

AGENDA CANBY CITY COUNCIL

Work Session 6:00 PM – Virtual Meeting/ Council Chambers
Regular Meeting 7:00 PM - Virtual Meeting/ Council Chambers
Meetings can be viewed on CTV Channel 5 or YouTube

August 5, 2020
222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale
Councilor Trygve Berge
Councilor Traci Hensley

Councilor Greg Parker
Councilor Sarah Spoon
Councilor Shawn Varwig

Work Session – 6:00 PM

1. CALL TO ORDER
 2. PRESENTATION AND DISCUSSION ABOUT TRANSIT ADMINISTRATION OFFICES AND TRANSIT YARDS. Pg. 1
 3. ADJOURN
-

Regular Meeting – 7:00 PM

1. CALL TO ORDER
2. COMMUNICATION
3. **CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. Staff and the City Council will make every effort to respond to questions raised during citizens input before the meeting ends or as quickly as possible thereafter. ***If you would like to speak virtually or in person, please email or call the City Recorder by 5:00 pm on August 5, 2020 with your name, the topic you'd like to speak on and contact information: bissetm@canbyoregon.gov or call 503-266-0733. Once your information is received, you will be sent instructions to speak. Please note that Council will be attending this meeting virtually.
4. MAYOR'S BUSINESS
5. COUNCILOR COMMENTS & LIAISON REPORTS
6. **CONSENT AGENDA:** This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.
 - a. Approval of Minutes of the July 15, 2020 City Council Work Session and Regular Meeting. Pg. 13

7. ORDINANCES

- a. **Ordinance No. 1530:** An Ordinance authorizing the Mayor and Interim City Administrator to execute a contract with CURRAN-McLEOD, Inc. Consulting Engineers for engineering services to complete improvements to N Locust Street Reconstruction; and declaring an emergency. *(Second Reading)* Pg. 23
- b. **Ordinance No. 1531:** An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby; and establishing an effective date. *(Second Reading)* Pg. 42
- c. **Ordinance No. 1532:** An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date. *(Second Reading)* Pg. 50

8. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

9. CITIZEN INPUT

10. ACTION REVIEW

11. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Melissa Bisset at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov. **City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5.** For a schedule of the playback times, please call 503.263.6287.

****We are requesting that rather than attending in person you view the meeting on CTV Channel 5 or on YouTube: <https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>**

**If you do not have access virtually,
there are a small number of chairs provided inside to allow for physical distancing.**

Introduction:

- Transit Director
- Why Move
- Property History
- Current Property
- Shop
- Next Steps:



Transit Director:

- Todd M. Wood
- A bit of personal history
- Transit employment history and background





Why Move?:

- Outgrown current location
 - Inadequate parking and training space
- More facilities and parking needed for buses
 - Bus Wash
 - Bus Parking
- Annual Lease Cost - \$46.5k



Location History:

- Prior Offices Located Downtown
- October 14, 2013 Offices moved to 195 S Hazel Dell Way, Suite C
- Shop considered as future of Transit offices
- 2019 Property Purchased on Hazel Dell Way totaling 1.8 Acres



Current Property



- Behind Current Location
- Final Piece Purchased 2019
- Total Acreage 1.8
- Existing Bus Yard and Entrance





Current Property Pros

- Accessible to Customers
- Easy Access to 99E
- New Building

Current Property Cons

- No onsite maintenance for buses
- Sharing with neighbor creates security issues
- Marketable Property



City Shop

- Located off Territorial
- Over 5 acres
- City owned
- Location of Roads, Parks, Water, and Fleet





Shop Pros

- Consolidated City Services
- Fleet Located with Transit
- Facilities needed by Transit can be used by other departments (i.e. Bus wash)
- Improve and modify Shop
- Hazel Dell property goes on the market



Shop Cons



- No Customer Access
- Shop will need to be modified
- Contractor will be located at shop (Transit will need to answer security Concerns)
- Transit will likely need nearly 50% of the shop



Next steps

- Engineering Evaluation of the shop
- Engineering Evaluation of property
- Determination of best fit



**CANBY CITY COUNCIL
WORK SESSION MINUTES
July 15, 2020**

Due to COVID-19 Pandemic, the Mayor and City Councilors attended the meeting virtually. The public was asked to view the meeting live on CTV Channel 5 or on YouTube. Seating was available in the Council Chambers in compliance with the Governor's Executive Order regarding social distancing.

