

**COUNCIL MEETING MINUTES
FEBRUARY 25, 2013**

0:01 **DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, FEBRUARY 25, 2013**

CONVENED The meeting convened at 7:01 p.m. with Mayor Figley presiding.

ROLL CALL

Mayor Figley	Present
Councilor Cox	Present
Councilor Lonergan	Present
Councilor McCallum	Present
Councilor Morris	Present – 7:03
Councilor Raustein	Present
Councilor Ellsworth	Present

Staff Present: City Administrator Derickson, City Attorney Shields, Public Works Director Brown, Human Resources Director Hereford, Police Chief Russell, Economic and Development Director Hendryx, Community Services Director Row, Finance Director Shearer, Captain Garrett, Library Manager Hunter, Communications Coordinator Horton, City Recorder Pierson.

0:01 **PRESENTATION**

- A. Chief Russell gave the 2012 Crime Report.
- B. Don Judson, Executive Director of the Woodburn Area Chamber of Commerce, announced that Councilor Morris has been chosen as the recipient of the Junior First Citizen Award and reminded Council that the Distinguished Service Awards will be taking place on March 15.

0:57 **CONSENT AGENDA**

- A. Woodburn City Council minutes of February 11, 2013,
 - B. Woodburn City Council Executive Session minutes of February 11, 2013,
 - C. Woodburn Planning Commission minutes of January 24, 2013,
 - D. Woodburn Recreation and Park Workshop minutes of January 8, 2013,
 - E. Woodburn Recreation and Park Board minutes of February 12, 2013,
 - F. Crime Statistics through January 2013.
- McCallum/Cox...** adopt the Consent Agenda.

0:58 **FY 2013/14 FINANCIAL PLAN** City Administrator Derickson provided a staff report. **Cox/McCallum....** adopt the attached FY 2013/14 Financial Plan (Budget Policies & Reduction Strategy and 5-Year Financial Forecast). Motion passed unanimously.

1:05 **TRANSIENT OCCUPANCY GRANT DISTRIBUTION & PROPOSED THREE YEAR AGREEMENT WITH THE WOODBURN AREA CHAMBER OF COMMERCE** City Administrator Derickson provided a staff report. Ruby Wolfer, Woodburn Area Tourism Coordinator, provided the City Council with an update on the work she has been doing to promote Woodburn. She also provided the City Council a copy of Woodburn Area Tourism projects and budget. **Lonergan / Morris** authorize the

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renewal of a proposed three year agreement effective June 30, 2013 through June 30, 2016 with the Woodburn Area Chamber of Commerce. Motion passed unanimously.

1:23 **AWARD OF CONSTRUCTION CONTRACT FOR I-5 INTERCHANGE AND TRANSIT FACILITY – WATERLINE RELOCATION AT EVERGREEN EXTENSION Cox/McCallum....** acting as the Local Contract Review Board, award the construction contract for the I-5 Interchange-Waterline Relocation at Evergreen Extension Project to Canby Excavating, Inc. in the amount of \$180,900. Motion passed unanimously.

1:24 **OREGON LIBRARY PASSPORT PROGRAM Cox/McCallum...** authorize the City of Woodburn to participate in the Oregon Library Passport Program. Motion passed unanimously.

1:26 **DIRECTOR’S APPROVAL OF PARTITION PAR 2013-01 AND STREET EXCEPTION EXCP 2013-01, LOCATED AT 1050 N. EVERGREEN ROAD (WEST COAST BANK)** Councilor McCallum requested that Economic and Development Director Hendryx clarify what is happening with this and Director Hendryx answered that this a partition for Woodburn Crossing and that the applicant would like to divide the property into two lots. Council declined to call this item up for review.

1:30 **CITY ADMINISTRATOR’S REPORT**
City Administrator Derickson informed the City Council that the first E-blast was sent out last week to 615 people.

1:32 **MAYOR AND COUNCIL REPORTS**
Councilor McCallum wished Doug Burkhardt the very best at his new position in Hillsboro. He also mentioned that a Prescription Drug Summit will be taking place on April 25 at Silverton Health Center from 6:00 to 8:00.

Councilor Ellsworth encouraged the City to look into a document shredding event. She also mentioned that she is attending the Woodburn Police Departments Citizens Academy and that Detective Puente is doing a great job.

1:35 **ADJOURNMENT**
McCallum/Lonergan... meeting be adjourned. The motion passed unanimously. The meeting adjourned at 8:36pm.

APPROVED _____
KATHRYN FIGLEY, MAYOR

ATTEST _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

**WOODBURN PLANNING COMMISSION WORKSHOP/MEETING
MINUTES
February 7, 2013**

CONVENED: The Planning Commission met in a public meeting session at 7 p.m. in the City Hall Council Chambers, with Chair Claudio Lima presiding.

ROLL CALL:

Chair	Lima	Present
Vice-Chair	Piper	Present
Commissioner	Grigorieff	Absent
Commissioner	Valladares	Present
Commissioner	Bandelow	Present
Commissioner	Corning	Present
Commissioner	Carney	Present

Staff Present: Jim Hendryx, Economic & Development Services Director
 Jon Stewart, Assistant City Attorney
 Don Dolenc, Associate Planner
 Vicki Musser, Recording Secretary

Chair Lima opened the workshop/meeting at 7 pm, and led the Commissioners in the flag salute.

Minutes

The January 24, 2013 minutes were unanimously approved.

Business from the Audience

There was none.

Communication

On Jan. 24th, several Commissioners requested copies of the unaltered sections of the Woodburn Development Ordinance (WDO). Those sections were handed out to all the Commissioners at this meeting. An updated July, 2012 Comprehensive Plan was also handed out, as well as updated Planning Commission contact information, terms of office and common planning acronyms.

Jim thanked the PC for arranging their being willing to meet on this specially scheduled date.

Items for Action

There were none.

Public Hearing

This meeting was a continuance of the January 24, 2013 public hearing, which was held to discuss sections of the WDO rewrite. The purpose of these hearings is to offer a time during which the public is encouraged to come forward and discuss their thoughts and concerns about the changes that are being proposed for the WDO. Economic and Development Services Director Jim Hendryx presented a PowerPoint overview of the topics being covered at tonight's meeting. He noted that there have been a number of steps to follow in the process of rewriting the WDO and getting it ultimately approved (such as holding three open houses and sending over 5,000 notices out to Woodburn citizens), each of which led to tonight's process. The City Council is scheduled to hold a hearing in May to consider the WDO rewrite and make a final decision. There is ample time to hold several extra meetings before the City Council meeting if needed.

The Planning Commission public hearing dates and discussion topics are:

Jan. 24 – Sections 1 and 2

Feb. 7th – Section 3.1 and Section 5

Feb. 28 – Signs Section 3.110 (including amortization)

Mar 14 - Any issues remaining to be discussed

The purpose of the rewrite is to simplify and clarify the WDO, to include charts and maps, to update and standardize terminology, to resolve any conflicting standards and circular references, and to make things user-friendly.

Tonight was the second of four Planning Commission public hearings, and after discussion and recommendations from the Commission, it will go before the City Council.

Director Hendryx presented a PowerPoint to discuss an overview of the changes proposed in the different sections of the WDO.

Section 3.101 Development Guidelines and Standards

Director Hendryx did an overview of each section separately, so that the audience could respond to each if they wished.

Public Testimony:

Section 3.101 Street Standards

No comments.

Section 3.102 Utilities and Easements

Commissioner Carney wanted to know if the WDO distinguished between high and medium voltage lines when discussing utility lines being put underground. He noted that there was a large price difference between putting high and medium voltage lines underground, and said the WDO should be amended to reflect this cost differential. He recommended putting medium voltage lines underground.

Section 3.103 Setbacks and Open Space

Chair Lima asked about fence heights. The proposed rewrite is meant to standardize heights, rather than the different heights that would ordinarily be required in regards to the vision clearance area.

Section 3.104 Vehicular Access

Commissioner Bandelow felt that Table 3.104A should be amended in the “Paved width of driveway” section, which currently lists a 24 foot maximum residential driveway width. She felt the maximum width should be increased to 36 feet, so that a triple wide driveway is officially allowed, noting that there are many triple-width driveways already established in Woodburn.

Section 3.105 Off-street Parking and Loading

No comments.

Section 3.106 Landscaping Standards

Commissioner Valladares requested further information regarding drainage. Commercial structures have a requirement for retention (although not a bioswale that would further filter the water), whereas residential houses have drainage going to the street.

A certain number of plant units (PUs) are required for commercial properties, in order to increase aesthetics and soften any stark building lines. The WDO rewrite proposes that PUs in roof gardens or living/green roofs could be used to satisfy up to 25% of total PUs required in the overall landscaping, except in cases of yards abutting a street and buffer yards (next to a less-compatible use). The PU credit would cover churches, schools, multi-family dwellings, as well as commercial and industrial areas, but not residential properties.

Commissioner Piper noted that landscaping is primarily about aesthetics, and felt that a roof garden would not usually be seen or make an aesthetic difference. Director Hendryx noted that another reason for encouraging roof gardens would be to improve storm water quality and act as a detention pond. Plants on the roof are able to clean and filter water before it goes into the ground, ponds, and rivers. Commissioner Piper suggested that it would be better to encourage roof gardens and other ways of treating water on-site with a credit going towards system development charges, rather than crediting with PUs. Commissioners Bandelow and Valladares agreed with Commissioner Piper, feeling that roof gardens serve a worthy purpose, but that another way should be found to encourage them.

Commissioner Carney noted that a PU credit might give the owner the opportunity to put in more parking lot space, since he doesn't have to devote so much ground to landscaping. He felt that a PU credit for roof gardens doesn't necessarily achieve the intended purpose in regards to aesthetics. Commissioner Bandelow agreed.

Commissioner Piper said that the landscaping standards in the WDO were not based on water treatment, which would need to be dealt with as a whole separate issue. If, however, the PU credit stands, he felt that it should also include residential properties.

Director Hendryx told the Commission that Public Works has rules for new buildings that would give them credit for filtering water on-site. An existing building has different rules, and their impervious surface (for parking) is already set.

Danny Draper, 17507 SW Rigert Road, Aloha, OR 97007

Mr. Draper, standing in for Bob Barman, franchisee of the Chevron station near I-5, spoke. The present Woodburn Chevron will be torn down when ODOT widens the street. They want to remodel their Chevron station to resemble their eco-friendly station in Beaverton. At that station, they have built a canopy with a green roof down the middle, which holds in the hardscape water. Mr. Draper reminded the Commission that Chevron is one of the first businesses people see when they come off I-5 into Woodburn, and the garden roof would be seen by people coming over I-5, increasing aesthetic appeal. Chevron is asking for some flexibility in PU totals on sides abutting streets, since the number of PUs is so large, even with the proposed credit. They only have a single driveway and the gas trucks need to be able to turn into the gas station. It will cost significantly more to put in the green roof, but Chevron wants to hold to eco-friendly standards.

Commissioner Piper says that historically the Planning Commission tends to look favorably on environmentally green projects.

Director Hendryx summarized the discussion by noting the Commission's concern about the effect of roof gardens on landscaping. He questioned whether the proposed landscaping rewrite fully meets the Commission's concerns, and said that items 15 and 16 on page 4 of 9 in Section 3.106 will be deleted, to be reworked in some form. Director Hendryx asked the Commission to consider whether the proposed changes address all the concerns that they have with the WDO. More questions may arise when the details are considered.

Section 3.107 Architectural Design Guidelines and Standards

Commissioner Carney noted that manufactured homes are allowed in every area except for the Neighborhood Conservation Overlay District (NCOD) area. Director Hendryx stated that manufactured homes are subject to WDO standards, which are similar to regular houses. Manufactured homes must be on a foundation. Commissioner Bandelow pointed out that they are required to have a garage, as well.

