusted by Designated Access Providers subject to approval by the City. If technology changes render Channel

assignments obsolete, Grantee shall negotiate with the City to determine equitable placement of Access Channels.

(C) Narrowcasting Access Channels. To the extent feasible given normal Cable System design, Grantee shall use good faith efforts to configure the Cable System to allow Designated Access Providers to cablecast Access Channels, identified in Section 7.3(A)(5) and (6), to Cable Services Subscribers located within the following specific geographic areas, as such areas exist on the effective date of this Franchise: Portland Community College and Multnomah Community College service boundaries discretely; or public school district boundaries discretely.

(D) Access Channels on Lowest Service Tier. All Access Channels required by this Franchise shall be included by Grantee on the Basic Service Tier and therefore be made available to every Cable Services Subscriber, except as otherwise provided under this Franchise.

(E) Access Programming Information in Programming Guides.

(1) Grantee shall include the PEG Access Channels and Programming information in any program guides provided to its Cable Services Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and Programming information in the programming guides.

(2) The Designated Access Providers shall provide to the Grantee, or its designee, the Access Channel and Programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

7.4 Access Channel Origination Points.

(A) Access Origination Points. The City may designate up to six (6) points of origination located within the Cable Services Area as defined in Section 4.1 for Access Channels. Grantee shall enable the Designated Access Providers to use the Channel origination points as central collection, switching and dissemination points for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems.

(B) Access Interconnect Capacity. Grantee shall provide Activated Interconnection of the Cable System to the designated Access Channel origination points. The Designated Access Providers shall provide an Access Channel Signal by a BNC cable and two balanced audio cables at +4dBm to the Grantee's encoding device at the Channel origination point. Designated Access Providers shall have the exclusive right to control and schedule the operation of all Interconnections of the PEG Access Channels with other cable systems and other entities.

(C) Changes in Access Channel Origination Points. Grantee shall provide all obligations in Section 7.4 to those Access Channel points of origination in place on the Service Date. If the City designates new Access providers for Channel origination or if a current Designated Access Provider moves its Channel origination location at its own instigation after the Service Date, the Designated Access Provider and/or the City will fund the Incremental, direct costs to construct the Cable System from the new site or location to Grantee's nearest Cable System Fiber in the Street.

7.5 Access Programming Interface with Grantee Video-On-Demand Capabilities. Grantee shall include up to 25 hours, at any given time, of Access Programming on its video-on-demand (“VOD”) platform to be accessible free of charge to Cable Services Subscribers on the same basis as commercially offered VOD content. Grantee agrees to work in good faith with the Designated Access Providers to establish a mutually agreeable process for placing Access Programming on the VOD platform, including but not limited to, addressing programming technical formatting; identifying potentially offensive programming for disclaimers; and including program information in VOD program guides. Designated Access Providers are responsible for selecting the Access Programming and providing it to Grantee in an appropriate format. Grantee and the City recognize that future development of VOD technology may allow for the Designated Access Providers and Grantee to agree on a mutually acceptable alternative to including Access Programming on Grantee’s VOD platform and increasing the amount of Access Programming available to Subscribers.

7.6 Live Origination Video Transport.

(A) Grantee shall initially provide a minimum of 30 Mbps symmetrical Ethernet service, or equivalent, at Portland Community Media’s Access Channel origination point, including all necessary equipment for service activation, in order for PCM to use the service for PEG Access video transport, including the ability for PCM to originate discrete, live Programming from PEG Institutions. The initial 30 Mbps Ethernet service shall include Internet access and up to sixteen (16) static Internet protocol (IP) addresses in order for PCM to administer PEG Access Programming applications, including, but not limited to, on-demand, streaming and live origination PEG Programming applications. Grantee shall provide additional capacity under this Subsection 7.6(A) if PCM documents a need for such capacity in order to administer PEG Access Programming applications.

(B) Portland Community Media. For purposes of the Section 7.6, “Portland Community Media” or “PCM” means the PEG Access provider, or its successors or assignees, designated by contract with the City. Access Resources allocated to PCM under this Section 7.6 may be re-assigned at the City’s sole discretion to another Designated Access Provider.

7.7 Access Programming Interconnects. Upon request by the City based on an identified community need, Grantee shall provide an Activated Interconnect, within 120 days of such request, for the carriage and routing of Access Programming Signals to and from other franchised cable service providers, including cable service providers serving jurisdictions contiguous with the Franchise Area. If the City authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against payments made under Section 9.1(A).

7.8 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the City or to any Designated Access Provider, except as specifically provided in this Section 7.

7.9 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 substantially affect the Signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary

equipment, to ensure that the capabilities of Designated Access Providers or Access Programmers are not diminished or adversely affected by such change.

7.10 Technical Quality.

(A) Grantee shall maintain all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels.

(B) Grantee shall have no responsibility for the technical quality of the Access Programming distributed on the Access Channels.

(C) Use of the Cable System by Designated Access Providers shall not interfere with the technical quality or reliability of the Cable System.

8. PEG INSTITUTIONAL NETWORK

8.1 Institutional Network (“I-Net”)

(A) Grantee acknowledges that the City has acquired I-Net capacity, facilities, interconnects, services and resources from a variety of existing franchised cable services providers to design, construct and operate an Institutional Network and to facilitate PEG Institutions’ uses of the I-Net. The parties acknowledge that the public interest would not be served by duplicating existing I-Net facilities or services provided under other cable services franchises.

(B) Grantee agrees that the City may use I-Net resources provided under this Franchise to support use by PEG Institutions of I-Net capacity, facilities, interconnects, services and resources not constructed, owned, controlled, operated or provided by Grantee.