PRESIDING: Mayor Brian Hodson.

COUNCIL PRESENT: Trygve Berge, Tim Dale, Greg Parker, Sarah Spoon, and Shawn Varwig.

COUNCIL ABSENT: Traci Hensley

STAFF PRESENT: Amanda Zeiber, Interim City Administrator; Joseph Lindsay, City Attorney; Police Chief Bret Smith, Lieutenant Jorge Tro, Lieutenant Jose Gonzalez; and Melissa Bisset, City Recorder.

OTHERS PRESENT: None.

CALL TO ORDER: Mayor Hodson called the Work Session to order at 6:05 p.m.

DISCUSSION REGARDING POLICE DEPARTMENT POLICIES

Bret Smith, Police Chief, reviewed the document "75 Things White People Can Do for Racial Justice." On the list were outfitting all police officers with body cameras and police de-escalation training. Another document was "#cantwait" that recommended banning chokeholds and strangleholds, requiring de-escalation, requiring warning before shooting, requiring a police officer exhaust all alternatives before shooting, requiring a duty for a police officer to intervene, banning shooting at moving vehicles, requiring the use of force continuum, and requiring comprehensive reporting. He explained the six police accountability legislative bills which were all created under an emergency clause meaning that they became law as soon as they were signed by the Governor. These included SB 1604 arbitration reform and disciplinary matrix, HB 4201 establish a Joint Committee on Transparent Policing and use of force reform, HB 4203 police chokehold ban, HB 4205 police officers duty to intervene and report misconduct, HB 4207 establish a public statewide online database of suspensions and revocations of certifications of police officers, and HB 4208 prohibit law enforcement agencies from using tear gas or long range acoustic devices or sound cannons for purposes of crowd control except in circumstances constituting the crime of riot. He then discussed the Canby Police Department General

Orders/Policies document and how they had included the recent changes in the department's rules and regulations and how many of them were already being done as standard conduct.

Jorge Tro, Police Lieutenant, discussed use of force reporting and accountability. If there was a use of force incident reported, all of the officers involved were required to write a report, all the witnesses were interviewed, and a supervisor reviewed all of the reports and filled out a separate use of force incident report which went to command staff. The command staff reviewed all of the reports and wrote a summary and a yearly report. Any deadly physical force used against someone was reported and submitted to Oregon DOJ and there were federal use of force requirements. Anytime there was a death due to an officer's use of force or a serious bodily injury or discharge of a firearm, reports had to go to the FBI. There were also policies and procedures that prohibited profiling and any complaint about profiling was investigated thoroughly and the complaint had to be submitted to the Law Enforcement Contact Policy and Data Review Committee for their review. If an officer was involved in a death or serious injury to a suspect in Canby, it was investigated by the Interagency Clackamas County Major Crime Team as well as all of the other reporting. He shared the Statistical Transparency of Policing data which showed the discretionary traffic and pedestrian stops made by officers. The analysis was from July 1, 2019 to June 30, 2020. There were 2,379 self-initiated stops by officers. The information was broken down by race and gender as well as the number of arrests and searches. The percentages were indicative of Canby's population.

Jose Gonzalez, Police Lieutenant, discussed Internal Affairs investigations and the complaints that came in from citizens. He reviewed all of the complaints and contacted citizens about the resolutions to their complaints. He also reviewed any of the reports that came in for violations of policy. He helped find remedies for the police officer so the action would not happen again in the future. All complaints were logged in a database and filed so if there was a third party audit they could review all of the documents. He also had to notify the District Attorney's office if there was a complaint of bias and the officer had to testify so they would know whether they could use the officer as a witness. There were mandates in place for officers to report if they saw another officer behaving inappropriately. They voluntarily reported any use of force to the FBI monthly, which was ahead of the game of most departments in the state.