Section 3.108 Partitions and Subdivisions

No comments.

Section 3.109 Planned Unit Development Standards

No comments.

Section 5.101 Type I (Administrative) Decisions and Application Requirements
In 5.101.02, Type II (Quasi-Administrative) Decisions and Application Requirements,
Director Hendryx noted that this section clarifies Design Review thresholds for
multi-family dwellings, addressing previous Planning Commission concerns.

- Type I – up to 4 units
- Type II – 5 to 8 units
- Type III – 9 or more units

Section 5.103 Type III (Quasi-Judicial) Decisions and Application Requirements
No comments.

Section 5.104 Type IV (Quasi-Judicial) Decisions and Application Requirements
No comments.

Director Hendryx noted the proposed changes to the Transportation System Plan, Figure
7-2.

No comments.

Commissioner Carney said that he had an opportunity to go through the WDO last year,
and observed a lot of ambiguity. He congratulated Planning staff for all the work that has
gone in to updating the WDO.

Items for Action

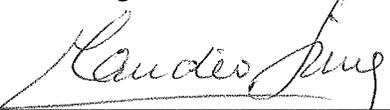
The next Planning Commission meeting/public hearing is scheduled for Thursday,
February 28, 2013. Section 3.110 Signs, will be discussed, including the mandatory
removal of nonconforming signs.

Business from the Commission:

Commissioner Bandelow observed that in regards to the flag salute, which is observed at
the start of every Planning Commission meeting, there is no comma, and thus no pause,
between the words, “one nation” and “under God”.

Adjournment

Commissioner Bandelow made a motion that the meeting be adjourned, and
Commissioner Corning seconded it. The meeting was adjourned at 8.19 pm.

APPROVED 
Claudio Lima, Chair

2/28/2013
Date

ATTEST 
James N.P. Hendryx
Economic & Development Services Director
City of Woodburn, Oregon

3/11/2013
Date



Agenda Item

March 11, 2013

TO: Honorable Mayor and City Council through City Administrator
THRU: Scott Russell, Chief of Police
FROM: Jason R. Alexander, Captain
SUBJECT: **Full On-Premise Sales – Greater Privilege**

RECOMMENDATION:

The Woodburn City Council recommends that the OLCC approve the **Full On-Premise Sales – Greater Privilege** application for El Agave Grill Restaurant LLC.

BACKGROUND:

Applicants: Jose Angulo-Guzman
355 Harvard Dr.
Woodburn, OR 97071
503.703.1924

Elizabeth Sonia Garcia
355 Harvard Dr.
Woodburn, OR 97071
503.703.1924

Business: El Agave Grill Restaurant LLC
1615 Mt. Hood Ave.
Woodburn, OR 97071
503-982-3838

Owners: Same as Applicant (Above)

Agenda Item Review: City Administrator City Attorney Finance

License Type: **Full On-Premise Sales** - Permits beer, wine, cider, and hard alcohol sales for on-premise consumption only.

On February 19, 2013, the Woodburn Police Department received an application, requesting approval for a **Full On-Premise Sales – Greater Privilege** El Agave Grill Restaurant LLC located at 1615 Mt. Hood Ave. Woodburn, Oregon. This location currently holds a Limited On-Premises Sale License through the Oregon Liquor Control Commission.

The business will be open Sunday 8:00am to 9:00pm Monday thru Thursday from 8:00am to 11:00pm and Friday and Saturday 6:00am to 4:00am. There will be hot food service while the business is open and alcohol will be served during this time. There will not be live music, karaoke, video lottery games, or pool tables. The Police Department has received no communication from the public or surrounding businesses in support of or against the new outlet.

DISCUSSION:

The Police Department has completed a background investigation, in connection with the OLCC, on the applicant and found nothing of a questionable nature, which would preclude the issuance of this license. However, if approved, this business will be adjacent to two other (Monte Carlos and Mangos Tavern) Full On-Premise Sales locations.

FINANCIAL IMPACT:

None.



Agenda Item

March 11, 2013

TO: Honorable Mayor and City Council

FROM: Scott C. Derickson, City Administrator
N. Robert Shields, City Attorney

SUBJECT: **WAVE Cable Television Franchise**

RECOMMENDATION:

Adopt the ordinance.

BACKGROUND:

In 2001, the City adopted Ordinance 2307 and granted a franchise ("the Existing Franchise") to Willamette Broadband, LLC to operate a cable television system. Willamette Broadband, LLC then became WaveDivision VII, LLC, which does business in Woodburn as Wave Broadband.

After several drafts were exchanged between WAVE's corporate attorney and the City Attorney a tentative agreement was reached on everything in this lengthy document except for the Woodburn Community Access Television (WCAT) provisions and the institutional network (I-Net) sections. On January 30, 2013, the City's negotiating team and a WCAT representative met with WAVE officials in an effort to finalize the franchise agreement. The City's main concern going into the meeting was the possibility that the production of public access television in Woodburn could be jeopardized. Due to WAVE's community spirit and cooperation, however, we are happy to report that this will not be the case and that the WCAT operation will be able to continue as it presently operates.

DISCUSSION:

The Franchise grants WAVE the right to use the public rights-of-way to provide cable television services. It is for a 10 year period and is not exclusive in that the City reserves the right to grant a similar franchise to another cable television pursuant to the requirements of state and federal law.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

Highlights of the new franchise include:

- The franchise is valid for a period of ten (10) years following the effective date.
- The franchise fee is 5% of WAVE's gross revenues. This is the maximum percentage allowed by federal law and is the same percentage imposed under the prior franchise.
- Any transfer of the franchise must be approved by the City Council.
- All construction related provisions of the franchise were reviewed by the Public Works Director and found to be workable and reasonable.
- All legal provisions of the franchise were negotiated by the City Attorney and adequately protect the City from different eventualities. The performance bond requirement was reduced because WAVE has existed for some time and has a good "track record" and relationship with the City.
- A provision was negotiated so that if WAVE converts to an all-digital format, it has the obligation to provide signal conversion equipment for the primary televisions of all subscribers who request this equipment.
- A total of \$40,000 will be paid by WAVE for equipment purchase and replacement to support community access television in addition to a per subscriber amount of \$1.25 per subscriber for this purpose.
- Supplementing the community access television equipment money, WAVE agreed to pay an additional \$1500 per month to WCAT. In return, WCAT will allow WAVE to broadcast "sponsorship announcements" similar to those aired on public television programs.

The negotiation of the Franchise was successfully completed by city staff "in house" without the assistance of a cable television consultant or outside legal counsel. This resulted in a significant monetary savings.

An emergency clause was added to the ordinance so that the new franchise can become immediately operational after its formal acceptance by WAVE.

FINANCIAL IMPACT:

Franchise fees are an important part of City revenue. During Fiscal Year 2011-2012, WAVE paid \$100,286 to the City.

COUNCIL BILL NO. 2919

ORDINANCE NO. 2500

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO WAVEDIVISION VII, LLC D/B/A WAVE BROADBAND AND DECLARING AN EMERGENCY

WHEREAS, Ordinance 2307 granted a franchise (“the Existing Franchise”) to Willamette Broadband, LLC to operate a cable television system for a 10 year period within the corporate limits of the City of Woodburn; and

WHEREAS, WaveDivision VII, LLC d/b/a Wave Broadband is the successor-in-interest to Willamette Broadband, LLC; and

WHEREAS, the parties to the existing Franchise have been negotiating in good faith towards renewal; and

WHEREAS, the parties have agreed to a new non-exclusive 10-year franchise agreement; **NOW, THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City of Woodburn hereby grants to WaveDivision VII, LLC d/b/a Wave Broadband a cable television franchise (the “Franchise”) under the authority of and in accordance with the Woodburn City Charter, applicable city ordinances, Oregon state law, the Cable Communications Policy Act of 1984, as amended by the Cable Communications Policy Act of 1992 and the Telecommunications Act of 1996.

Section 2. The terms and conditions of the Franchise are memorialized in the City of Woodburn Cable Franchise Agreement, which is affixed to this ordinance as Attachment “A” and is by this reference incorporated herein.

Section 3. The duration of the Franchise shall be ten (10) years subject to all of the terms and conditions provided in the Woodburn Cable Franchise Agreement.

Section 4. The Franchise shall replace the Existing Franchise granted pursuant to Ordinance 2307 and the terms and conditions of the prior franchise shall have no further legal force and effect.

Section 5. This ordinance being necessary for the immediate preservation of the public peace, health and safety so that franchised cable television

service can continue, an emergency is declared to exist and this ordinance shall take effect immediately upon passage and approval by the Mayor.

Approved as to form: _____
City Attorney Date

Approved: _____
Kathryn Figley, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

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13.7 Entire Agreement.....6%

13.8 Consent.....6%

13.9 Notices and Time Limit for Grantee Communications6%

13.10 Consistency of Franchise with Cable Act6%

13.11 Franchise Review6&

13.12 Grantee Responsibility for Costs of Franchise Compliance6&

13.13 Notice.....6&

13.14 Grantor Rights Upon Termination6&

13.15 No Waiver6'

EXHIBIT A: Origination Points..... 6(

EXHIBIT B: Acceptance and Guarantee..... 6)

EXHIBIT C: Price for Work—Incremental Cost..... 66

City of Woodburn Cable Franchise

1. PURPOSE AND INTENT

1.1 Intent

The City of Woodburn, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to WaveDivision VII, LLC d/b/a Wave Broadband (hereafter Grantee) a non-exclusive 10-year Franchise, revocable as provided herein, to construct, operate and maintain a Cable System in the Franchise Area as that term is defined herein.

1.2 Purpose

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

*City of Woodburn Cable Franchise***2. DEFINITIONS**

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

2.1 “Access” or “Community Access” or “Public, Educational and Government (PEG) Access”

means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the Grantor and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.

2.2 “Access Channel” or “Public, Educational or Government Access (PEG) Channel”

means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.

2.2.A “Educational Access Channel”

means any channel or portion of a channel available for educational programming by individuals or institutions.

2.2.B “Government Access Channel”

means any channel or portion of a channel available for programming by government agencies.

2.2.C “Public Access Channel”

means any channel or portion of a channel where any member of the general public may be a programmer on a non-discriminatory basis.

2.3 “Addressability”

means the capability of the Cable System by which the cable operator can add, drop or delete subscriber programming from a remote location, without the need for a site visit.

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2.4 “Affiliate”

means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

2.5 “Basic Cable Service”

means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels.

2.6 “Broadcast Signal”

means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the Cable System off the air, whether by microwave link, by satellite receiver, or by other means.

2.7 “Cable Act”

means the federal Cable Communications Policy Act of 1984, as amended, including provisions of the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 as may be amended from time to time.

2.8 “Cable Service”

means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.9 “Cable Operator”

any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system

2.10 “Cable System” or “System”

shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise specified or made clear by the context, the term shall refer to the cable system constructed and operated by the Grantee in the City of Woodburn under this Franchise.

City of Woodburn Cable Franchise

2.11 “Channel”

means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

2.12 “City”

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

2.13 “Converter”

means a device for changing the frequency of a television signal. A set-top converter changes the frequency of signals to a suitable channel which the television receiver is able to tune.

2.14 “FCC”

means the Federal Communications Commission.

2.15 Financial Partner

means Oak Hill Capital Partners III, L.P.; and GI Wave Holdings LLC; or the successor of any of these companies.

2.16 “Franchise”

means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified or made clear by the context, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.

2.17 “Franchise Area”

means all portions of the City of Woodburn, as now or hereafter constituted.