(C) The City and Grantee may mutually agree on I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 9.1(A).

8.2 Interconnections. Upon request by the City based on an identified community need, Grantee shall provide an Activated Interconnect, within 120 days of such request, for the carriage and routing of I-Net Signals to and from any I-Net facilities provided by Grantee and I-Net facilities provided by other franchised cable service providers, including cable service providers serving jurisdictions contiguous with the Franchise Area. If the City authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against payments made under Section 9.1(A).

9. PEG ACCESS CAPITAL FUNDING

9.1 3% Gross Revenue Annual Setaside.

(A) Grantee shall pay to the City three percent (3%) of Gross Revenues Annually to support PEG Access and I-Net Capital Costs.

(B) The City intends to use one percent (1%) of funds paid under Section 9.1 to provide support for Designated Access Provider Capital Costs; one percent (1%) for grants to PEG Institutions for Capital projects related to use of the Cable System; and one percent (1%) to fund PEG Institutions' Capital requirements for use of the I-Net.

(C) The restrictions upon the City's use of the funds provided under this Section 9.1 for PEG and I-Net Capital Costs will survive the termination of this Agreement for any cause. If at the end of the Franchise Term, as provided in Section 1.2, or upon revocation of the Franchise as provided in Section 23, there are any carry-over amounts remaining in City accounts from funds paid to the City under Section 9.1(A), the City may continue to use these funds for a period of two (2) years in support of PEG or I-Net Capital Costs. At the conclusion of the two (2) year period, the City will return any remaining unexpended funds to Grantee, to refund these amounts to cable subscribers.

9.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the City under Section 9.1 for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

9.3 PEG Access Support not Franchise Fees; Applicable Federal Law. Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the City, subject to the requirements of Federal law. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 9 may total more than five percent of Grantee's Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

9.4 Audit Rights.

(A) The Grantee and its agents and representatives may arrange for and conduct audits, upon no less than thirty (30) days prior written notice and during normal business hours, for payments made under Section 9 to ensure that the PEG Access Capital funding has been utilized for PEG Access and Institutional Network Capital Costs in accordance with this Franchise. Grantee shall provide written notice to the City of the auditors' conclusions. The City shall have thirty (30) days to provide a written response. If the parties are unable to agree upon the auditors' conclusions, either party may submit the issue to arbitration under Section 24.2. If the auditors' conclusions become final, determining that any PEG Access Capital funding has not been used by the City for PEG Access and Institutional Capital Costs as specified in this Franchise, the City shall, within 30 days, take any or all of the following actions, in keeping with the auditors' conclusions: 1) requiring the recipient of the PEG Access Capital funding to spend the funds properly; 2) recovering the funds from the recipient and re-depositing the funds into the Capital funding accounts; 3) allowing the Grantee to reduce future Section 9 Capital payments by the amount of the improperly spent Capital funds; or, 4) directly paying back the Capital funding accounts for the improperly spent amount, which the City could do from franchise fees or any other source of funds it may chose. The decision as to which of these options to exercise shall be at the City's sole discretion.

(B) The City agrees to reimburse the Grantee for:

- (1) The reasonable costs of its audit of the PEG Access Capital Funding if the auditor concludes for the period subject to the audit that 5% or more of PEG Access Capital Funding has not been utilized for PEG Access and Institutional Network Capital Costs in accordance with the requirements of this Franchise; or

- (2) One half of the reasonable costs of such audit if the auditor concludes for the period subject to the audit that less than 5% but more than 2% of the PEG Access Capital Funding has not been utilized for PEG Access and Institutional Network Capital Costs in accordance with the requirements of this Franchise.
- (3) The City shall reimburse the Grantee within 30 days of receipt of an invoice from the Grantee showing such costs were actually incurred and were directly related to the audit. The Grantee's costs which may be reimbursed under this Section 9.4 shall not exceed \$7,500.00 per audit. PEG Access Capital Funding may be audited by the Grantee within thirty-six (36) months of the date any audited and recomputed payment is due. If no such audit is conducted within the thirty-six (36) month period, then any claim that the Grantee may have under this Section 9.4 shall be forever waived and relinquished.

Section 10. SERVICE, CONSTRUCTION, AND INTERCONNECTION

10.1 For purposes of this Section 10, "RT Service Radius" means an area within 4,000 feet from an Activated Remote Terminal capable of providing Residential Cable Services to Residential Subscribers.

10.2 Universal Service. Subject to Section 4, following the Service Date, Grantee shall provide Cable Services under non-discriminatory rates and reasonable terms and conditions to all Subscribers in the Cable Services Franchise Area who reside in Dwelling Units within an activated RT Service Radius. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within an activated RT Service Radius within the Cable Services Franchise Area.

10.3 Service Availability. Except as otherwise provided in this Franchise, where Grantee chooses to activate a Remote Terminal located within the Franchise Area, Grantee shall provide Cable Services at its standard installation rates within seven (7) days of a request by any Person within an activated RT Service Radius. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

10.4 Monthly Service and Installation of Schools. Upon request, Grantee shall provide without charge the Basic Service Tier, an expanded programming service Tier and one standard outlet to any School located within an activated RT Service Radius.

10.5 Quality and Workmanship. The Cable System constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

10.6 Inspection of Construction. The City shall have the right to inspect any construction or installation work performed under this Franchise. The City shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Franchise and applicable provisions of law.

Section 11. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

11.1 Technical and Safety Standards.

(A) Grantee shall comply with FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), now in effect or as may be amended from time to time.

