

**ORDINANCE NO. 1011**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH 4 RIVERS CONSTRUCTION COMPANY FOR THE TOWNSHIP ROAD PEDESTRIAN BRIDGE FOUNDATION CONSTRUCTION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received bids for the Township Road Pedestrian Bridge Foundation Construction; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on October 23, 1998; and

**WHEREAS**, bids were received and opened on November 3rd, 1998 at 3:00 PM by the City of Canby in the Canby City Hall, and the following read aloud:

<b>BIDDER</b>	<b>BID AMOUNT</b>
1. 4 Rivers Construction	\$ 25,000.00
2. Copenhagen Utilities	31,880.00
3. J.R. Merit	32,000.00
4. Skyline Construction	32,450.00
5. Roger Potter	34,200.00
6. Brock Construction	38,799.00
7. R.L. Martin	38,976.00
8. Sight Excavation	42,846.00
9. W.G. Moe & Sons	48,750.00
10. Baseline Industrial	53,011.00

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, November 4th, 1998, and considered the bid and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

**WHEREAS**, the Canby City Council determined that the low responsive bid was that of 4 Rivers Construction Company; now therefore

**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The Mayor and City Recorder are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with 4 Rivers Construction Company, for the Township Road Pedestrian Bridge Foundation Construction, for the bid amount of \$25,000.00. A copy of the contract with 4 Rivers Construction Company is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 4th, 1998; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, November 18th, 1998, after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.



Michael Jordan, Acting City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 18th day of November, 1998, by the following vote:

YEAS 5    NAYS 0



Walt Daniels,  
Council President

ATTEST:



Michael Jordan, Acting City Recorder

**CONTRACT FOR CONSTRUCTION**

Exhibit A

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_ in the year 1998 by and between

CITY OF CANBY

(hereinafter called OWNER) and

4 Rivers Construction LLC

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

**CITY OF CANBY  
TOWNSHIP ROAD PEDESTRIAN BRIDGE  
FOUNDATION CONSTRUCTION**

The Work is generally described as follows:

Construction of two piers and two landings for the Township Road pedestrian bridge.

**ARTICLE 2 - ENGINEER**

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3 - CONTRACT TIME**

3.1 The Work will be substantially completed within 25 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.13 of the General Conditions within 30 days after the date when the issuance of the Certificate of Substantial Completion.

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

### **7.1 Intent.**

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

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

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

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

### **7.3 Rate regulation.**

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the

Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.

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

#### **7.4 Remedies for Franchise Violations.**

- a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day or per incident, not to exceed a total of \$50,000, in the event Grantee violates any other material provision of this Franchise agreement, subject to Section 7.4(c), below.
- b. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

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

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

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
  - ii. Cure the violation, or;
  - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.
- c. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (f) of this section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
- d. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.
- e. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (b) i above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.
- f. In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee may be provided and opportunity to be heard and to present evidence in its defense.

The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

- g. The penalties set forth in this section of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
  - i. Whether the violation was unintentional;
  - ii. The nature of any harm which resulted;
  - iii. Whether there is a history of overall compliance, and/or;
  - iv. Whether the violation was voluntarily disclosed, admitted or cured.
- h. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
  - i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
  - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
  - iii. Revoke this Agreement, and/or
  - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor, and shall be reviewable only consistent with the dispute resolution provisions of this Agreement.
- j. Notwithstanding other language to the contrary in this agreement:
  - i. In cases where either intermittent or repeated violations of any single franchise standard occur, Grantor may in its discretion give one initial thirty (30) day notice and opportunity to cure and no subsequent notices of each individual violation; and

- ii. Grantor may in its sole discretion establish lesser or no cure periods for violations of Section 12 (Reports and Records) or Section 5 (System Upgrade).

## **7.5 Remedies Not Exclusive**

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

## **7.6 Consumer Protection Standards**

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

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

- i. The Grantee shall maintain an office within the City of Canby. The office must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, with a minimum of nine (9) hours per day on weekdays and 4 hours on Saturdays, excluding holidays consistent with federal law.
- ii. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- iii. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.
- iv. The Grantee shall maintain:
  1. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under normal operating conditions, the



customer will receive a busy signal less than 3% of the time.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

**b. Service and Repair Calls.**

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

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

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

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

or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

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

**c. Disconnection**

- i. The Grantee may disconnect a subscriber if:
  - 1. At least 30 days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
  - 2. The Grantee has provided at least five (5) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.
- ii. Regardless of subsection 1. hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.
- iii. The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, 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.