2.18 “Grantee”

means WaveDivision VII, LLC and the lawful successors, transferees, or assignees thereof.

City of Woodburn Cable Franchise

2.19 “Grantor”

means the City of Woodburn, a political subdivision of the State of Oregon.

2.20 “Gross Revenues”

means any revenue received by the Grantee and all Affiliates from the operation of the Cable System to provide Cable Service in the Service Area, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (2) unrecovered bad debt; (3) refunds, rebates or discounts made to Subscribers or other third parties; (4) sales of capital assets or sales of surplus equipment; and (5) revenue from cable internet service, any service or product that has not been determined by federal law or regulation to be a Cable Service, or any other product or service offered subsequent to the date of execution of this agreement unless and until such service is finally and specifically determined by the Federal Communications Commission, Federal Court, or Congress, after all appellate remedies have been exhausted and finally concluded, to be a Cable Service. For purposes of Subsection 3.11, the term "affiliate" shall mean an entity providing service within the service area and which provides "cable service" as finally and specifically determined by the Federal Communications Commission, Federal Court, or Congress, as contractors, subcontractors, assignees, or subsidiaries of, for and at the request of the Grantee during the term of this franchise.

2.21 “Institutional Service”

means video, audio, data and other services provided to institutional subscribers on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio or digital signals among institutions, or between institutions and residential subscribers.

2.22 “Institutional Network”

means that part of a Cable System designed principally for the provision of non-entertainment, non-profit and non-commercial programming, provided such use does not exceed the limitations agreed to in Section 6.5.F of this document.

2.23 “Institutional Subscriber”

means a public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.

City of Woodburn Cable Franchise

2.24 “Interconnection”

means the linking of the Cable System or I-Net with another cable system, communications system or I-Net, or the linking of locations connected to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area, including technical, engineering, physical, financial, and other necessary components to accomplish, complete, and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the systems or locations. Such linking does not necessarily include the provision of end-user equipment for generating or receiving signals.

2.25 “Leased Channel”

means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.

2.26 “Pay Channel” or “Premium Channel”

means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.

2.27 “Person”

means an individual, proprietorship, partnership, association, joint stock company, trust, corporation, or governmental entity.

2.28 “Programmer”

means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the Cable System.

2.29 “Programming”

means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.

2.30 “Record”

means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or experts, invoices,

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billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs.

2.31 “Resident”

means any individual person residing within the Franchise area.

2.32 “Residential Service”

means services delivered on the residential subscriber network.

2.33 “Residential Subscriber”

means a subscriber who receives services on the Residential Network.

2.34 “Residential Network”

means a Cable System designed principally for the delivery of Cable Services to individual dwelling units.

2.35 “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.

2.36 “Section”

means any section, subsection or provision of this Franchise agreement, unless otherwise made clear by the context.

2.37 “Streets and Public Ways”

means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.

2.38 “Subscriber”

means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the Cable System whether or not a fee is paid for such service.

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2.39 “Year”

means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

*City of Woodburn Cable Franchise***3. GRANT OF FRANCHISE****3.1 Grant****3.1.A Grant of Franchise**

Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a 10-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a Cable System, including an Institutional Network, within the Franchise Area. This Franchise authorizes Grantee to engage in providing Cable Service. This Franchise shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the Rights-Of-Way should Grantee provide service other than Cable Service and such other service places additional burdens on the Rights-Of-Way.

3.1.B Police Power and Laws

This Franchise is subject to the laws of the United States and the State of Oregon, and to the police powers of Grantor to adopt and enforce ordinances of the Grantor affecting matters of general applicability and not merely Grantee, whether now existing or hereinafter enacted. Grantee agrees to comply with all applicable laws, regulations and ordinances enacted, or hereafter enacted, by Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Franchise, however, shall be construed as a waiver of any right Grantee has by law, nor interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provision of applicable law, including any purported use of the police power.

3.1.C Compliance by Affiliates

Grantee promises and guarantees as a condition of exercising the privileges granted by this Franchise, that any Affiliate or joint venture or partner of the Grantee which assumes actual working control over in whole or in part the management or operation of the Cable System to provide Cable Service in the Franchise Area, will also comply with the terms and conditions of this Franchise.

3.1.D No Rights by Implication

No rights shall pass from Grantor to the Grantee by implication. Without limiting the foregoing, by way of example and not limitation, the Franchise shall not include or be a substitute for:

- 1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may

City of Woodburn Cable Franchise

be required under generally applicable ordinances and laws of the Grantor;

- 2) Any permit, agreement or authorization required under generally applicable ordinances and laws of the Grantor in connection with operations on or in Public Rights of Way or property, including by way of example and not limitation, street cut permits; or
- 3) Any permits or agreements for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the Grantor or a private entity. This provision should not be interpreted to restrict Grantee's general franchise rights under 47 U.S.C. § 541(a).

3.2 Use of Streets and Public Ways

For the purpose of constructing, operating and maintaining a Cable System in the Franchise area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the Franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable System. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and pay applicable fees, and receive approval as necessary before proceeding.

3.3 Duration and Effective Date of Franchise

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be ten (10) years from the effective date of this Franchise, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be March 1, 2013 unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.6 herein, or to establish the performance bond and security fund in accordance with Sections 8.2 and 8.4, in which event this Franchise shall be null and void.

3.4 Franchise Not Exclusive

The Franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or

City of Woodburn Cable Franchise

authority herein set forth, in the same or other streets and public ways or public places by Franchise, permit or otherwise.

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Public Rights-of-Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, and such franchise, permit, license, authorization, or agreement contains terms which are materially more favorable than this Franchise, Grantee may request that the City amend this Franchise to give the Grantee the reasonably comparable benefit of any such terms. The City shall rule promptly on such request.

3.5 Franchise Non-Transferable

3.5.A No Transfer Without Consent

Neither the Cable System nor this Franchise may be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person, nor may actual working control of the Grantor be changed, transferred or acquired without the prior written consent of the Grantor, which consent shall not be unreasonably withheld. The word “control” as used in this Section 3.5 is not limited to majority stockholders but includes actual working control in whatever manner exercised. This Section is not intended to require Grantor’s consent to the hiring and firing of employees.

3.5.B Notification

The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. Every change, transfer or acquisition of control of the Grantor shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto.

3.5.C Request for Approval

The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.

3.5.D Cable Act Requirements Apply

In accordance with Section 617 of the Cable Act, applicable at the time of the granting of this Franchise, the Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it

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has received all required information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time. Should federal law change during the term of this Franchise relative to the time limits and conditions placed on the Grantor for responding to a request for transfer of ownership or control, the Grantor shall respond to any such request from the Grantor in a manner consistent with the changed federal law.

3.5.E Filing Evidence of Transfer

Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantor and the transferee.

3.5.F Grantor Inquiry into Qualifications

In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon reasonable terms and conditions related to the legal, technical, and financial qualifications of the prospective controlling party or transferee, and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantor.

3.5.G Approval No Waiver

The consent or approval of the Grantor to any transfer by the Grantor shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

3.5.H Exceptions

Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Franchise. In addition, this Section shall not apply: to sales of property or equipment in the normal course of business; to any transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or; to sales of

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less than 5% of common stock or other equity that do not effect a change in actual working control of Grantee.

3.6 Franchise Acceptance

3.6.A Filing

The Grantee shall unconditionally accept the terms of this Franchise by filing a written acceptance with the City Administrator in the form attached hereto as Exhibit B within 30 days after the date the Franchise ordinance is passed by the City.

3.6.B Failure to File

In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

*City of Woodburn Cable Franchise***4. CONSTRUCTION AND SERVICE REQUIREMENTS****4.1 General**

The Grantee shall maintain on its cable system a minimum practical capacity of one hundred and twenty (120) activated channels, defined under the Cable Act as those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this franchise agreement.

4.2 Construction

Prior to beginning any construction other than routine installations or repairs for individual Subscribers, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonable practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts.

4.3 Right of Inspection of Construction

Grantor shall have the right to inspect all construction or installation work performed within the Franchise area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise agreement and other pertinent provisions of law. Grantee shall reasonably cooperate to facilitate such inspection and testing, and shall be subject to any fees or charges applicable under ordinances or other laws or regulations affecting similarly situated users of the Grantor's rights of way.

4.4 Provision of Residential Service**4.4.A In General**

It is the Grantor's general policy that all residences in the Grantee's Franchise Area should have equivalent availability of Cable Service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area.

Following a period of sixty (60) days after the date on which any part of the Franchise Area has reached a minimum density of thirty (30) dwelling units per linear strand mile, as measured from the nearest cable line, and

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thereafter throughout the term of the Franchise, Grantee shall extend and make cable television service available at the standard connection charge to any resident within the Franchise area who requests connection, if the connection to the resident would require no more than a standard one hundred twenty-five (125) foot drop line or extension from the nearest feeder cable. With respect to requests for connection requiring a drop line in excess of the maximum standard distance, Grantee shall extend and make available cable television service to such residents at a connection charge not to exceed its actual costs for the distance exceeding the standard one hundred twenty-five (125) feet of cable. In all new subdivisions or other areas where undergrounding is required, cable plant and drops will be placed underground; in other areas, new or replacement cable plant and drops will be placed underground whenever feasible.

4.4.B Low-density Areas

In low-density Areas (those having fewer than thirty (30) residential units per proposed cable bearing strand mile) Grantee shall offer a cost-sharing arrangement with residents. A dwelling unit will be counted for this purpose if its lot fronts a street. At the request of a resident desiring service in such a low-density area, Grantee shall determine the cost of the plant extension required to provide service to the potential subscriber from the closest point on the Cable System where it is technically feasible. The cost of construction shall be allocated based on the following terms:

- 1) If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least thirty (30) potential subscribers per proposed cable bearing strand mile, Grantee and residents who agree to subscribe to cable service will each bear their proportionate share of construction costs. For example, if there are five (5) dwelling units per proposed cable bearing strand mile, Grantee's share will equal 5/30ths or one sixth (1/6) of the construction cost. The remaining cost will be shared equally by each subscriber.
- 2) Should additional residents actually subscribe to cable television service in areas where subscribers have already paid a proportionate share under the extension cost sharing formula, subscribers who have previously paid a proportionate share under the extension formula shall be reimbursed *pro rata* for their contribution or a proportional share thereof. In such case, the *pro rata* shares shall be recalculated and each new subscriber shall pay the new *pro rata* share, and all subscribers who previously paid a proportionate share shall receive *pro rata* refunds. In the event such subscribers (or prior subscribers) have been disconnected or have moved and owe the Grantee money which

City of Woodburn Cable Franchise

has not been recovered, Grantee shall have the right to first apply the refund to amounts owed the Grantee and give the balance, if any to the subscriber. At such time as there are thirty (30) potential subscribers per cable bearing strand mile, the subscribers shall receive their *pro rata* share of construction costs. In any event, three (3) years after the completion of a project, subscribers who have paid a share of line extension costs are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of Grantee.

- 3) Where the density of residential dwelling and occupied commercial or industrial structures, adverse terrain, or other factors render extension of the System and offering of cable service impractical, technically infeasible or would create an economic hardship, the Grantor may, upon petition of the Grantee, either waive the extension of the System into such areas, or allow the extension and offer of service on special terms or conditions which are reasonable and fair to the Grantor, the Grantee and potential subscribers in such areas.
- 4) It shall be the responsibility of the Grantee to maintain records documenting any special terms or conditions for extending cable, and any refund arrangements. Such documentation shall be made available to the Grantor upon request.

4.4.C Commercial Rates

Notwithstanding Section 4.4.A, Grantee may establish different and nondiscriminatory rates and charges and classes of cable services for Commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of Commercial Subscribers. For the purposes of Section 4.4.C, "Commercial Subscribers" means any Subscribers other than Residential Subscribers in single family or multifamily dwellings.