Chief Smith said they had addressed and complied with all of the #8cantwait recommendations with a few exceptions such as shooting at a moving vehicle as a deadly force standard. They gave warnings as soon as practical. The only one that was not met was the body cameras, but they were moving in that direction. All of the cars had cameras in them for traffic stops. In the ten years he had been in Canby there had been two use of force complaints and four or five treatment complaints, none of which were substantiated.

Mayor Hodson asked how often the policies were reviewed. Lieutenant Tro said for any legislative or case law change that came through, their policies were changed accordingly. The ones that did not come up were reviewed every three years. An auditor also reviewed the policies

to make sure they were current and in compliance. For accreditation they had to have proof that they were following the policies. An Oregon DOJ attorney also came out to explain the changes to the law once per year.

Mayor Hodson asked in what areas they might be falling short. Chief Smith said if there was a new policy change, it might take time to adapt. One of the things they needed to do was create a disciplinary matrix which was a new state requirement that they had not had time to do yet.

Councilor Spoon asked if there were policies about job candidates who were leaving a position in the middle of an investigation or who had an investigation in the past. Chief Smith said they had a requirement to ask for that type of information from the agency that candidates were coming from. They would know about it before anyone was hired. The candidates were also asked that question during interviews and if they were currently under investigation they were not considered for the job until the investigation was complete.

Councilor Dale asked about body camera recordings being public record even inside of a private residence. Lieutenant Tro said there were challenges with the body cameras, and editing to blur out juveniles would be one as well as when to record and when not since it was a public record.

Councilor Parker asked if any of these policies and laws alone would have prevented the abuse that happened in West Linn. Chief Smith did not have the details on that incident. They were trying to hire the right people with the right motives and provide good training and supervision for the department.

Councilor Parker would like advice on what the Council could do to prevent abuses like that in a police force. He thought it could be a conversation as a team as they tried to work together to reach that goal.

Councilor Berge thought the presentation was excellent. He thought the department was providing good leadership and were ahead of the curve.

The meeting adjourned at 6:52 p.m.

Melissa Bisset, CMC
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
July 15, 2020**

Due to COVID-19 Pandemic, the Mayor and City Councilors attended the meeting virtually. The public was asked to view the meeting live on CTV Channel 5 or on YouTube. Seating was available in the Council Chambers in compliance with the Governor's Executive Order regarding social distancing measures to be taken.

PRESIDING: Mayor Brian Hodson.

COUNCIL PRESENT: Trygve Berge, Tim Dale, Traci Hensley, Greg Parker, Sarah Spoon, and Shawn Varwig.

COUNCIL ABSENT: Traci Hensley

STAFF PRESENT: Amanda Zeiber, Interim City Administrator; Joseph Lindsay, City Attorney; and Melissa Bisset, City Recorder.

OTHERS PRESENT: None.

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:01 p.m.

PRESENTATIONS

Swearing in of New Police Officer – Brett Smith, Police Chief, introduced new Police Officer David Wohlers.

Jon Henriksen, Municipal Court Judge, administered the oath of office to Officer Wohlers.

Canby Disposal Rate Increase Proposal – Andy Kahut and Steve Donovan from Canby Disposal gave a presentation on solid waste and recycling rates. They discussed the current status of recycling markets, proposal for the implementation of rate increases for solid waste and recycling, and neighboring community rates. In September 2019 they informed Council about their intent to request a special rate review under Section 7.5 of the franchise. In fiscal year 2019, Canby Disposal lost 5.70% before taxes; the net loss from Canby operations was \$181,576 on total revenues of \$3,186,673. They were requesting a general rate increase to be phased in on September 1, 2020 and on March 1, 2021. It cost \$130 per ton to dispose of recyclable materials collected from the curbside recycling program in September of 2019. Since that time, the cost of disposal rose to \$138 per ton. They expected to see that number increase to \$150 per ton by the end of 2020. The comparable tipping fee for solid waste at any Metro franchised transfer station was \$97.45 per ton. The Chinese government passed a domestic law forbidding Chinese processors from accepting foreign recyclables. Based on revenue requirements, they were

requesting a 20.11% general rate increase. This translated to \$4.95 per month to the average single family residential customer (32 gallon cart with recycling and yard debris). Recognizing the magnitude of this increase, they were proposing to phase the increases over one year as follows: on September 1, 2020 implement one half of the increase which was \$2.47 per month to the average single family customer and then on March 1, 2021 implement the other half of the increase which would be \$2.48 per month to the average single family customer. They displayed a graph of neighboring communities' rates that showed how Canby was lower than most other cities even with the increases.