(B) Grantee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the Grantee.

(C) Grantee shall install and maintain its Cable System in accordance with the requirements of the National Electrical Safety Code, and in such manner that the Cable System shall not interfere with any installations of the City or any public utility or Institutional utility, or any franchisee, licensee or permittee of the City.

(D) Grantee shall provide and put in use such equipment and appliances as shall control on a closed circuit basis and effectually carry all electric currents and Grantee television and other system Signal impulses in a manner so as to prevent injury to the wires, pipes, structures, and property belonging to the City or to any Person within the City.

(E) Grantee, at its own expense, shall repair, renew, change, and improve its Cable System from time to time as may be necessary to accomplish these purposes.

11.2 Performance Testing.

(A) Grantee shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) Any other tests reasonably necessary to determine compliance with this Franchise or in response to subscriber complaints.

(B) Grantee shall maintain written Records of all results of its Cable System tests, performed by or for the Grantee. Such test results shall be available for inspection by the City upon request.

11.3 Specific Technical Facilities or Capabilities. The following specific technical facilities or capabilities shall be provided on the Cable System by the Grantee:

(A) 100% Emergency Standby Power. Grantee shall maintain standby power generating capacity throughout the Cable System that serves Subscribers within the Franchise Area. All standby power systems shall be rated to provide at least two (2) hours duration. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.

(B) Emergency Override. Grantee shall comply with all applicable federal regulation regarding emergency alert systems, including equipment standards and procedures for alerting capacities. The City may identify authorized emergency officials for activating the emergency alert system. The City may also develop a local plan containing methods of emergency alert system message distribution, subject to federal review and approval as provided by federal rules.

Section 12. CUSTOMER SERVICE AND CONSUMER PROTECTION

12.1 City's Cable Television Consumer Protection Policy. Grantee shall comply with the City's Cable Television Consumer Protection Policy set forth in Portland City Code Chapter 3.115.

12.2 Subscriber Contracts. Grantee shall not enter into contracts with Subscribers which are inconsistent in any material sense with the requirements of this Franchise.

Section 13. COMPENSATION AND AUDITING

13.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, the Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues related to Cable Services.

13.2 Payments and Quarterly Reports.

(A) Payments. Grantee's franchise fee payments to the City shall be computed quarterly following the effective date of this Franchise for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

(B) Quarterly Reports. Each payment shall be accompanied by a written report to the City, verified by 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. Such reports shall be in a form satisfactory to the City.

13.3 Interest on Late Payments. Payments not received within forty-five (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date.

13.4 Cost of Publication. Grantee shall pay the cost of publication of this Franchise and any amendments thereto, as such publication is required by the City Charter.

13.5 Alternative Franchise Compensation. Grantee acknowledges that the City has a utility license fee applicable to cable television utilities under Portland City Code Chapter 7.14. If Grantee's obligation to pay franchise fees to the City under this Franchise is lawfully suspended or eliminated, in whole or in part, at any time during the term of this Franchise, then the Grantee shall pay to the City the utility license fee set forth in PCC 7.14. In the event the obligation of Grantee to compensate the City through franchise fees or the utility license fee is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the streets for Grantee's use of the Streets, to the extent the City has the legal right to require such compensation.

13.6 Maximum Legal Compensation. The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible franchise fee of five percent (5%) of Gross Revenues related to Cable Services. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may request a modification of this Franchise.

13.7 Additional Commitments not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay franchise fees related to Cable Services in accordance with applicable law. Although the total sum of such franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments in this Franchise are not franchise fees as defined under 47 U.S.C. § 542, nor are they to be offset or credited against any franchise fee payments due to the City, subject to applicable Federal law. Except as otherwise authorized by 47 U.S.C. § 542, and the regulations promulgated thereunder, Grantee shall not pass these additional commitments through to subscribers.

13.8 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to Section 9 or Section 13 of this Franchise shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 9 or Section 13 of this Franchise shall be subject to audit by the City, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 9 or Section 13 of this Franchise that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the City, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date the City receives the payment.

(B) A Penalty of five percent (5%) of the underpayment shall be assessed and due within thirty (30) days of written notice from the City, if the City's audit discloses that the Grantee has paid ninety-five percent (95%) or less of the principal amount owing for the period under audit. If such payment is not received within thirty (30) days of written notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date on which the City receives the payment, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the City.

13.9 Escrow. If the Grantee disputes the City's determination of underpayment under Section 9 or Section 13 of this Franchise, the Grantee shall place the disputed amount in an escrow account at a financial institution with instructions agreed to by the City until final resolution.

13.10 Authority to Audit.

(A) The City and its agents and representatives shall have authority to arrange for and conduct audits under Section 13., within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 13.8, the City may determine the scope of audit in each instance.

(B) The Grantee agrees to reimburse the City for:

- (1) The reasonable costs of such audit if the audit discloses that the Grantee has paid 95% or less of the fees owing under Sections 9 and 13 for the period at issue; or
- (2) One half of the reasonable costs of such audit if the audit discloses that the Grantee had paid more than 95% but less than 98% of the fees owing under Sections 9 and 13 for the period at issue.
- (3) The Grantee shall reimburse the City within 30 days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the audit. The City's costs which may be reimbursed under this Section 13.10 shall not exceed \$7,500.00 per audit.

13.11 Liability for Licenses and Taxes. Except as provided in Section 13.5, payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The City's right to impose any such license fee, tax or charge shall be subject to any limitations on the City under applicable law.

Format Note: Need to change section numbers and check references.