4.4.D Newly Annexed Areas

As areas are annexed to the City, Grantee shall provide Service Availability to all residences within the annexed area on the same terms as provided for in Section 4.4.A-C unless otherwise authorized by the City.

4.4.E New Subdivisions

In new subdivisions, service will be made available under the terms of 4.4.A to 4.4.C above either (i) contemporaneously with other utility services; or (ii) no more than 60 days from first occupancy, whichever is first.

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4.4.F Areas Already Served

Notwithstanding any other provision in this Franchise, Grantee shall not be required to extend its Cable System lines to any area of the City that already receives Cable Service from a provider that is not commonly owned to any degree with Grantee, unless the density meets or exceeds 60 residential units per proposed cable-bearing strand mile

4.5 Erection of Poles

Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee shall make all reasonable efforts to lease pole space from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

4.6 Trimming of Trees or Other Vegetation

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming in the right of way, on other public property and dedicated easements shall be done only in accordance with the ordinances and other rules and regulations of Grantor. Nothing contained in this Franchise agreement shall be deemed to empower or authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise on private property. In cases of emergency, Grantee may trim trees or other vegetation with notification to the Grantor at the earliest feasible time.

4.7 Repair and Restoration of Streets, Public Ways and Grounds

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, other public way or ground for any purpose mentioned herein, it shall repair and restore the same to at least the condition in which it was prior to the opening or other damage thereof. And when any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to at least its original condition. The Grantor shall notify Grantee if any Opening made by Grantee requires further restoration and, after an eight-hour period for Grantee to affect repairs, Grantor may refill and/or pave. The cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect. Unless otherwise provided for in a written contract with a private property owner, Grantee shall repair and restore any private property it disturbs in the same manner required by this Franchise with respect to

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public property. The requirement under this Section for the City to notify the Grantee and to allow a minimum period for the Grantee to make repairs is effective except in the case of emergency.

4.8 Construction Codes

The Grantee shall strictly adhere to all applicable building, zoning or other construction laws and codes currently or hereafter in force in Grantor's jurisdiction. This provision, however, does not diminish or impair Grantee's rights under law to rely on this Franchise. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor in reliance on generally accepted practices, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question

4.9 Reservations of Street Rights

Nothing in this Franchise agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing sewer or water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be protected, removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In all such instances of relocation of Grantee's property, however, Grantor shall not treat Grantee any less favorably than it treats other providers of Cable Services. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee. Except in the case of emergencies, reasonable notice shall mean sixty (60) days at a minimum.

4.10 Street Vacation and Abandonment

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such

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removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In all such instances of requiring restoration, repair or reconstruction, however, Grantor shall not treat Grantee any less favorably than it treats other providers of Cable Services. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.11 Movement of Facilities

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

4.12 Undergrounding**4.12.A Underground Requirement**

Cable must be installed underground where (1) all existing utilities are located underground, (2) all utilities are required to place their facilities underground by statute, or ordinance, policy or other regulation of Grantor, (3) all overhead utility lines along the same route as the Grantee's lines are replaced with underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case), (4) Grantee is unable to get pole clearance, (5) underground easements are obtained from developers of new residential areas, or (6) utilities are overhead but residents prefer underground (service to be provided at cost to resident).

4.12.B Use of Conduit

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

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4.13 Location Maps

Grantee shall maintain drawings of the System route, showing at minimum the strand and trench portions along the System's route, power supply locations, and node locations, and shall make them available to the Grantor for inspection upon request. Such drawings shall be updated as changes occur in the System. The Grantee shall provide to the Grantor, within ten (10) days of Grantor's request, a copy of the drawings in electronic form compatible with the Grantor's GIS system if the Grantee has them in such form

4.14 Emergency

In the event of an emergency, or when the Cable System creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's Cable System without prior notice. Whenever possible, the City shall make a reasonable attempt to notify the Grantee prior to such removal or relocation.

*City of Woodburn Cable Franchise***5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS****5.1 System Configuration**

Grantee's Cable System shall be no less than 750 MHz throughout the Franchise Area with a capacity of at least 200 activated analog and/or digital channels. The System shall have the forward and return capacity to provide pay-per-view, video-on-demand and other services requiring addressability. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement.

5.2 Emergency Alert Capability

Grantee shall provide the system capability to provide video interrupt and audio alert on all System channels for emergency purposes, and allow the Grantor to transmit an emergency alert message from locations designated by the Grantor to all subscribers. This capability shall be consistent with the requirements of Part 11 of the regulations of the FCC.

5.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System headend and hubs capable of providing emergency operation for at least forty-eight (48) hours, and shall maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks

5.4 Parental Control Lock

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device that permits inhibiting the viewing of any channel, consistent with 47 U.S.C. § 544(d)(2). Any charge for such device shall be consistent with applicable rate regulations. Subscribers shall be notified by Grantee of the availability of the locking device no less frequently than annually.

5.5 Technical Standards

The Grantee shall meet the requirements of the Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted.

5.6 Performance Testing**5.6.A Schedules**

Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness

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tests, and copies of written test reports shall be made available to Grantor upon request.

5.6.B Reporting

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor a written copy of the results of such tests upon request.

5.6.C Inspection

The Grantor shall have the right to inspect any and all work performed in the streets and rights-of-way. In addition, for initial and semi-annual FCC proof-of-performance tests, the Grantor shall be given the opportunity by Grantee to review test sites. Upon Grantor's request Grantee shall notify the Grantor of the time and place of the next scheduled test and shall cooperate in facilitating the Grantor's witnessing at the time of the tests. The Grantor may, at its own expense and upon thirty (30) days written notice to Grantee, conduct independent tests of the System, for which Grantee shall give its fullest cooperation.

5.6.D FCC Compliance

It shall be the responsibility of the Grantee to document that the System and its operation are in compliance with FCC technical specifications and performance requirements. If the Grantor has received Subscriber complaints regarding the performance of the Cable System; and the Grantor determines that the most efficient or only reasonable way to determine a question of System compliance with FCC technical specifications is through specific electronic testing of the System in addition to tests required by the FCC; the Grantee shall, upon written notice by the Grantor, perform such testing at a reasonable time, give the Grantor an opportunity to witness the testing, and provide the Grantor with documentation of the testing results. The FCC's technical standards shall govern the protocols for all such testing.

5.6.E Remedy for Non-Compliance

In any case where System testing reveals non-compliance with FCC standards, the Grantee shall repair the System or make whatever modifications are necessary to bring the System performance into compliance with FCC standards.

*City of Woodburn Cable Franchise***6. SERVICES AND PROGRAMMING****6.1 Programming Categories and Number of Services**

The Grantee shall provide video programming services in at least the following broad categories, to the extent such categories are reasonably available:

1. News & Information
2. Sports
3. General Entertainment, movies, music & comedy
4. Arts, Culture, Performing Arts
5. Children / Family
6. Science / Documentary
7. Weather Information
8. Governmental and Educational Programming
9. Foreign language / Ethnic Programming

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

6.2 Changes in Video Programming Services

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

6.3 Leased Channel Service

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

6.4 Community Access and Local Programming**6.4.A Management and Control of Access Channels**

The Grantor may authorize Designated Access Providers to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels for noncommercial, non-profit PEG Access purposes. The Grantor or its designee

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may formulate rules for the operation of the Public Access Channel, consistent with this Franchise. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

6.4.B Channel Capacity and Use

- 1) Channels used for PEG Access purposes shall be administered by the Grantor or its designee.
- 2) Downstream Channels
 - a) During the Franchise term, Grantee shall provide a minimum of two Access Channels in analog or digital format for PEG use. Each Access Channel if analog shall be a minimum of 6Mhz, subject to (B)(5) & (B)(3) below, and be capable of carrying a video signal. Although nothing in this Franchise restricts the use of PEG channels to video applications, any other use shall be subject to the technical limitations of the Grantee's System and the requirements of this Franchise.
 - b) After the initial two Access Channels have been made available for PEG use, and in accordance with the trigger criteria set forth in Section 6.4.A (3) below, the Grantor may require the Grantee to activate one (1) additional Access Channel for a maximum of four Access Channels.
 - c) Grantee may use unused PEG Channels for its own purposes until such time as the Grantor, upon 60 days prior written notice, requests them for PEG use by the Grantor or a Designated Access Provider.
- 3) Triggers for Additional Access Channels

After the initial two Access Channels have been made available for PEG Access use, Grantee shall, if directed by the Grantor, provide additional activated Access Channels for PEG use to a maximum total of four Access Channels as required in this subsection. The Grantor shall give Grantee at least 90 days prior written notice of required additional Access Channels. Such written notice shall include information verifying that the trigger criteria have been met.

One (1) additional Access Channel shall be made available to the Grantor each time that the existing Access Channels are in use for locally scheduled video programming (not to include character-generated programming, non-video transmissions, or repetitions of programs beyond three (3) repetitions) an average of 80% of the time, seven days per week for any consecutive five hour block during the hours from 10:00 a.m. to 10:00 p.m. for 10 consecutive weeks.

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Provided, however, that if the usage ratio of any additionally designated channel should at any time fall below 30% of the level of usage required above for the addition of a channel, then the use of that channel shall revert back to the Grantee. This mechanism for exchanging control of channels based on usage shall be continuous throughout the term of the Franchise.

- 4) Grantee shall make available the PEG Channels to all Subscribers. Grantee may deliver such PEG Channels in an analog or digital format, at Grantee's sole and absolute discretion. At such time Grantee delivers the PEG Channels to Subscribers in a digital format, Grantee agrees to provide, at no charge to Subscribers, Digital to Analog Converter Boxes or other equivalent equipment for the primary television of each Subscriber who requests such equipment. The Access Channels must be receivable by Subscribers without special expense, other than the expense required to receive Basic Service. Designated Access Providers have no obligation to provide a signal to Grantee in a digital format.
- 5) Grantor may, at its sole cost and expense, deliver the PEG Channels to Grantee in video-on-demand (VOD) format. Grantor is responsible for all costs and expenses to encode and deliver such VOD programming. If Grantor delivers VOD programming to Grantee, Grantee will have the right, but not the obligation, to deliver the VOD programming to Subscribers receiving the PEG Channels.
- 6) If Grantee modifies its Cable System in a manner that has the effect of requiring modifications to PEG facilities and equipment, in order to deliver PEG signals, Grantee will bear any cost that the Designated Access Providers must incur as a result. If, for example, Grantee requires high definition signals, Grantee will bear the costs Designated Access Providers incur to provide high definition signals.
- 7) The Grantee will provide all PEG Channels on the Basic Service tier throughout the life of the Franchise, consistent with the requirements of federal law. If there is no Basic Service tier, Grantee shall provide the PEG Channels at no additional charge to any Person who subscribes to any level of cable video programming service and otherwise in accordance with federal and state law. If channels are selected through a menu system, the PEG Channels shall be displayed in the same manner as

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other channels. Designated Access Providers shall be responsible for the costs associated with specific program listings for the PEG Channels on Cable System program guides and menus.

- 8) Upstream Channels
- a) All return lines for upstream PEG Access transmissions which are in place as of the effective date of this Franchise shall be maintained in working order throughout the term of the Franchise. Throughout the term of this Franchise, Grantee shall provide and maintain communications return lines, as well as all necessary wires and electronic and optical interface and transmission equipment, sufficient so that the Grantor or its designee can transmit full motion video signals as described in this Section from the Master Control Site and other Origination Points identified in Exhibit A onto the Cable System, to enable the distribution of programming on Access Channels. Grantor and/or qualified access users shall provide all other routers and equipment necessary to produce and manage the control of programming from the Master control site and other Origination Points identified on Exhibit A. For all Origination Points, Grantee shall provide the capacity to transmit at least one (1) full motion analog video signal upstream; except that, for the WCAT Master Control Site, Grantee shall provide the capacity for the upstream transmission of at least as many full motion video signals as are necessary for simultaneously transmitting programming for all access cable channels active from that location to the headend serving the area for distribution.