Mayor Hodson said they were a great community partner and he appreciated the information. He asked if there were companies in the U.S. or Canada that would do the recycling that China used to or if recycling would just need to go into the trash.

Mr. Kahut said there was a paper mill in Washington that accepted the paper recycling, however several mills in Oregon had shut down in the last decade. Several small cities had dropped their recycling programs because of the transportation costs to get the materials to the market. It was changing every month and he was not sure how it would end up.

Mr. Donovan said several other cities were throwing it away currently.

Councilor Dale asked what the increase would be for 65 gallon users. Mr. Donovan did not have the specific number, but it would be the same 20 percent increase.

Mayor Hodson said if the recycling program was removed, people would have to use larger garbage containers. How much longer would they be able to do the recycling program? Mr. Kahut did not think it would completely go away anytime soon. If it did, people would have to upsize their containers.

Councilor Parker thought it was interesting that there was more garbage being generated by people staying home due to COVID. He thought they could only respond to the world market and recyclables issue. He asked if they could project the expenses and adjust the rates accordingly.

Mr. Donovan said they could change the franchise to be more forward looking, but they could not have predicted the recycling market to take this down turn.

Mr. Kahut said that was the biggest hit he had ever seen in his career and they were hoping it was a one-time increase and they would not have to come back like this again.

Mayor Hodson emphasized the need for communication with rate payers about this increase. He thought they should come back with an update in March to let them know where things were at.

Councilor Parker was in support of changing the franchise and the need for consumer education about the costs of recycling.

There was discussion regarding changing the franchise to allow for more gradual rate increases on a regular cycle.

Councilor Berge asked what fee they were trying to shoot for. Mr. Donovan said the revenue requirements set a 12% pre-tax profit and that was the bar they set for revenue requirements. They had a negative 5% and up to the 12% pre-tax, so it was a 6% after tax as the net. There were four diesel trucks that showed up every garbage day to people's homes, which was a lot of equipment, labor, and fuel and once it was collected it had to go to the transfer station and transported to Eastern Oregon for the landfill.

COMMUNICATIONS: None.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: It was publically noticed that Council would be attending the meeting virtually and written comments and input on agenda items were accepted until 5:00 p.m. on Wednesday, June 15.

Paul Ylvisaker, Canby resident, said last month he had discussed the use of fireworks at the graduation ceremony and this was a follow up to that discussion. The School District did not have the authority to use fireworks at graduation. It violated his environment and harassed him with the unwanted explosions. He stated the Council knew about the fireworks, but did nothing to stop it which did not promote public trust and confidence in the Council. He reviewed the Council's values and goals and how this violated them for an inclusive community and exceptional public services. He thought it violated the ordinances of the City, which was law that should be followed.

Mayor Hodson planned to have a conversation with the City Attorney and School District about the process for the fireworks because it should have come to Council for approval.

Councilor Varwig clarified he did not know about the fireworks prior to graduation.

Valerie Bird, Canby resident, said some of the major players on social media platforms had all banned discussions on 5G and the effects on human health. Many companies were advertising the benefits of 5G, but nothing about the studies on health. Many countries and cities had halted the implementation of 5G. She explained what she had found in multiple scientific sources and books about the effects. The 5G antennas were going up everywhere and there was a proposal to put them on residential homes. She thought more investigation needed to be done before a blanket roll out.

Joe Lindsay, City Attorney, clarified the City had not permitted any of these sites yet.

Brad Clark, Canby resident, discussed the cost of law enforcement which was 60% of the City's budget, especially when compared with other cities. He thought Canby's was high in comparison

and he wanted to make sure they were not missing other opportunities by disproportionately spending the budget.

Amanda Zeiber, Interim City Administrator, said that number was reflective of the General Fund budget rather than the overall City budget. The Police Department was about 55% of the General Fund budget.

Mr. Clark had combined the Police and Court for the 60%.

Mr. Lindsay said the Police and Court were different branches of government and the Court made money for the City.

Mayor Hodson would look into it further and get back with him.