Section 15. GENERAL INDEMNIFICATION AND INSURANCE

15.1 Indemnification.

(A) General Indemnification. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to Person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Cable System with all necessary Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee also hereby agrees to indemnify the City, its officers, agents and employees, for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Cable System in a timely manner in accordance with a reasonable relocation schedule furnished to Grantee by the City Engineer unless Grantee's failure arises directly from the City's negligence or willful misconduct.

(C) Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, associated with, arising from or due to Grantee's structures or other Facilities in the Streets.

(D) Defense of the Franchise. Grantee agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from injury, damage, loss, liability, reasonable cost or expense, including expert witnesses and other consultants, court and appeal costs and reasonable attorney fees or expenses, arising from or in any way related to the grant of, or terms of, this Franchise. This agreement to indemnify, defend and hold harmless encompasses, but is not limited to, injury, damages, losses, liabilities, costs or expenses, including expert witnesses and other consultants, court and appeals costs and reasonable attorney fees and expenses that in any way arise in connection with a claim or defense that the City: (1) lacked authority under federal or state law, its charters, city codes or ordinances in granting this Franchise; (2) acted in any disparate or discriminatory manner against any incumbent franchisee or permittee in granting this Franchise; (3) granted this Franchise in violation of any contractual rights belonging to any incumbent franchisee or permittee.

15.2 Insurance.

(A) The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City, as well as the City's officers, agents, and employees from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith. The insurance shall provide coverage at all

times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the term of the Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Franchise shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of the Franchise.

(B) The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for the City to declare a forfeiture of this Franchise under and subject to Section 23.1(C).

(C) In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 15.2 (A), Grantee may provide the City with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under Section 15.2(A). The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 15.2 (C), any failure by the Grantee to maintain adequate self-insurance shall be cause for the City to declare a forfeiture of this Franchise under and subject to Section 23.1(C) of this Franchise.

(D) The City shall require as a condition of any separate agreement between the City and an Designated Access Provider that the Designated Access Provider shall include the Grantee as a named insured in the Designated Access Provider's liability insurance policy with respect to any claim for injury, damage, loss, liability, cost or expense arising from Programming or other transmission placed by Designated Access Provider on PEG Access Channels or the Institutional Network (but not if arising out of or by reason of any act done by the Grantee or its officers, agents or employees).

15.3 Faithful Performance Bond.

A) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than \$100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Cable System installed in the Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.

(B) During the term of the Franchise, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City

exercise its rights against the performance bond under this Section 15.3 if a bona fide, good faith dispute exists between the City and the Grantee.

(C) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

15.4 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a Street opening permit, Grantee shall post a faithful performance bond running to the City, as is required for Street opening permits, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 16. Grantee shall pay all premiums or other costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section 15.4. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond, along with written evidence of the required premiums. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section 15.4.

Section 16. GENERAL STREET USE AND CONSTRUCTION

16.1 Construction.

(A) Subject to applicable regulations of the City, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all Facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain the Grantee's responsibility. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee.

(B) Construction Schedule and Maps.

- (1) Prior to beginning any new construction in the Streets, Grantee shall provide the City Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When construction of Grantee's Cable System in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the City Engineer.
- (2) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, Grantee shall provide a map to the City Engineer and the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Grantee's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon. Grantee shall also provide such maps in an electronic format acceptable to the City and the Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Cable System.

(C) Grantee may make excavations in Streets for any Facility needed for the maintenance or extension of the Grantee's Cable System. Prior to doing such work, Grantee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

(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 within 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.

16.2 Locates. Grantee shall comply with the requirements of ORS 757.542-757.562 and ORS 757.993 (2005), and the rules and regulations promulgated thereunder in OAR Chapter 952.

16.3 Relocation. The City shall have the right to require Grantee to change the location of any of Grantee's Cable System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the Streets, the City shall make a reasonable effort to provide Grantee with an alternate location within the Streets.

16.4 Restoration of Streets.

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 16.4 shall be done in strict compliance with all rules, regulations and ordinances of the City.

16.5 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 the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the Streets by or under the City's authority.

(B) Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's Signals so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.

(C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Street.

16.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Street, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any Streets, the Grantee shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Grantee has possession of such information. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall immediately be subject to the terms of this Franchise within a reasonable period of time to bring the acquired Facilities into compliance with this Franchise .

16.7 Reservation of City Street Rights. Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, 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 the Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Cable System shall be removed or replaced in the manner the City shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

16.8 New Underground Construction.

(A) For new Grantee Duct installation, Grantee will provide additional duct(s) as needed and as specified by the City in an Annual duct capacity plan provided to Grantee:

- (1) City will pay Grantee the incremental costs for this work, consisting of material and labor;
- (2) City will then maintain ownership of and maintenance responsibilities for the additional duct(s).

(B) Access to Grantee's Vaults. To facilitate safe working conditions, Grantee will control access to Grantee's vaults. City or its contractor will notify Grantee, in advance, of access needs and Grantee will provide qualified personnel. Grantee will bill the City or contractor for the cost of labor incurred for this work, and the City agrees to pay or have its contractor pay Grantee in accordance with such bills.

16.9 Street Vacation. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to the City, remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council. In the event of failure, neglect or refusal of Grantee, after thirty days' notice by the City Council, to restore, repair or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket.