The requirements of this Section relating to connections to and from the Grantee's facilities shall apply wherever Grantee's facilities are located or relocated.

- b) As an alternative to providing some or all of the hard-wired Origination Points identified in (a) above, the Grantee, upon approval of the Grantor, may provide a microwave transmit and receive system which would allow upstream programming to the WCAT Master Control Site from remote locations.

6.4.C Financial Support for PEG Access

- 1) The Grantee shall provide the following financial support for PEG Access:
- a. Forty Thousand Dollars (\$40,000) for equipment purchase and replacement. Grantee shall cooperate with and assist Grantor in obtaining such equipment, including but not

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limited to facilitating Grantor's purchase of such equipment. Grantee shall be pay Grantor as follows:

- i. Twenty Thousand Dollars (\$20,000) shall be paid within thirty (30) days following January 1, 2014.
 - ii. Two Thousand Dollars (\$2,000) shall be paid within thirty (30) days following January 1 of each subsequent year this Franchise is in effect until the remaining \$20,000 has been paid in full by Grantee.
- b. One Dollar Twenty-Five Cents (\$1.25) per Subscriber per year, payable in October of each year of the Franchise term or its extension, for ongoing equipment needs.
 - c. One Thousand Five Hundred Dollars (\$1,500) per month pursuant to an agreement between the Grantee and Woodburn Cable Access Television ("WCAT"), an Oregon nonprofit corporation, to allow the Grantee to provide sponsorship announcements as provided herein. In consideration of such monthly payment, WCAT shall permit Grantee to place short and long-form sponsorship announcements on the PEG Channels in regular intervals. Grantor shall not regulate the content of these sponsorship announcements but the announcements shall be approved by WCAT and shall conform to the underwriting and donor acknowledgement rules adopted by the Federal Communications Commission at 7 FCC Record 827. In addition, Grantor shall periodically acknowledge Grantee as a sponsor of WCAT in Grantor's Out and About newsletter sent to residents of the City.
- 2) The Grantor may use a portion of PEG Access support for the costs of the Institutional Network.
 - 3) Should Grantee continue to provide Cable Service after the scheduled expiration of the Franchise, pursuant to a Resolution passed by the Grantor allowing Grantee to continue to operate under the this Franchise, until and unless this Franchise is superseded by a renewed Franchise issued by the Grantor, Grantee shall continue to provide support of PEG Access as specified herein above.

6.4.D Studio

Grantee shall continue to provide the studio space and facilities for PEG Access it provides as of the effective date of this Franchise.

*City of Woodburn Cable Franchise***6.4.E PEG Support Not Franchise Fees**

Grantee agrees that support for PEG Access agreed to in this Franchise is not Franchise Fees, nor shall it be treated as payment in lieu of Franchise Fees, and that it falls under one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this Section is intended to affect in any way (by expansion or contraction) Grantor's rights under applicable law governing rates.

6.4.F Technical Quality

Grantee shall maintain all Upstream and Downstream PEG Channels and Interconnections of PEG channels at the same level of technical quality and reliability as the commercial Channels carried by Grantee. There shall be no significant deterioration in signal due to Grantee's signal carriage from the point of origination Upstream to the point of reception Downstream.

6.4.G Change in Technology

- 1) In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access services or programming, Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Designated Access Providers' Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.
- 2) In accordance with Section 6.4.B (5) the Grantee is required to provide connections as described herein to its headend wherever the headend may be located or relocated. Without limiting the foregoing, in the event Grantee alters its Cable System (including by relocating its headend), Grantee will be responsible for replacing or restoring all connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional cost to the Grantor or Designated Access Providers. To the extent that additional costs are incurred by the Grantor as the result of such alteration, Grantee will reimburse the Grantor.

6.4.H Non-Commercial Use

The PEG Access Channels shall be used only for non-commercial purposes; however, this requirement does not prohibit the use of program sponsorship similar to that used in public broadcast television, consistent with federal law.

*City of Woodburn Cable Franchise***6.4.I Interconnection of PEG Access**

1) Communities Served by Grantor

Grantor may request at any time an interconnection for the transport of Access programming to or from communities provided service by Grantor's headend for Woodburn or an interconnected headend. If technically and legally possible, within 6 months following a request from the Grantor, Grantee will perform such interconnect or provide method of transportation of the access channels, provided Grantor pays all Incremental Costs therefor. Incremental Cost shall be determined in accordance with Exhibit C. Interconnection with Other Systems

- a) Grantor may request at any time an interconnection for the transport of access programming to or from adjacent communities served by cable operators other than the Grantee. If technically and legally possible, within 6 months following a request from the Grantor, Grantee will perform such transport or provide method of transport of the access programming, provided Grantor pays all Incremental Costs therefor. For the purposes of this Section, Incremental Cost shall be determined in accordance with Exhibit C.
- b) With respect to installing the capacity required under this Section 6.4.J (2), the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation shall be limited to providing equipment needed, and performing construction work required, within Grantee's Franchise areas in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of other cable systems interconnecting with the Grantee's System to provide equipment and perform construction work within their respective Franchise areas; and the provision of such equipment and performance of such construction work shall not be the obligation of Grantee under this Franchise. Therefore Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system regulators and operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

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3) Signal Quality

All PEG Access interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected channels; provided that the Grantee shall not be responsible for the quality of signals provided by programmers or the interconnected systems of other operators.

6.5 Institutional Network**6.5.A Obligation to Construct**

Grantor acknowledges that the Grantee has provided System plant, capacity and services according to a design and functionality previously specified by the Grantor and used for an Institutional Network (I-Net). At the Grantor's discretion, the I-Net may be used for non-commercial, non-profit applications, subject to Section 6.5.F below, by the Grantor and its agencies, other governments and their agencies, Schools, libraries, public corporations created by the Grantor, and other non-profit institutions to the extent that such non-profit institutions provide public services.

6.5.B I-Net Design, Functionality and Management

Grantee has to installed: 1) fiber for I-Net use to each existing I-Net site; and 2) such electronics, labor and services necessary to make the Grantor's I-Net functional. The Grantor or its designee shall have the right to control and manage the use of the I-Net provided for herein. The Grantee shall, if requested by the Grantor, maintain the I-Net it provides up to the demarcation point as defined below, according to the terms of a maintenance agreement between the parties. The Grantor will be responsible for the Incremental Costs associated with maintenance of the I-Net that Grantee is required to perform. The demarcation point for purposes of this Section shall be the patch panel, termination block, or other termination device located at each I-Net site, at the point closest to the Grantee's facilities where the device transmits signals to and from the I-Net provided by Grantee.

6.5.C Interconnection of I-Net

- 1) In the event that Grantee constructs an interconnect between Grantee's headends or between systems served by the headend serving Woodburn, and upon Grantor's request, Grantee will provide up to 2 fiber pairs provided the Grantor pays for all Incremental Costs therefor. Incremental Cost shall be determined in accordance with Exhibit C.
- 2) In the event the Grantor requests Grantee to interconnect the I-Net with any communications system inside or at the borders of

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the franchise area, Grantee shall, if legally and technically possible, perform this construction as requested, 6 months following Grantor's request whichever is later, provided Grantor pays for all Incremental Costs therefor. Incremental Cost shall be determined in accordance with Exhibit C.

- 3) The Grantor shall be permitted to interconnect the I-Net, directly or indirectly, with any other communications network for PEG or I-Net purposes.
- 4) If the design of the I-Net involves the use of the Grantee's headend, then The Grantee shall provide sufficient floor space in its facilities to accommodate such equipment as may be necessary there to operate or monitor the I-Net; and shall permit the Grantor reasonable access to its facilities as may be necessary to install, replace, repair or maintain such equipment. However, Grantee shall not be required to operate, make available, or maintain such facilities, unless such facilities are a necessary part of Grantee's own Cable System operation. Notwithstanding the foregoing, Grantee shall remain the custodian of such space and Grantor shall obtain Grantee's prior consent before accessing the facilities and shall be accompanied by Grantee's representative when accessing the facilities if Grantee reasonably requires such escort.

6.5.D Limits on Use

- 1) The I-Net may only be used for any (a) municipal purpose (proprietary or governmental); (b) educational purpose; (c) public purpose, or for use of the PEG Channels on the Subscriber Network. It is understood that the connections to City, county or other governmental institutions and transmissions to and among these institutions fall within the terms above. Fees may be charged by the Grantor to Persons other than Grantee for use of the I-Net or for the information transmitted via the I-Net. The I-Net may be linked to any other communications network used by the Grantor or to any I-Net user authorized by the Grantor, provided such user is either a public agency or such use is for non-commercial, non-profit purposes. The I-Net may also be linked to the Internet; however, an I-Net user, the Grantor (or an entity under the Grantor's control) may not use the I-Net provided by Grantee to act as the Internet Service Provider for the general public or any commercial establishments.
- 2) Appropriate uses of the I-Net include, by way of example and not limitation:

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- a) Transmitting GIS and other data to and from Grantor departments and to and from the public;
 - b) Linking libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;
 - c) Transmitting live and stored instructional materials (whether in the form of data, video, or otherwise) to and from schools and to the public;
 - d) Providing kiosks where members of the public may access information;
 - e) Providing video conferencing among municipal and educational locations and to other locations for municipal and educational purposes such as economic development and distance learning;
 - f) Providing for remote permitting, remote arraignment, and voice traffic to and from the Grantor and the Schools.
- 3) The Grantor may designate an entity to control and manage the use of the I-Net provided by Grantee. The Grantor may not lease, to a third party, any portion of the network that Grantee installs or leases to the Grantor without the prior written permission of the Grantee; provided that the Grantee shall not unreasonably deny such permission, and shall limit denial to those cases where the lease may reasonably be construed as facilitating the provision of a service in competition with the Grantee. Moreover, where the purpose of any use is commercial and for profit, such use shall not be allowed without the written permission of Grantee.
- 4) The I-Net is a private communications network governed by this Franchise and the Cable Act. The City and Institutional Subscribers will use the I-Net solely for non-commercial applications. The Institutional Subscribers will not attach any equipment or otherwise use the I-Net in any way that will interfere with the signal quality and the normal operation of Grantee's quality and the normal operation of Grantee's Cable System in conformity with this Franchise or FCC regulations, including but not limited to regulations pertaining to signal leakage. The City and Institutional Subscribers will not resell access to the I-Net.

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6.5.E No Charge for I-Net Use

The parties agree that there shall be no charge for the I-Net provided by Grantee other than the Incremental Costs and possible maintenance charges as described in this Section.

*City of Woodburn Cable Franchise***7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS****7.1 Intent**

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

7.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas: 1) administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility; 2) coordination of the operation of Public, Government and Educational Access channels. 3) coordinating the Grantee's technical, programming and operational assistance and support to public agency users, such as Grantor departments, schools and health care institutions; 4) formulating and recommending long-range cable communications policy for the Franchise area; 5) disbursing and utilizing Franchise revenues paid to the Grantor; 6) regulating rates, to the extent permitted by law. 7) customer service, to the extent permitted by law; and 8) planning and facilitating development of public uses of the Cable System on the residential and institutional networks, both within the Grantor and through interconnection with adjacent systems. Nothing in this Section is intended to expand Grantee's authority beyond the scope authorized by state and federal law

7.3 Rate Regulation**7.3.A Rate Regulation Right Reserved**

Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.