**d. Credits Upon Outage.**

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

**e. Downgrade Charges.**

Grantee may impose Downgrade Charges only if:

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

**f. Billing Information Required.**

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

**g. Information to Subscribers.**

- i. Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
  1. The equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
  2. The amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;

3. The Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
4. The toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
5. The company's practices and procedures for protecting against invasions of subscriber privacy; and
6. The notice and referral information, as set forth in subsection 2. hereof.

ii. Notice to Subscribers.

1. The Grantee shall inform the Grantor and subscribers within 30 days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
2. All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.
3. The Grantee shall, upon request by the Grantor and no more often than annually, send written notice approved by the Grantor to all subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement. The Grantor or its designee shall bear the cost of the printing and production of such notice; the Grantee shall be responsible for inserting

and mailing out the notice.

iii. **Written Complaint Acknowledgment**

Within ten (10) days following receipt of a formal written complaint as defined in subsection (h)(ii) below from a subscriber which is mailed to and received at the Grantee's primary business address, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the City, such as the FCC.

h. **Complaint Resolution.**

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

## 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

### 8.1 Compensation.

- a. Franchise Fee. As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the gross revenues generated in any manner through the operation of the cable system to provide cable services as defined in this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of gross receipts required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

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

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

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

- b. Payment of Franchise Fees.
  - i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) 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.

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

## **8.2 Faithful Performance Bond.**

- a. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand Dollars (\$100,000.00), 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.
- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a) and unless the City Commission specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
  - i. The remaining term of this Franchise; or
  - ii. If required by the City, the removal of all of Grantee's system installed in the City's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given

to the City. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the City 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 City.

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

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

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

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

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



Franchise or in connection therewith, as follows:

- b. The insurance shall provide coverage at all times for not less than \$1,000,000 for personal injury to each person, \$1,000,000 aggregate for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

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

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

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

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 without thirty (30) days written notice first being given to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

- e. Grantee shall file prior to the effective date of this Franchise and shall maintain on file with the City 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 13.2. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

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

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

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

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

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise agreement, or in the event of expiration of the initial term of this Franchise agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor pending the purchase of the whole or part of the system by Grantor or its designee. Within 90 days following the date of forfeiture or revocation or expiration of the initial term, the Grantor may notify the Grantee that it or its designee desires to acquire by purchase all or a portion of the system used by the Grantee in its operation, exclusive of parts of the system essential to Grantee's operation of parts of the system, or of other systems, not acquired, for its fair value. Such notice shall be by resolution or other appropriate writing of the Grantor and shall state a date upon which Grantee shall cease its operations and receive payment as described below.

The fair value of the system for purpose of this subsection shall be determined by mutual agreement between Grantor and the Grantee. If such mutual agreement cannot be reached within sixty (60) days following notification by the Grantor of its desire to purchase the system, then Grantor and Grantee shall submit to a mandatory mediation procedure, as provided for in Section 9.1(b), below.

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.

During any period of continued operation under this section, except as provided in section 3.5 of this Franchise, the Grantee shall not sell, assign,

transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

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.

- b. If mandatory mediation is initiated pursuant to Section 9.1(a), both the Grantor and the Grantee shall participate in good faith in the mediation, in a manner determined by the mediator chosen for the process. The mediator shall be chosen from a list of five (5) qualified persons obtained from the American Arbitration Association. The choice of a mediator shall if possible be made by mutual agreement by the Grantor and Grantee; however, if such agreement is not possible, then the mediator shall be chosen by having the Grantor and Grantee alternately eliminate one member of the list of qualified mediators until only one name is left, with the party to be first to eliminate a name determined by a coin toss. The cost of mediation under this Section shall be shared equally by the Grantor and the Grantee.

If agreement regarding the valuation of the system cannot be reached through the mediation process described in this Section, then either the Grantor or the Grantee may file such proceeding as is appropriate in an Oregon court of competent jurisdiction to exercise any rights it may have.