16.10 Common Users.

(A) For the purposes of this Section:

- (1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.
- (2) "Conduit" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholds or other such facilities in the Grantee's Cable System.
- (3) "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.
- (4) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets.
- (5) "Surplus Ducts or Conduits" are Ducts or Conduit other than those: (i) occupied by the Grantee or any prior Licensee, (ii) unoccupied Ducts or Conduit held by Grantee as an emergency use spare, and (iii) unoccupied Ducts or Conduit that the Grantee reasonably expects to use within the next eighteen (18) months.

(B) Use of Surplus Facilities by Third-parties. Grantee acknowledges that the Streets have a finite capacity for containing conduits, ducts and other facilities. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Streets, the City Engineer may require Grantee to afford to such Person the right as a Licensee to use Grantee's Surplus Ducts or Conduits in common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by the Grantee and the Licensee, and to the safety and reliability of Grantee's Cable System and maintenance requirements. Any agreement governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

(C) If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of Surplus Ducts or Conduits, Grantee shall seek resolution of the dispute in accordance with OAR 860-028-0220.

(D) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(E) The Grantee shall give a Licensee a minimum of 120 days notice of its need to occupy licensed conduit and shall propose that the Licensee take the first feasible action as follows:

- (1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers or other space-saving technology sufficient to meet the Grantee's space needs;
- (2) Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;
- (3) Vacate ducts that are no longer surplus; or
- (4) Construct and maintain sufficient new conduit to meet the Grantee's space needs.

(F) When two or more Licensees occupy a section of Conduit, the last Licensee to occupy the Conduit shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the increased cost.

(G) All attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages or other costs the Licensee's attachments cause the Grantee to incur.

(H) As needed and as specified by the City in an Annual duct capacity plan provided to Grantee, City will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under Section 16.10 and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

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

16.12 Hazardous Substances.

(A) Compliance with Applicable Law. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its Cable System and Facilities in the Streets.

(B) Maintenance, Inspection and Remediation. Grantee shall maintain and inspect its Cable System located in the Streets. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its Facilities in the Streets, Grantee shall provide a written report of the discovery to the City within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by Grantee's Facilities or the acts or omissions of Grantee. Nothing in this Franchise transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Streets.

(C) Construction, Modification or Removal of Facilities. In the course of construction, modification or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations and orders. Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

16.13 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

16.14 Construction Codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables, and other appurtenances from the property in question.

16.15 Construction and Use of Poles.

(A) Whenever feasible, the construction, maintenance, and use of Grantee's Cable System shall comply with the standards of materials in engineering and all other provisions of a pole user agreement for use of poles, entered into by and between QC, PacifiCorp, Portland General Electric Company, and the Grantee, or separate agreements between each of said companies and the Grantee, a copy of which shall be furnished to the City upon request of the City. In the event Grantee cannot obtain the necessary poles and allied facilities pursuant to the provisions of such an agreement, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper City authorities, and each pole shall be set whenever practicable at an extension of a lot line. The City shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when in the opinion of the City the public convenience requires such change, and the expense thereof shall be paid by the Grantee.

(B) The terms of Section 16.15(A) shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

16.16 Tree Trimming.

16.1. When Permits Needed. Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets which interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below 30 feet above sidewalk grade until one week (seven [7] calendar days) after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. The owner or occupant shall have one week from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable utility service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

16.2. Blanket Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a blanket tree pruning permit if Grantee adequately

demonstrates to the City Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any blanket permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have discretion to cancel the blanket permit, notification and single tree permit process if, at any time, the Grantee or its agents fail to either use proper utility arboricultural practices or to properly notify the public as specified in Section 16.1.

16.3. Emergencies. Notwithstanding the permit and notice requirements of Section 16, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this Section 16, emergencies exist when it is necessary to prune a tree or trees in order to restore electrical services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

Section 17. TRANSFER OF GRANTEE'S CABLE SYSTEM

17.1 Transfer Defined. For purposes of Section 17, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

17.2 Council Consent. Neither this Franchise nor all or substantially all of Grantee's Cable System located in the Streets by authority of this Franchise shall be Transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Cable System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Cable System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment with respect to Grantee's Cable System shall be subject to the City's other rights contained in this Franchise.

17.3 Review.

(A) In determining whether the City will consent to any Transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any Transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate.

(B) No Transfer for which the City's consent by ordinance is required may occur until the successor, assignee, lessee or transferee has complied with the requirements of Section 15 of this Franchise, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City Auditor an executed counterpart or certified copy thereof.

17.4 Leases. Grantee shall not lease any portion of its franchised Cable System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 17.2, Grantee may lease any portion of its Grantee System in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Cable System. A lessee of any portion of Grantee's Cable System shall not obtain any rights under this Franchise.

17.5 Sales.

(A) Notwithstanding Section 17.2, Grantee may sell portions of its Cable System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

- (1) The sale is to the holder of a current existing, cable system franchise, license, permit, or other similar right granted by the City;
- (2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Cable System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the mapping requirements of Section 16.1(B)(2) and providing an executed counterpart or certified copy of the sales documents;
- (3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Cable System; and,
- (4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid cable system franchise, license, permit or other similar right granted by the City. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

17.6 If required by federal law, the City shall make a final decision upon a proposed change in control within 120 days of receiving a written request for approval of a change in control containing or accompanied by such information as is required by federal law and this Franchise. If the City fails to render a final decision on the request within 120 days, then the proposed change shall be deemed to be consented to by the City. At any time during the 120 day period, the City may request in writing that the Grantee provide or cause to provide any information reasonably necessary to rendering a final decision on the request. The City and the Grantee may, at any time, agree to extend the 120 day period.