7.3.B Rate Discrimination Prohibited

Grantee shall apply non-discriminatory rates and charges to all subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

*City of Woodburn Cable Franchise***7.3.C Provisions Subject to the Cable Act**

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

7.4 Remedies for Franchise Violations**7.4.A Notification**

If the Grantor believes that the Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, and Grantor wishes to impose liquidated damages or seek revocation under this Section 7, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have a Cure Period following receipt of such notice to:

- 1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred and request a hearing in accordance with Section 7.4.D below; or
- 2) Cure the violation; or
- 3) Notify the Grantor that Grantee cannot cure the violation within the Cure Period because of the nature of the violation, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, the Grantor shall, within thirty (30) days of receipt of such response, either a) accept the Grantee's plan and schedule for curing the violation, or b) set a hearing in accordance with 7.4.B below.

The Cure Period, for purposes of Section 7, shall be thirty (30) days, unless Grantor specifies a longer cure period, and except that in cases of emergency, or repeat violations within any 3-month period, the Grantor may set a reasonable shorter Cure Period.

If a Grantee fails to demonstrate to the reasonable satisfaction of Grantor that no violation exists, or if Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before

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the City Council, pursuant to Section 7.4.E. of this Franchise. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Franchise violations, including those in which grounds for revocation are considered.

7.4.B Plan for Cure

In the event that the Grantee notifies the Grantor that it cannot cure the violation within the Cure Period, and proposes a plan and schedule for cure which is not accepted by the Grantor, Grantor may, within thirty (30) days of Grantee's receipt of such notice, set a hearing before the City Council. At the hearing, Grantee shall review and determine whether the Grantor has taken reasonable steps to cure the violation and whether the Grantor's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Grantor, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in Section 7.4.F.

7.4.C Imposition of Liquidated Damages

In the event that the Grantee fails to cure the violation within the Cure Period, or within an extended cure period approved by the Grantor pursuant to Section 7.4.B the Grantor may impose liquidated damages or revoke this Franchise in accordance with this Section 7, but may do so only in accordance with the requirements of this Section, only after it holds a hearing before the City Council to determine what liquidated damages, if any, or revocation, shall be applied. Any such liquidated damages shall not begin to accrue until after the Cure Period has expired.

7.4.D Contest of Violation

In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with Section 7.4.A (1) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found to have occurred, what remedies under this Section 7 shall be applied.

7.4.E Opportunity to Be Heard

In the case of any hearing pursuant to this Section 7.4 Grantor shall notify Grantee of the hearing in writing at least 30 days prior to the hearing date. At the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate. After the hearing

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is closed, Grantor shall issue written findings and a decision based on the evidence presented. In the event Grantor determines that a breach has occurred, Grantor may appeal the decision of the City Council to a court of competent jurisdiction for a judicial review.

7.4.F Reduction of Liquidated Damages

The liquidated damages set forth in Section 7.2 of this Franchise may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

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

7.4.G Nature of Remedies

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

- 1) Order Grantor to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
- 2) Establish the amount of liquidated damages set forth in Section 7.5, taking into consideration the criteria provided for in Section 7.4.F as appropriate in Grantor's discretion;
- 3) Revoke this Franchise, subject to Sections 7.4 and 11.1 of this Franchise and/or;
- 4) Pursue any other legal or equitable remedy available under this Franchise or any applicable law

7.5 LIQUIDATED DAMAGES

7.5.A Amounts:

Because Grantee's failure to comply with provisions of the Franchise will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantee and Grantor agree to the following liquidated damages for the following violations. Violation of the Franchise in these instances will damage the Grantor, the amount of such damage will be

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impracticable to determine, and the specified amounts are the parties' best estimate of the damages resulting from each injury.

- 1) For failure to extend Cable Service within the Franchise Area as required: by this Franchise, Twenty-Five Dollars (\$25) per day, per affected potential Subscriber, up to a maximum of \$500 per day.
- 2) For failure to provide any capability for Public, Education and Government Access use of the Cable System required in this Franchise: Five Hundred Dollars (\$500) for each violation, per day.
- 3) For violation of applicable customer service standards: Twenty-Five Dollars (\$25) per day, multiplied by the number of affected Subscribers, up to a maximum of \$500 per day.
- 4) For failure to submit any report, maps, documentation, or other information required by this Franchise, Fifty Dollars (\$50) per day for each day past the due date for the first thirty (30) days, and One Hundred Dollars (\$100) per day thereafter.
- 5) For all other material violations of this Franchise, other than those specified in this Section, for which actual damages may not be ascertainable, up to One Hundred Dollars (\$100) per day for each provision of this Franchise that is violated.

7.5.B Collection of Liquidated Damages.

The collection of liquidated damages by the Grantor shall in no respect affect:

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

7.5.C Recourse to Securities

In conformance with the procedural requirements herein, the Grantor shall be entitled to draw upon the Grantor's letter of credit, performance bond or any security, including any parental guarantee, to collect the foregoing damages.

7.5.D Liquidated Damages Maximum

Notwithstanding any provision herein to the contrary, the aggregate amount of liquidated damages for which Grantee is liable shall not exceed fifty thousand dollars (\$50,000.00) during the term of this Franchise as set forth in Section 3.3 herein.

*City of Woodburn Cable Franchise***7.6 Remedies Not Exclusive**

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

7.7 Customer Service & Consumer Protection Standards

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

7.7.A Customer Service and Telephone Responsiveness

- 1) The Grantee shall maintain an office within the Urban Growth Boundary of Woodburn. The office must be staffed 40 hours per week, and Grantee shall be able to respond to subscribers and the public not less than 40 hours per week during normal business hours, plus at least 8 weekend or evening hours.
- 2) During the 40 hours the office is open, customer service representatives shall be available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; and to respond to inquiries.
- 3) Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.

7.7.B Service and Repair Calls

- 1) Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be acknowledged by the Grantee within 24 hours from the time of the request or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within 24 hours under normal circumstances. All other repairs should be completed within 72 hours under normal circumstances.
- 2) Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request for service calls, installations or other installation activities, the Grantee shall offer either a specific

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time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

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

- 3) For mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
- 4) Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this Section, shall mean those that are located up to 150 feet from the existing distribution system.

7.7.C Disconnection

- 1) The Grantee may disconnect a subscriber if:
 - a) at least 30 days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
 - b) the Grantee has provided at least 10 days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.
- 2) Regardless of subsection 7.7.C (1) hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.

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- 3) The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's Cable System. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, at least 95% of the time measured on a quarterly basis, within thirty working days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any undisputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

7.7.D Credits Upon Outage

Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the subscriber's account for any period of four hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the System.

7.7.E Downgrade Charges

Grantee may not impose Downgrade Charges on Subscribers, except as allowed by applicable law.

7.7.F Billing Information Required

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

7.7.G Information to Subscribers

- 1) Upon installing initial service to or reconnecting each customer, and upon request by the customer thereafter, and upon request by the Grantor but no more often as a result of such request than annually, the Grantee shall advise the customer, in writing, of:
 - a) the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - b) the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;

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- c) the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
 - d) the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
 - e) the company's practices and procedures for protecting against invasions of subscriber privacy; and
 - f) the notice and referral information, as set forth in subsection 7.7.G (2) hereof.
- 2) Notice to Subscribers
- a) The Grantee shall inform the Grantor and subscribers within 30 days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
 - b) All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.
 - c) The Grantee shall, upon request by the Grantor and no more often than annually, send at Grantee's own expense written notice approved by the Grantor to all subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement.

7.7.H Complaint Acknowledgment

Within ten (10) days following receipt of a written complaint from a subscriber which is separately mailed to and received at the Grantee's primary business address, the Grantee shall provide an acknowledgment by phone or in writing to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not

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apply to complaints submitted for processing by a regulatory agency other than the Grantor, such as the FCC.

7.7.I Complaint Resolution

- 1) The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a hearing of any complaints, where there is evidence that the Grantee has not settled the complaint to the satisfaction of the person initiating the complaint.
- 2) For purposes of this Section, a "complaint" is a grievance related to the service of the Cable System within the Franchise area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

*City of Woodburn Cable Franchise***8. GENERAL FINANCIAL AND INSURANCE PROVISIONS****8.1 Compensation****8.1.A Franchise Fee**

- 1) As compensation in consideration of permission to use the Public Rights- of Way of the City for the construction, operation, maintenance of a cable system within the City, Grantee shall pay to the City an amount equal to five percent (5%) of Grantee's Gross Revenues for the year as defined in Section 3.11, and such additional amount as shall be permitted by applicable law and approved by the City of Woodburn.
- 2) In the event that any applicable state or Federal law, rule or regulation shall limit or prevent the City from imposing a franchise fee in the amount provided for herein, Grantee may pay to the City the maximum permissible amount. In the event the maximum permissible amount is less than five percent (5%), and the law or rule or regulation establishing the maximum permissible amount subsequently is repealed or amended to permit a higher amount, then Grantee shall pay the higher amount if such additional amount is permitted by applicable law and approved by the City of Woodburn.

8.1.B Payment of Franchise Fees

- 1) Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts of Franchise fee payments. Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due.
- 2) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.

8.1.C Franchise Fees on Bundled Services

When Cable Services are bundled with non-cable services and sold to subscribers at a discounted price, or simply as part of the total price for the

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bundled services, then the allocation of revenues for the purpose of calculating Gross Revenues and cable franchise fees shall be reasonably proportionate to the average relative price of the individual services as normally charged during the period for which the franchise fees are calculated. Nothing in this Section shall be construed to (1) regulate Grantee's rates in a manner beyond that which is expressly authorized by federal law; or (2) compel Grantee to pay more than its statutorily authorized taxes and fees on combined cable and non-cable services.

8.2 Faithful Performance Bond**8.2.A Posting**

Upon or before the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor with good and sufficient surety approved by the Grantor, in the penal sum of Fifty Thousand Dollars (\$50,000.00), conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise

8.2.B Payment of Premiums

Grantee shall pay all premiums charged for any bond or other security required under Sections 8.2, 8.3, and 8.4, and unless the City Council specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

- 1) The remaining term of this Franchise; or
- 2) If required by the Grantor, the removal of all of Grantee's System installed in the Grantor's Streets and Public Ways.

8.2.C Notice of Termination

The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the Grantor. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Sections 8.2, 8.3, and 8.4. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the Grantor.

*City of Woodburn Cable Franchise***8.3 Construction Bond**

In the event that Grantee engages in System-wide construction activities during the period of this Franchise, Grantee shall post a faithful performance bond or irrevocable letter of credit in a form acceptable to the City Attorney, running to the Grantor, with good and sufficient surety approved by the Grantor, in the sum of One Hundred Thousand Dollars (\$100,000). Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the period of the System-wide construction.

8.4 Damages and Defense**8.4.A General Indemnification**

Grantee agrees and covenants to indemnify, defend and hold the Grantor, its officers, agents and employees harmless from any claim for injury, damage, loss, liability, cost or expense, including expert witnesses and other consultants, court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages, arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee to keep its System in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the Grantor or its officers, agents or employees. The Grantor shall provide Grantee 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 the Grantor which approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor and the Grantor shall fully cooperate with Grantee.