MAYOR'S BUSINESS: Mayor Hodson reported on the City Administrator recruitment. Interviews were currently being conducted and the final candidates would come to town. The Parks and Recreation Advisory Board would meet next week. In June they selected a new Chair. Regarding tolling and I-205 expansion, he had been invited to meet with a group of potentially impacted cities. C4 would meet in August. The last meeting they discussed the work plan for the year. Regarding COVID, Clackamas County had remained steady between 18-24 cases. He asked people to wear masks when they were going into businesses.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Spoon welcomed the new Transit Advisory Committee members. She would like to discuss the Diversity, Equity, and Inclusion Strategic Plan she had proposed.

Councilor Varwig welcomed the new Library Board member. The Library Director was retiring. The Fire Department was remodeling the main fire station. The new ladder truck had arrived.

Councilor Dale said the last two Canby Utility meetings had dealt with yearly housekeeping issues.

CONSENT AGENDA: ****Council President Dale moved to adopt the minutes of the June 17, 2020 City Council Regular Meeting, new limited on-premises OLCC liquor license for B's Bake Shoppe, appointment of Jessica Hines to the Library Board, and appointments of Warren Holzem, Alex Vice, and Paul Waterman to the Transit Advisory Committee and passed 5-0.**

RESOLUTIONS & ORDINANCES

Resolution No. 1339: A Resolution authorizing a rate increase and establishing a new rate schedule for garbage collection by Canby Disposal within the City of Canby.

****Councilor Varwig moved to adopt Resolution 1339, A RESOLUTION AUTHORIZING A RATE INCREASE AND ESTABLISHING A NEW RATE SCHEDULE FOR GARBAGE COLLECTION BY CANBY DISPOSAL WITHIN THE CITY OF CANBY. Motion was seconded by Council President Dale and passed 5-0.**

Resolution No. 1340: A Resolution to ratify the contract between the City of Canby (City) and the Local 350-6 AFSCME Council 75 AFL-CIO (Union) for the period from July 1, 2020 through June 30, 2021; and repealing Resolution No. 1273.

Ms. Zeiber said the AFSCME contract expired on June 30, 2020. The negotiation process had started and then had to postpone meetings and hold virtual meetings due to COVID-19. They decided to do a one year contract because of all the unknowns. The contract would be retroactive to July 1, 2020 and would expire on June 30, 2021. Next spring there would be another negotiation process. The contract included a 2.5% COLA and legislative updates related to additional pay during emergency closures. There was agreement to limit employees having additional pay when city offices were closed if they were considered essential and had to come in for a two week period.

Councilor Parker clarified the Council had discussed the contract in Executive Session.

****Councilor Varwig moved to adopt Resolution 1340, A RESOLUTION TO RATIFY THE CONTRACT BETWEEN THE CITY OF CANBY (CITY) AND THE LOCAL 350-6 AFSCME COUNCIL 75 AFL-CIO (UNION) FOR THE PERIOD FROM JULY 1, 2020 THROUGH JUNE 30, 2021; AND REPEALING RESOLUTION NO. 1273. Motion was seconded by Councilor Berge and passed 5-0.**

Ordinance No. 1530: An Ordinance authorizing the Mayor and Interim City Administrator to execute a contract with CURRAN-McLEOD, Inc. Consulting Engineers for engineering services to complete improvements to N Locust Street Reconstruction; and declaring an emergency. *(First Reading)*

Ms. Zeiber said Locust Street had intermittent old curbs and sidewalks and a deteriorating surface. This project was a complete rebuild of the curbs and sidewalks on one side and parking on both sides from NE 4th to NE 10th. Improvements would also be made to N Knott between NE 3rd and 4th. They were receiving \$374,000 in federal funds for the project and the rest would be funded through street and sewer SDCs. The reason for the emergency language was because this was a high priority project to connect the new splash pad, library, and fairgrounds with safe pedestrian routes and due to the timing of a power extension project at the fairgrounds.

Councilor Varwig asked if this project included pedestrian crosswalks across 10th Avenue. Ms. Zeiber said they were looking into additional crosswalks and locations.