17.3 Bankruptcy or Dissolution. Grantee shall immediately report to the City, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

17.4 Consent. No consent by the City, which is required under this Section, shall be unreasonably denied or delayed.

Format Note: Need to change section numbers and check references.

Section 19. CITY REGULATORY AUTHORITY

19.1 City Regulatory Rights

(A) The City Council shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

(B) Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of this Franchise by any failure of the City to promptly enforce compliance with this Franchise.

19.2 City Regulatory Actions. Subject to the conditions set forth in Section 1.6, Grantee shall comply with any and all lawful actions of the City affecting Grantee's operations under this Franchise, including, without limitation, all applicable ordinances, orders, contracts, and regulatory actions taken pursuant thereto, in all respects and without exception, so long as such actions do not materially affect the rights of Grantee hereunder. Subject to the conditions set forth in Section 1.6, In the event of any direct conflict between City orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

19.3 Regulation of Rates and Charges. All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by the City Charter and by applicable federal, state and local laws and City ordinances.

19.4 Rate Discrimination. All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 19.4 shall be construed to prohibit:

(A) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns;

(B) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens; or

(C) Grantee establishing different and nondiscriminatory rates and charges and classes of services for commercial subscribers, as well as different, nondiscriminatory monthly rates for classes of commercial subscribers.

19.5 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the City. Nothing in this Section 19.5(A) shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

(B) Grantee shall maintain on file with the City a complete schedule setting forth the maximum rates and charges for any and all Leased Access Channels. The schedule shall be in a form satisfactory to the City.

19.6 Changes in Rates and Charges.

(A) Unless otherwise provided by law, Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any increase in rates and charges. Notice to the City of proposed increases in rates and charges shall be filed in a form satisfactory to the City.

(B) Unless the City has lawfully required prior review of Grantee's rate increase in accordance with the requirements and conditions of applicable law, Grantee's rate increase shall become effective on the date identified in the form filed by the Grantee, provided that the effective date shall not be earlier than the 31st day after such filing.

19.7 Regulation of Equipment for Hearing Impaired. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Basic Service Tier by hearing impaired individuals.

19.8 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

(1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in this Franchise. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or Tiers.

(2) Unless otherwise provided by law, Grantee may impose Downgrade Charges only if:

- (a) the Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;
- (b) the Downgrade Charge does not exceed the Grantee's actual Incremental, direct costs of performing the downgrade; and
- (c) the downgrade is from a level of service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request.

(B) Disconnection Charges. Unless otherwise provided by law, Grantee shall not impose any charges for the disconnection of Cable Services, nor may the Grantee impose any rate, charge or other financial liability upon any Subscriber for Cable Services delivered after the date of a voluntary disconnection request.

Section 20. RECORDS AND REPORTS

20.1 Open Records. Grantee shall maintain a business office within the City for managing the Grantee's Cable System. Grantee shall manage all of its operations in accordance with a policy of keeping its Records open and accessible to the City. The City shall have the right to inspect all Records of the Grantee and Affiliated Entities at any time during normal business hours and upon reasonable notice to determine compliance by Grantee with its obligations under this Franchise. Grantee shall not deny the City access to Grantee's Records on the basis that Grantee's Records are under the control of an Affiliated Entity or a third party, rather than the Grantee. In the case of Affiliated Entities not under common control with Grantee, Grantee shall not be subject to the remedies set forth in Section 23.1(A) if such Affiliated Entity does not permit inspection of its Records, and Grantee has;

(A) made available for inspection all of its Records relevant to the determination of compliance; and

(B) exercised all reasonable efforts to persuade such Affiliated Entity to make such Records available for inspection.

20.2 Annual Reports. Grantee shall Annually present a written report to the City (the "Annual Report") setting out such information as the City deems necessary to determine compliance by Grantee with its obligations under this Franchise. Grantee shall submit the Annual Report no later than May 1 of each Year, following the end of the Grantee's calendar fiscal year. Except as otherwise provided by the City, the

Annual Report shall include, at a minimum, information as may be required concerning the Grantee's operations within the Franchise Area for the immediately previous Year in a form prescribed by the City. Specifically, the Annual Report will include the following information:

(A) Cable System structure and operating information:

- (1) Cable System ownership, including all levels of Parent Corporation and related ownership percentages;
- (2) An organizational chart for Grantee, listing officers and member of the board of director, department heads, and supervisors for major activity centers by category;
- (3) Total Cable System mileage and overall homes passed;
- (4) The number of Basic Service Tier Subscribers, Cable Programming Service Tier Subscribers, Pay Service Subscribers and pay-to-basic percentages;
- (5) Cable Services provided on the Cable System, including services begun or dropped during the previous Year; and
- (6) A schedule of all Grantee's rates and charges.

(B) A statement of Gross Revenues for the Grantee's Cable System within the City, prepared in accordance with generally accepted accounting principles, consistent with the financial statements provided under Section 20.2(C). Grantee shall certify that the statement of Gross Revenues for Grantee's Cable System within the City is an accurate reflection of Grantee's or Affiliated Entities Gross Revenues. If Grantee makes a significant change in its accounting methods in any Year, Grantee shall disclose such change and include a restatement of the statement of Gross Revenues submitted in prior years to the extent the City may require such restatements in order to determine compliance under this Franchise.

(C) Parent Corporation(s) Annual corporate reports, including audited financial statements.

20.3 General Reports. Grantee shall prepare and furnish to the City, at the times and in the form prescribed by the City, such other reports with respect to its operation, affairs, transactions or property as the City may deem reasonably necessary or appropriate to the performance of the City's rights, functions or duties under this Franchise.