8.4.B Defense of the Franchise

Grantee agrees and covenants to indemnify, defend and hold the Grantor, its officers, agents and employees, harmless from injury, damage, loss, liability, 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 Grantor: (1) lacked authority under federal or state law, their respective charters, city codes or ordinances in issuing this Franchise to Grantee; (2) violated federal or state laws, if any, in awarding this Franchise to Grantee; (3) acted in any disparate or discriminatory manner against any incumbent franchisee in awarding this Franchise to Grantee; (4) granted this Franchise to Grantee in violation of any incumbent franchisee's contractual rights; (5) are required to alter the terms of another Franchise because of the terms of this

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Franchise; or (5) accepted terms or conditions in the Franchise awarded to Grantee which violate federal or state laws.

8.5 Liability Insurance and Indemnification

8.5.A Insurance Coverage

Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the Grantor, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:

8.5.B Minimums and Limits

The insurance shall provide coverage at all times for not less than \$5,000,000 for personal injury to each person, \$5,000,000 aggregate for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$5,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$5,000,000.

Grantee's insurance carrier shall have an A. M. Best rating of "A" or better, or a Best Financial Performance Rating of 7 or better.

8.5.C Additional Insureds

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Grantor and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

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8.5.D Cancellation and Replacement

The Grantee shall provide notice to the Grantor immediately if the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.5. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.6 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

8.5.E Certificate of Insurance

Grantee shall maintain on file with the Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of Section 8.6.

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

- 1) Broad form property damage;
- 2) Products and completed operations;
- 3) Explosion, collapse, and underground exposures;
- 4) Contractual liability; and
- 5) Owners and contractors protective coverage.

8.5.F Grantor Held Harmless

The Grantee shall also indemnify, defend and hold harmless the Grantor and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

*City of Woodburn Cable Franchise***9. RIGHTS RESERVED TO GRANTOR****9.1 Grantor's Purchase of the System****9.1.A Continuation of Operations / Purchase at Fair Market Value**

In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement as provided in Sections 7.4 or 11 herein, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended in accordance with Cable Act guidelines, the Grantee shall continue its operations for a period of up to 270 days under the terms and conditions of this Franchise agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor.

If the Grantor purchases the Cable System or any part of it under these circumstances, the fair value of the System for purpose of this subsection 9.1.A shall be determined by mutual agreement between Grantor and the Grantee. The Grantor, however, does not have a right of first refusal or other right to purchase or acquire the Cable System under this Franchise.

For purposes of revocation or forfeiture under this subsection 9.1.A, the fair value of all or part of the System shall be an equitable price for the System or part of the System being acquired, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

For any other purpose under this Section, the fair value of all or part of this System shall be its fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself, reduced by the amount of any lien, encumbrance, or obligation of the Grantee which Grantor may assume.

In the event of the Grantor's acquisition of all or portions of Grantee's Cable System, as provided herein, Grantee shall use all best efforts to obtain any needed consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's Cable System or any facilities to be acquired require any consent to assignment by third parties; and Grantee shall not unreasonably withhold any consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's Cable System or any facilities to be acquired.

9.1.B Transfer of System to Others

In the event Grantor purchases, acquires, takes over, or holds all or parts of the System pursuant to subsection 9.1.A or through any other lawful process, Grantor shall have the right without limitation to assign, sell, lease, or

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otherwise transfer its interest in all or parts of the System to any other persons, including any other Grantee of a cable communications Franchise, on whatever terms Grantor deems appropriate.

9.1.C Cable Act Requirements

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

9.2 Eminent Domain

Nothing in this Franchise is intended to expand or restrict the Grantor's lawful condemnation authority.

9.3 Right to Perform Franchise Fee Audit or Review

The Grantor shall have the right to perform, or cause to have performed, a formal audit or a professional review of the Grantee's books and records, and, for the specific purposes of a Franchise enforcement effort, the books and records of any parent or affiliate company, for the purpose of determining the gross receipts of the Grantee generated in any manner through the operation of the Cable System under this Franchise and the accuracy of amounts paid as Franchise fees to the Grantor by the Grantee, provided that any audit or review must be commenced not later than five (5) years after the date on which Franchise fees for any period being audited or reviewed were due. As part of any such audit, Grantee shall, upon request, identify for the Grantor the amount collected by the Grantee or any parent or affiliate of the Grantee from the use of Grantee's Cable System under this Franchise to provide Cable Services. The cost of any such audit or review shall be borne by the Grantor, except that if it is established that the Grantee has made underpayment of 2% or more in Franchise fees than required by this Franchise, then the Grantee shall, within 30 days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit or review. To the extent that they are not involved in the operation of the Cable System, Financial Partners shall not be subject to audit or review of their Records under this Section 9.3; provided that, should specific Records needed by the Grantor for an audit or review reside with a Financial Partner, it shall be made available to the Grantor by the Grantee upon request. Nothing in the Section implies that the Grantor waives its right to have legal recourse through the courts to obtain Records necessary to the enforcement of the Franchise.

9.4 Right of Inspection of Construction

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

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and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law.

9.5 Intervention

This Franchise does not alter any lawful right Grantor may have to intervene in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the System

9.6 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted providing no renewal is granted following completion of the renewal procedures required by the Cable Act, or upon its forfeiture or revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all streets and public ways within the Franchise area. If the Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor. Notwithstanding the other provisions of this Section, the Grantee, by written notice to the Grantor, may elect to abandon underground cable in place, in which event the Grantee shall have no further obligation hereunder as to the abandoned cable; except that the Grantor may nevertheless, by written notice, require the Grantee to remove cable as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

*City of Woodburn Cable Franchise***10. RIGHTS OF INDIVIDUALS PROTECTED****10.1 Discriminatory Practices Prohibited****10.1.A Grantee Shall Not Unlawfully Discriminate**

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

10.1.B Services to Disabled

The Grantee shall comply with all laws regarding the provision of Cable Services to Subscribers with disabilities, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited. This obligation includes Grantee's compliance with all requirements for hearing impaired customers, such as the provision of information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, Grantee, upon request by a hearing impaired Subscriber, shall make available a TDD/TTY, or shall make arrangements to accommodate the Subscriber in a comparable manner satisfactory to the Subscriber.

10.1.C Permitted Discounts

Nothing in this Section shall be construed to prohibit:

- 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or
- 2) offering reasonable discounts to economically disadvantaged citizens.
- 3) the establishment of different rates for different classes of customers and services.

10.2 Privacy and Other Rights

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

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the protection of subscriber privacy. In addition, subject to applicable law, the Grantee shall not utilize, nor intentionally permit to be utilized by others, the two-way communications capability of the System for unauthorized or illegal subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

10.3 Permission of Property Owner Required

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

10.4 Multiple Dwelling Units

Grantee shall offer and provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered and provided to other dwelling units within the Franchise area; provided that this requirement shall not apply in cases where a) Grantee is providing services under a bulk services agreement with a building owner, a) where offering full service not legally possible because a building owner prevents it or because of other circumstances, or c) where total construction costs would exceed \$250 per subscriber and the subscriber is unwilling to pay the amount of the cost exceeding that figure.

*City of Woodburn Cable Franchise***11. TERMINATION AND EXPIRATION****11.1 Revocation****11.1.A General**

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

11.1.B Conditions of Revocation

The grounds for which the Grantor may declare forfeiture or revoke the Franchise are the following:

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

11.1.C Due Process

Upon the occurrence of one of the events set out above, following 30 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In a hearing of the Grantee, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such

City of Woodburn Cable Franchise

proceeding as is appropriate in a court of competent jurisdiction to determine whether the Grantor properly has declared a forfeiture.

11.2 Receivership

In addition to its other rights and remedies as set forth in this Franchise, the Grantor shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless: a) within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a City Council resolution; and b) within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the Grantor, duly approved by the Grantor and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.3 Expiration

Upon expiration of the Franchise, in the event there is no forfeiture or revocation of the Franchise, and the Grantee desires to renew the Franchise, both the Grantee and the Grantor shall abide by the Franchise renewal provisions of the Cable Act, as amended from time to time.

11.4 Continuity of Service Mandatory

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the System, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise.

In the event of purchase, lease-purchase, condemnation, acquisition, taking over and holding of plant and equipment, sale, lease or other transfer to any other person, including any other Grantee of a cable communications Franchise, the Grantee shall continue its operations for a period of 270 days under the terms and conditions of this Franchise agreement following the date of the transfer, if such continuation of operations is ordered by the Grantor with a view to maintaining continuity of service to all subscribers.

*City of Woodburn Cable Franchise***12. OPERATION AND MAINTENANCE****12.1 Books and Records**

The Grantee shall maintain a business office within a radius of 25 miles of Woodburn, for managing the Cable System, and, subject to the provisions of Section 10 of this Franchise and, to such privileges as may be established under Oregon law, shall make available to the Grantor access to all books and records reasonably necessary to the regulation or enforcement of the material terms of this Franchise. The Grantor shall have the right under this provision to inspect at any time during normal business hours upon reasonable notice, all such records, books, electronic or optical files, maps, plans, service complaint logs, performance test results, records required to be kept by the Grantee and also of any parent company, affiliate or any cable operator, which directly relate to the operation of the Cable System in the Franchise Area, and all telephone logs and customer service logs maintained by the Grantee. If the records the Grantor wishes to inspect under the terms of this Section are not available in the business office within the radius of 25 miles, then the Grantee shall pay reasonable travel expenses to permit the Grantor to inspect the records. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information," nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. To the extent that they are not involved in the operation of the Cable System, Financial Partners shall not be subject to inspection of their Records under this Section 12.1; provided that, should specific Records needed by the Grantor for a regulatory or enforcement effort reside with a Financial Partner, it shall be made available to the Grantor by the Grantee upon request. Nothing in the Section implies that the Grantor waives its right to have legal recourse through the courts to obtain Records necessary to the enforcement of the Franchise.

Grantee agrees to meet with a representative of the Grantor upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the Grantor deems necessary for understanding the meaning of reports and records.

12.2 Communications with Regulatory Agencies

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any affiliate or any cable operator of the System authorized by this Franchise, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the Grantee's provision of Cable Services pursuant to this Franchise agreement, shall be submitted to the Grantor upon request, and copies of any such documents and

City of Woodburn Cable Franchise

their replies from respective agencies shall also be made available to the Grantor upon request. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency affecting operations within the Franchise area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an affiliate or cable operator of the Cable System authorized by this Franchise; except that such submission shall not be required in the case of the customary first signal leakage violation notice from the FCC based on a complaint from an individual subscriber. To the extent that Financial Partners are not involved in the operation of the Cable System, Financial Partners shall not be subject to the requirements of this Section 12.2; provided that, should specific Records needed by the Grantor for a Franchise enforcement effort reside with a Financial Partner, they shall be made available to the Grantor by the Grantee upon request. Nothing in the Section implies that the Grantor waives its right to have legal recourse through the courts to obtain Records necessary to the enforcement of the Franchise.

12.3 Reports**12.3.A Form of Reports**

With respect to all reports required under this Franchise, the Grantor shall accept reports in the form normally generated by the Grantee so long as the information requested by the Grantor can reasonably be recognized and understood by the Grantor in such form; provided, however, that nothing in this Franchise shall excuse the Grantee from providing such information as may be required by the Grantor for the administration and enforcement of the Franchise. The requirements of this Section shall not require the Grantee or an affiliate to keep on a regular basis or in a particular form such records or information which may be required on an ad hoc basis by the Grantor, unless otherwise required by the Franchise. .

Within 30 calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a summary report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of complaints, remedial action taken if any, and the current status of the complaints. Upon request by the Grantor, Grantee shall also provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee.

Within 45 days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all gross revenues

City of Woodburn Cable Franchise

earned and gross receipts collected by the Grantee or any cable operator, related to operation of the Cable System Franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of Franchise fee payments.