Any final determination of system valuation for the purposes of a proposed purchase of the system by the Grantor, whether proceeding pursuant to subsection 9.1(a) or by any other lawful process, shall be subject to: 1) the Grantor's right within sixty (60) days of final determination of valuation to decide by appropriate resolution or other writing not to acquire all or any part of the system subject to the valuation proceeding; and 2) the Grantor's right to decide to acquire through use of proceeds from the sale of bonds, but subject to and conditioned upon any necessary voter approval of the bond funding and, if applicable, the successful sale of the bonds.

- c. 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 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.

- d. 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 Condemnation**

To the extent authorized by law, the City may condemn all or any portion of Grantee's Cable System, including real property. Nothing in this Franchise is intended to expand or restrict the City's lawful condemnation authority.

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

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

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

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

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

In addition to all rights granted under section 9.3, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise enforcement effort, the books and records of any parent or affiliate company, for the purpose of determining the gross receipts of the Grantee generated in any manner through the operation of the cable system under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of two percent (2%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit.

#### **9.5 Right of Inspection of Construction.**

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

#### **9.6 Intervention.**

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

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

At the expiration of the term for which the Franchise is granted providing no renewal is granted, 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 communications 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.

#### **9.8 Inspection of Facilities**

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

## **10. RIGHTS OF INDIVIDUALS PROTECTED**

### **10.1 Discriminatory Practices Prohibited.**

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis or race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to non-discrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.
- c. The Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d. Upon request by a subscriber or potential subscriber, the Grantee shall make a reasonable effort to provide information required under Section 7.6(e) and 7.6(f), or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e. Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

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

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



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

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

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

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

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

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

## 10.6 Landlord - Tenant.

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

- a. To Grantee's providing of the services to units of the facility;
- b. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
- e. However, Grantee shall have no obligation to provide service if the cost of installation exceeds \$223.00 per unit. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

The \$223.00 cost is expressed in 1998 dollars. This figure may be adjusted each year on July 1 to reflect the annual change in the Consumer Price Index for the Portland Metropolitan Region.

**11. TERMINATION AND EXPIRATION.**

**11.1 Revocation.**

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

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

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

immediately be divested without a further act upon the part of the Grantor.

### **11.2 Receivership.**

In addition to its other rights and remedies as set forth in this Franchise, the City 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 Commission resolution; and
- b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

### **11.3 Expiration.**

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

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

It shall be the right of all subscribers to receive all available services 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 two hundred and seventy (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.

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

## **12. OPERATION AND MAINTENANCE**

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

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

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

- a. Grantee's employee shall access requested computer file from file server or hard drive storage for City to view.
- b. Once accessed, Grantee's employee shall move slowly through the file while the City views it on the computer monitor.
- c. Grantee's employee shall facilitate the printing of requested file to paper.

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

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any affiliate or any cable operator of the system authorized by this Franchise, to the Federal Communications Commission,

Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to this Franchise agreement, shall be submitted to the Grantor each year with Grantee's annual report, and copies of any such documents and their replies from respective agencies shall also be made available to the Grantor. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting operations within the Franchise Area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an affiliate or cable operator of the cable system authorized by this Franchise.

### 12.3 Reports

- a. Quarterly Reports. Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken, if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide outage reports and 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 thirty (30) 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 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.

- b. Annual Report. No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:
  - i. Audited financial reports (or if audited reports are not available, then reviewed reports) for the previous fiscal year, including gross revenues from all sources, gross subscriber revenues from each category of service, as well as an income statement, statement of

cash flow, and a balance sheet; a financial report for the metropolitan area system of which the Franchise is a part with reviewed gross revenues and receipts as well as statements of expenses, balance sheet and capital expenditures reviewed by an independent certified public accountant; and a financial report for the Franchise Area with audited gross revenues and receipts. In the event any audited financial report has not been published by the date due under this section, then the audited financial report and, if the audited financial report is for the Grantee then also the accompanying reviewed report and the audited report for the Franchise Area, shall be deemed presented on time if presented within thirty (30) days after publication.

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

- ii. A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.
- c. Monitoring and Compliance Reports. No later than April 15 of each year, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall provide reports of the test and compliance procedures established by this Franchise agreement, no later than thirty (30) days after the completion of each series of tests.
- d. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this Franchise.
- e. All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee.



#### **12.4 Safety.**

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

### **13. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this section as a result of such provision being preempted

shall no longer be of any force or effect.