20.4 Format. The City, after consultation with Grantee, may specify the form and details of all Grantee's reports required under this Franchise.

20.5 Reports of Regulatory Violations. Grantee shall provide copies to the City of any communications to and from any regulatory agency having jurisdiction over Grantee pertaining to any alleged, apparent or acknowledged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Services under this Franchise.

20.6 Public Records.

(A) Grantee acknowledges that information submitted to the City is subject to the Oregon Public Records Law, and is open to public inspection. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information, such as trade secrets, submitted to the City as confidential. Grantee shall prominently mark each page for which it claims confidentiality as "Confidential" prior to submitting such information to the City. The City shall treat any information so marked as confidential, until the City receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the

request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. If the City determines that it will be necessary to reveal the information, the City shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released.

Section 21. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISES

21.1 Equal Employment Opportunity.

(A) Throughout the term of this Franchise, Grantee shall fully comply with the equal employment opportunity requirements of federal, state, and local law, and in particular, FCC rules and regulations relating thereto. Upon request by the City, Grantee shall furnish the City a copy of the Grantee's Annual statistical report filed with the FCC, along with proof of Grantee's Annual certification of compliance. Grantee shall immediately notify the City in the event Grantee is at any time determined not to be in compliance with FCC rules or regulations.

(B) Throughout the term of this Franchise, the Grantee shall maintain a policy that all employment decisions, practices, and procedures are based on merit and ability without discrimination on the basis of an individual's race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee's policy shall apply to all employment actions including advertising, recruiting, hiring, promotion, transfer, remuneration, selection for training, company benefits, disciplinary action, lay-off, and termination.

21.2 Affirmative Action. Grantee shall carry out its equal employment opportunity policy by making a determined and good-faith effort at affirmative action to employ and advance in employment women, minorities, and the physically and mentally disabled.

21.3 Minority and Female Business Enterprises. Grantee shall make determined and good faith efforts to use minority and female business enterprises in its contracted expenditures, including, without limitation, contracts for the acquisition of goods, services, materials, supplies, and equipment used in the construction, maintenance, and operation of its Cable System. If directed by the City, the Grantee shall participate in the City's Minority and Female Business Enterprise Certification Program.

Section 22. RIGHTS OF INDIVIDUALS

22.1 Discriminatory Practices. Grantee shall not deny Cable Services, deny access, or otherwise discriminate on the availability, rates, terms or conditions of Cable Services provided to Subscribers, Programmers or any other Persons on the basis of race, color, religion, ancestry, age, national origin, gender, sexual orientation, familial status, marital status, status with regard to public assistance or physical or mental disability. Grantee shall comply at all times with all applicable federal, state or local laws, rules and regulations relating to non-discrimination.

22.2 Unauthorized Monitoring or Cable Tapping.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or subscriber outlet or receiver for any purpose, except as provided in Subsection 22.2(B), and as is necessary for billing purposes.

(B) Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform

Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

(C) For purposes of this Section, "Tap" means to observe or monitor video, audio, digital or other non-video Signals, or any combination of such Signals carried on the Cable System, where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

22.3 Privacy. The City and Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any Subscriber, Programmer or any other Person resulting from any device or Signal associated with the Cable System. Grantee shall not use the two-way communications capability of the Cable System for unauthorized or illegal Subscriber surveillance of any kind.

22.4 Permission of Property Owner or Tenant. Grantee shall not install or attach any of its Facilities to any residence or other property without first securing the permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance or unless such installation or attachment is otherwise authorized by law. Nothing in this Section, however, shall excuse the Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, unless Grantee is otherwise entitled to maintain its Facilities, whether by the original or a subsequent owner or tenant, the Grantee, on the owner's request, shall promptly remove any of its Facilities and promptly restore the property to its original condition. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

22.5 Sale of Subscriber Lists and Personalized Data. Grantee shall be subject to the provisions of applicable law regarding limitations on Grantee's collection and use of personalized data, and other issues involving the protection of Subscriber privacy.

Section 23. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

23.1 Remedies for Franchise Violations.

(A) Remedies. In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the Persons burdened by the violation, the nature of the remedy required in order to prevent further violations, and any other matters the City deems appropriate.

- (1) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation;
- (2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
- (3) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
- (4) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
- (5) Revoke this Franchise.

(B) In determining which of the forgoing remedies is appropriate, and in the exercise of specific remedies, the City shall consider, among other things, (1) the nature and extent of the violation, (2) whether Grantee has had a history of similar violations, (3) the remedy that can be expected to deter such violations in the future, and (4) the damage suffered by the public and the cost of remedying the violation.

(C) The City also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 23.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

- (1) Grantee fails to meet the Service Date requirements under Section 4.2 of this Franchise;
- (2) Grantee fails to comply with the requirements of Section 15 of this Franchise, including but not limited to, providing insurance or performance bonds;
- (2) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or
- (3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

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

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

(F) In the event that the City makes a preliminary determination that the Grantee has violated this franchise, the City shall commence a contested case proceeding under the rules adopted by the City. The City's final determination, following a contested case proceeding, may be appealed to the City Council. The City Council shall consider the appeal based on the record established in the contested case proceeding, under rules established by the City Council.

23.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 23.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 23.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 23.1 or such other rights as the City may possess.

23.3 Minor Variances. The City may, upon request of the Grantee or its own motion, permit the Grantee to vary its manner of performance under this Franchise so long as the variance does not result in a substantial change in the terms of this agreement or a substantial reduction in the services to be provided.