12.3.B Annual Report

No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:

- 1) Financial statements for the Grantee and for any parent company of the Grantee—audited if existing, otherwise unaudited.
- 2) A financial report for the Franchise area identifying gross revenues and receipts for the previous year. Such report shall identify revenues derived from each category of services generating revenues, including but not limited to basic service, expanded basic service, pay tv, pay-per view, internet service, home shopping, and advertising. The report shall be certified as accurate by an officer of the Grantee; except that, if requested by the Grantor, no more often than once every three years, the report shall be audited.
- 3) A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.

All financial reports required under this Section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at Gross Receipts for the calculation of Franchise fees to be paid to the Grantor.

12.3.C Additional Reports

The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the determination of the correctness of Franchise Fees paid by the Grantee, or the specific performance with respect to any other material provision of this Franchise. The requirements of this Section are not to be interpreted as authorization to establish additional regular reporting; rather they authorize the Grantor's requiring information from time to time, on an ad-hoc basis, as may be necessary for Franchise administration and enforcement.

City of Woodburn Cable Franchise

12.4 Safety

12.4.A Safety Standards

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

12.4.B Adherence to National Electric Safety Code

The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code.

12.4.C Proper Maintenance of Equipment

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

*City of Woodburn Cable Franchise***13. MISCELLANEOUS PROVISIONS****13.1 Compliance with Laws**

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder. The Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise. ORS 279.312, 279.314, 279.316, and 279.320, having to do with certain conditions of labor, payment for medical care, workers' compensation insurance, liens, and other matters, are included in this Franchise by reference.

13.2 Severability

If any Section, subsection, sentence, clause, phrase or word of the Franchise agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such Section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

13.3 Captions

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

13.4 No Recourse Against the Grantor

Grantee's recourse against the City of Woodburn, its officers, agents and employees, for any claim arising from any provision or requirement of this Franchise, shall be limited as prescribed by applicable laws, rules and regulations as in effect from time to time including without limitation the restrictions set forth in 47 USC & 555a, the Local Government Antitrust immunity Act and sovereign immunity.

13.5 Nonenforcement by Grantor

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

*City of Woodburn Cable Franchise***13.6 Force Majeure**

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

13.7 Entire Agreement

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

13.8 Consent

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

13.9 Notices and Time Limit for Grantee Communications

All communications with the Grantor by the Grantee referred to in this Franchise shall be made through the Office of the City Administrator of Woodburn, unless otherwise specified in this Franchise. Grantee shall provide any written communication required by this Franchise within Thirty (30) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise.

13.10 Consistency of Franchise with Cable Act

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

City of Woodburn Cable Franchise

13.11 Franchise Review

Either the Grantor or the Grantee may request the other party to participate in good faith negotiations, no more often than tri-annually beginning three years after the effective date of this Franchise, for a period not to exceed 6 months, to consider adoption of amendments to the Franchise. There shall be no obligation for either party to enter negotiations.

If the parties enter negotiations, the subjects of consideration, or areas in which the Franchise may be subject to amendment, shall be limited to the following: a) Technology, b) parity with neighboring systems; c) PEG Access and Institutional Network support by the Grantee; d) customer service issues; and e) Franchise term.

Following negotiations, amendments to the Franchise may be presented to the City Council for adoption. Nothing in this Section requires either the Grantor or the Grantee to agree to any amendment to the Franchise, and any amendment to the Franchise must be formally accepted by both parties.

13.12 Grantee Responsibility for Costs of Franchise Compliance

Except as otherwise specifically stated in this Franchise, it shall be the responsibility of the Grantee to bear the cost of compliance with all of the terms of the Franchise.

13.13 Notice

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

If to the City: Office of the City Administrator
 270 Montgomery St.
 Woodburn, OR 97071

If to the Grantee: James A. Penney, Executive Vice President
 WaveDivision VII, LLC d/b/a Wave Broadband
 401 Kirkland Parkplace, Suite 500
 Kirkland, WA 98033

13.14 Grantor Rights Upon Termination

If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Grantor lawfully acquires ownership of the Cable

City of Woodburn Cable Franchise

System, any such acquisition shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Grantor agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall continue to operate the System for a period of 270 days, or until the Grantor determines in writing that the System has been transferred to a qualified transferee, whichever is earlier. During this period, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party.

13.15 No Waiver

No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Grantee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the Grantor fails to object within a reasonable time after receipt of such notice, said provision will be deemed waived.

City of Woodburn Cable Franchise

EXHIBIT A: ORINATION POINTS

City Hall

Woodburn High School

Fire District

Woodburn Public Library

Woodburn Police Department

City of Woodburn Cable Franchise

EXHIBIT B: ACCEPTANCE AND GUARANTEE

City Administrator
City of Woodburn
270 Montgomery St.
Woodburn, OR 97071

This is to advise the City of Woodburn, Oregon (the "Grantor") that WaveDivision VII, LLC d/b/a Wave Broadband (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____, passed by the City Council on _____, 2013 (the Franchise) granting a Franchise for ten (10) years to WaveDivision VII, LLC. The Grantee agrees to abide by each and every term of the Franchise.

WaveDivision VII, LLC

BY
TITLE
DATE

The undersigned guarantees the faithful performance of each and every term of this Franchise by the Grantee.

[Guarantor]
BY _____
TITLE _____
DATE _____

*City of Woodburn Cable Franchise***EXHIBIT C: PRICE FOR WORK—INCREMENTAL COST****1. Specification of Costs**

For the construction of the I-Net or Interconnection of I-Net or PEG Access Channels, Grantee agrees that the term "Direct Costs" include only those costs specified in Section 2 of this Exhibit, and no Indirect Costs.

2. Direct Costs are:

- 2.1. Costs of necessary materials, equipment and hardware to construct the I-Net/Interconnection;
- 2.2. Payments made by Grantee to subcontractors in accordance with the requirements of the subcontracts;
- 2.3. Wages and salaries of Grantee's employees performing work on the relevant portion of the I-Net/Interconnection, including those employees involved in designing and mapping the I-Net/Interconnection (to the extent such designing and mapping is a Direct Cost that is over and above any Direct Cost that Grantee would incur in designing and mapping its Cable System,) and including management and supervision costs incurred by persons working within the City (over and above any Direct Cost that Grantee would incur in managing and supervising its own Cable System), and also including their welfare, unemployment compensation, social security and other benefits, for such part of their time as is employed on this work;
- 2.4. Payroll taxes and insurance and contributions applicable to wages and salaries of Grantee's employees performing work on the relevant portion of the I-Net/Interconnection, and sales, excise, business and occupation, and other taxes paid by Grantee on materials, equipment, supplies and services chargeable to the relevant portion of the I-Net/Interconnection;
- 2.5. Any labor force travel expenses directly chargeable to the work on the relevant portion of the I-Net/Interconnection;
- 2.6. Costs of necessary Franchises and permit fees, including Right-of-Construction Permit fees and inspection fees, if any, related to the relevant portion of the I-Net/Interconnection;
- 2.7. Actual rental costs for the use of any necessary temporary facilities, or special machinery, equipment and hand tools used in the work on the relevant portion of the I-Net/Interconnection;
- 2.8. That portion directly attributable to this Franchise of premiums for insurance and bonds related to the design, construction, lease of optical fibers and maintenance of the I-Net/Interconnection;
- 2.9. Losses, expenses, and cost of reconstructing any work destroyed or damaged,

City of Woodburn Cable Franchise

not compensated by insurance or otherwise, sustained by Grantee in connection with the work, provided they have resulted from causes other than the fault or negligence of Grantee;

- 2.10. Costs of removal of debris on the relevant portion of the I-Net/Interconnection;
- 2.11. Costs incurred on the relevant portion of the I-Net/Interconnection in taking action to prevent threatened damage, injury, loss in case of an emergency affecting the safety of persons and property; and
- 2.12. Other costs incurred on the relevant portion of the I-Net/Interconnection in the performance of the work if and to the extent approved in advance in writing by Grantor.

3. "Indirect Cost" shall include:

- 3.1. Salaries and other compensation of Grantee's employees stationed at Grantee's principal office or offices other than the work site, except as provided in Section 2.3 of his Exhibit;
- 3.2. Overhead and general expenses, except as may be expressly included in Section 2.3 of this Exhibit;
- 3.3. Grantee's capital expenses, including interest on Grantee's capital, employed for the work;
- 3.4. Costs due to the fault or negligence of Grantee, subcontractors, anyone directly or indirectly employed by any of them, or for those whose acts any of them may be liable, including, but not limited to, costs for the correction of damage, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, in making good damage to property not forming a part of the work.

4. "Incremental Cost" shall mean:

That portion of the Direct Cost wholly attributable to the Grantor's requirements; i.e., only that portion of the Direct Cost which would not have been incurred but for the obligation to construct, operate or maintain facilities required by the Grantor in accordance with this Franchise.



Agenda Item

March 11, 2013

TO: Honorable Mayor and City Council, Acting as the Local Contract Review Board, through City Administrator

FROM: Dan Brown, Public Works Director

SUBJECT: **AWARD OF CONSTRUCTION CONTRACT FOR THE I-5 INTERCHANGE – FORCE MAIN AND SANITARY SEWER SERVICES RELOCATION EAST OF ASTOR WAY**

RECOMMENDATION:

That the City Council, acting as the Local Contract Review Board, award the construction contract for the I-5 Interchange – Force Main and Sanitary Sewer Services Relocation East of Astor Way Project to Canby Excavating, Inc. in the amount of **\$165,895.00**.

BACKGROUND:

The contract involves the relocation of existing city sanitary sewer main line and sanitary sewer laterals that are in conflict with the proposed 33" storm sewer line which will be installed this summer during stage I of the I-5 Interchange Project. The project includes the extension of an existing sanitary sewer force main across highway 214 and the reconnection of five existing sanitary sewer services.

Bids for the utility relocation project were opened on February 28, 2013. A total of Seven (7) bids were received. Six (6) bids were received from responsible, pre-qualified Bidders. One (1) bid was nonresponsive.

Offers received are as follows:

<u>No:</u>	<u>Name</u>	<u>Amount</u>
1	Canby Excavating, Inc	\$165,895.00
2	ML Houck Construction	\$166,111.00
3	Kerr Contractors Oregon, Inc.	\$171,495.00
4	Subcom Excavation & Utilities LLC	\$172,475.00
5	Jesse Rodriguez Construction	\$192,951.00
6	Jeff Kersey Construction	\$194,005.55

Agenda Item Review: City Administrator City Attorney Finance

7	M&M Earthworks	NR*
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Engineer's Estimate

\$188,307.20

NR* - Nonresponsive Bids

The recommended award is 12% under the Engineer's estimate.

DISCUSSION:

The timely relocation of existing City sanitary sewer facilities that are in conflict with the upcoming I-5 Interchange Project is critical for minimizing delays and enabling a successful project.

The contract award is in conformance with public contracting laws of the State of Oregon as outlined in ORS Chapter 279C and the laws and regulations of the City of Woodburn, therefore, staff is recommending the contract be awarded.

FINANCIAL IMPACT:

The project will be funded using fifty percent (50%) Street/Storm System Development Charge Fund 376, as authorized by FY 2012-2013 Supplemental Budget approved by Council on February 11, 2013. This expenditure will be credited to the City and reduce its outstanding contributory obligation to the ODOT Interchange and Transit Facility Project. The remaining fifty percent (50%) will be provided by Sewer Construction Fund 465.

Estimated Project Cost Summary:

• Design and Technical Services	\$ 20,000.00
• Construction Contract	\$165,895.00
• Construction Contingency	\$ 25,000.00
• Construction Management & Inspection	<u>\$ 20,000.00</u>
 Total Estimated Project Cost	 \$ 230,895.00
 Budgeted Project Cost Estimate	 \$ 250,000.00