### **13.3 Captions.**

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

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

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

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

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

### **13.6 Force Majeure.**

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; 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 agreement, such consent or approval shall not be unreasonably withheld.

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

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

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

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

### **13.11 Comparability of Other Cable Franchises**

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

- c. No provisions of this section shall be enforceable unless all are enforceable.

### **13.12 Franchise Review.**

At any time during the seventh year of this Franchise, either the Grantor or the Grantee may request the other party to participate in good faith negotiations, for a period not to exceed six (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 support by the Grantee; and
- d. 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.

### **13.13 Notice.**

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

If to the City:           City Administrator  
                                  City of Canby  
                                  P.O. Box 930  
                                  Canby, OR 97013

If to the Grantee:       North Willamette Telecom  
                                  190 NE 2nd Avenue  
                                  P.O. Box 850  
                                  Canby, OR 97013

**13.14 Public Disclosure.**

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

**13.5 Time is of the Essence**

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

EXHIBIT B  
ACCEPTANCE

City Administrator  
City of Canby  
P.O. Box 930  
Canby, OR 97013

This is to advise the City of Canby, Oregon (the "City") that North Willamette Telecom (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1017, passed by the City Council on April 8, 1999 (the Franchise) granting a Franchise for twelve (12) years to North Willamette Telecom. The Grantee agrees to abide by each and every term of the Franchise.

NORTH WILLAMETTE TELECOM

BY Richard D. C.  
TITLE PRESIDENT  
DATE MAY 4, 1999

**EXHIBIT B**

**ACCEPTANCE**

City Administrator  
City of Canby  
P.O. Box 930  
Canby, OR 97013

This is to advise the City of Canby, Oregon (the "City") that North Willamette Telecom (the "Grantee") hereby accepts the terms and provisions of Ordinance No. \_\_\_\_\_, passed by the City Council on \_\_\_\_\_, 199\_\_ (the Franchise) granting a Franchise for twelve (12) years to North Willamette Telecom. The Grantee agrees to abide by each and every term of the Franchise.

**NORTH WILLAMETTE TELECOM**

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_



**EXHIBIT C**

**Existing 2-Way Active Interconnections**

**Canby System Interconnected to:**

**Location of Interconnect**

Clackamas Community College

Clackamas Community College

- 3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR One Hundred Dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1. for substantial completion until the Work is substantially complete.

#### **ARTICLE 4 - CONTRACT PRICE**

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

Twenty-five Thousand and 00/100 Dollars (\$ 25,000.00)

as shown in the attached Bid Proposal.

#### **ARTICLE 5 - PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

- 5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 14.13.

## **ARTICLE 6 - INTEREST**

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279.

## **ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

**ARTICLE 8 - CONTRACT DOCUMENTS**

- 8.1 This Agreement (pages 17 to 21, inclusive).
- 8.2 Exhibits to this Agreement.
- 8.3 Performance and other Bonds (pages 23 to 26, inclusive).
- 8.4 Notice of Award.
- 8.5 General Conditions of the Construction Contract (pages 27 to 72, inclusive).
- 8.6 Supplementary Conditions (pages 73 to 76, inclusive).
- 8.7 Technical Specifications.
- 8.8 Drawings bearing the following general title:

CITY OF CANBY  
TOWNSHIP ROAD PEDESTRIAN BRIDGE  
FOUNDATION DESIGN

- 8.9 Addenda numbers   0  .
- 8.10 CONTRACTOR'S Bid
- 8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

**ARTICLE 9 - MISCELLANEOUS**

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed four counterparts of this Agreement.

This Agreement will be effective on \_\_\_\_\_, 1998.

OWNER

CONTRACTOR

\_\_\_\_\_  
CITY OF CANBY

\_\_\_\_\_  
4 Rivers Construction LLC

\_\_\_\_\_  
182 N. Holly

\_\_\_\_\_  
PO Box 339

\_\_\_\_\_  
Canby, Oregon 97013

\_\_\_\_\_  
Oregon City, Oregon 97045

By Walter R. Daniel

By \_\_\_\_\_

Name/Title Council president

Name/Title \_\_\_\_\_

(Corporate Seal)

Attest \_\_\_\_\_

Address for giving notices

\_\_\_\_\_  
\_\_\_\_\_