23.4 Expiration.

(A) Upon the expiration of this Franchise, subject to any restrictions imposed by 47 U.S.C. § 546 (Section 626 of the Cable Communications Policy Act of 1984) and other applicable federal, state or local laws, the City shall have the right, at its election, to:

- (1) Renew or extend Grantee's Franchise;
- (2) Invite additional proposals and award this Franchise to another Person;
- (3) Terminate the Franchise without further action; or
- (4) Take such further action as the City deems appropriate.

(B) Until such time as the City exercises its rights under Section 23.4, the Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

23.5 Removal of Plant and Equipment. If the City has by ordinance declared a forfeiture of this Franchise as provided in Section 23.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the City may require. In the event of a failure by the Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by City.

Section 24. MISCELLANEOUS PROVISIONS

24.1 Compliance with Laws.

(A) (1) Grantee shall comply with all applicable federal and state laws.

(2) In the event that there is a change in law that affects the parties rights or obligations under this Franchise, then the parties agree to meet and discuss in good faith the appropriate implementation of that change in law.

(B) Nothing in this Franchise is intended to authorize the Grantee to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the Robinson-Patman Act or any related amendments or regulatory provisions.

24.2 Arbitration.

(A) Any dispute between the parties hereto, including but not limited to disputes or controversies arising from or related to interpretation of this Franchise, may be arbitrated provided that both parties have consented in writing to the arbitration. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

(B) The City may initiate arbitration by resolution of its City Council, while Grantee may choose to initiate arbitration by sending written notice to the City. The City's consent to arbitration must be authorized by ordinance adopted by the City Council.

(C) After arbitration has been initiated, the City and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court.

(D) If either the City or Grantee does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:

- (1) If the City initiates arbitration, the City shall select one arbitrator and Grantee by written notice shall select one arbitrator within 15 days after passage of the resolution. If Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the City shall select one arbitrator, within 15 days after receiving the notice.
- (2) The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.

(E) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Grantee. The arbitrator(s) shall make a written report to the City and Grantee on the final determination within 60 days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination.

(F) The arbitrators shall have such powers as are set forth in ORS 36.335.

(G) The City and Grantee shall share equally the fees and costs of the arbitrator(s).

24.3 Mediation. The City and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise 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 City and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the City and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 24.2, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

24.4 Continuity of Service. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to Upgrade, modify or sell its Cable System, the Grantee shall make a good faith effort to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances during the term of this Franchise. In the event of purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment by the City, including subsequent assignment, sale, lease or other transfer to any other

Person, the Grantee shall operate the Cable System for such reasonable periods as are necessary to maintain continuity of Cable Services to all Subscribers.

24.5 Severability/Survivability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected. All provisions concerning indemnity survive the termination of this Agreement for any cause.

24.6 No Recourse against City. To the extent provided by law, Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief.

24.7 Nonenforcement by the City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

24.8 Action by Agencies or Courts. Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Oregon or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or the Grantee may determine if a material provision of this Franchise has been affected. Upon such determination, the City or the Grantee may seek to modify or amend this Franchise as may be necessary to carry out the parties' intentions and purposes under this Franchise.

24.9 Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

24.10 Choice of Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

24.11 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and: (1) delivered personally to the following addressee; (2) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested; (3) sent by overnight or commercial courier (such as Federal Express); or, (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: Office of Cable Communications and
 Franchise Management
 City of Portland, Oregon
 1120 SW Fifth Avenue, Room 1305
 Portland, Oregon 97204
 FAX No. (503) 823-5370

With a copy to: City Attorney's Office
Room 315, City Hall
1220 SW 5th Avenue
Portland, Oregon 97204
FAX No. (503) 823-3089

If to the Grantee: Qwest Broadband Services, Inc.
1801 California Street
Denver, CO 80202

With a copy to: James P. Campbell
Campbell Bohn Killin Brittan & Ray
270 St. Paul Street, #200
Denver, CO 80206
FAX No. (303) 322-5800

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of either actual delivery; three (3) business days after depositing in the United States mail as aforesaid; one (1) business day after shipment by commercial courier as aforesaid; or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

24.12 Reasonability of Actions. In any matter provided for in this Franchise involving discretionary acts by the City or the Grantee, including but not limited to the giving of consent, approval or instructions, the City and the Grantee, as may be appropriate, shall act in a manner that is reasonable under the circumstances.

24.13 Force Majeure.

(A) For purposes of this Franchise, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

24.14 Other Authority and Written Modification. Except as otherwise expressly provided in this Franchise, this Franchise contains the entire agreement between the City and the Grantee. All prior franchise agreements between the City and the Grantee shall be superseded. This Franchise may not be altered or modified orally but only by an instrument in writing executed by duly authorized representatives of the City and the Grantee. For the City, such authority may only be granted by ordinance enacted by the City Council.

24.15 Right of Intervention. The City shall have the right to intervene in any suit or proceeding to which the Grantee is a party, in the event the City's rights under this Franchise may be affected thereby.

Format Note: Need to change section numbers and check references.

Section 26. WRITTEN ACCEPTANCE.

26.1 Written Acceptance. On or before thirty days after this Franchise becomes effective, Grantee shall file with the City Auditor's Office a written acceptance of this Franchise duly executed by the Grantee, in the form provided in Exhibit B to this Franchise. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

26.2 Failure to File Acceptance. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this Ordinance shall thereupon be null and void.

Commissioner Saltzman
DCOlson/JSOmelchuck
_____, 2007

EXHIBITS

EXHIBIT A: Intergovernmental Agreement - Mt. Hood Cable Regulatory Commission

EXHIBIT B: Acceptance