****Councilor Berge moved to adopt Ordinance 1530, AN ORDINANCE AUTHORIZING THE MAYOR AND INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT**

WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES TO COMPLETE IMPROVEMENTS TO N LOCUST STREET RECONSTRUCTION; AND DECLARING AN EMERGENCY to come up for a second reading on August 5, 2020. Motion was seconded by Councilor Varwig and passed 5-0 on first reading.

Ordinance No. 1531: An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby; and establishing an effective date. *(First Reading)*

Mr. Lindsay said the franchise agreement with Canby Telephone for telecommunication services had expired. There was a brief renegotiation and the new agreement was mostly an extension of the last agreement because it was a good agreement and similar to other telecommunication agreements with other providers. It was a ten year agreement with 5% of gross revenues paid to the City. It would also allow CTV5 to continue with their PEG fees in the same way.

Jim Hunsaker, Canby Telephone, was there to answer any questions. He said Canby Telephone prided itself in being involved in the community.

Mayor Hodson clarified they would be going from 7% to 5% in anticipation of the regulations regarding 5G.

Mr. Lindsay stated it was due to the legal need for 5G and the intent to have a level playing field.

Councilor Dale asked if there would be a significant budget impact to take into account. Mr. Lindsay did not think it was that significant.

Councilor Dale said the franchise fee was a pass through to the customer. Mr. Hunsaker said they were permitted to pass it through, but they did not pass the entire fee through.

Councilor Dale asked if the FCC had decided 5G would count for telephone, cable TV, and internet. Mr. Hunsaker said it was a fast data source that would bridge between internet and traditional telephone.

Councilor Dale was in support of reducing it to 5%. He asked if they needed to change the Wave franchise agreement as well. Mr. Lindsay would look into it.

****Council President Dale moved to adopt Ordinance 1531, AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECTLINK) TO PROVIDE TELECOMMUNICATION SERVICES WITHIN THE CITY OF CANBY; AND ESTABLISHING AN EFFECTIVE DATE to come up for a second reading on August 5, 2020. Motion was seconded by Councilor Spoon and passed 5-0 on first reading.**

Ordinance No. 1532: An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date. *(First Reading)*

Mr. Lindsay said the previous discussion related to this franchise agreement, only this was for cable service. It also allowed for PEG fees for CTV5.

****Council President Dale moved to adopt Ordinance 1532, AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECTLINK) TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF CANBY; AND ESTABLISHING AN EFFECTIVE DATE to come up for a second reading on August 5, 2020. Motion was seconded by Councilor Varwig and passed 5-0 on first reading.**

CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Ms. Zeiber updated the Council on the splash pad project which was moving along successfully and would be completed by the end of August. The Ivy Street sewer project was out to bid and they were getting a good response.

Mayor Hodson said PGE was putting in a new power transfer line on Elm Street for the quiet zone project. The bi-monthly reports from staff were available in the Council packet.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Approved Resolution No. 1339.
3. Approved Resolution No. 1340.
4. Passed Ordinance No. 1530 to a second reading on August 5th.
5. Passed Ordinance No. 1531 to a second reading on August 5th.
6. Passed Ordinance No. 1532 to a second reading on August 5th.

The meeting adjourned at 9:00 p.m.

Melissa Bisset, CMC
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood



City of Canby

PO Box 930
222 NE 2nd Ave
Canby, OR 97013

Phone: 503.266.4021
Fax: 503.266.7961
www.canbyoregon.gov

City of Canby Staff Report

DATE: June 23, 2020
TO: Hon Mayor Hodson & City Council
THRU: Ms. Amanda Zeiber, Interim City Administrator
FROM: Jerry Nelzen, Operations Supervisor

Summary

North Locust Street has intermittent old curbs and sidewalks and the surface is failing and continues to deteriorate. The street is a residential street and also serves as an access to the Clackamas County Event Center. The existing sanitary sewer also needs upgrading prior to the reconstruction of the street. New curbs on both sides, streetlights, paving and sidewalks on the west side only will be constructed due to the limited right of way width. This staff report is to request the City Council's approval to enter into an engineering contract with the City Engineer of Record, Curran-McLeod, Inc. for design and construction engineering of sanitary sewer improvements to S Ivy Street, in the amount of \$90,000. The total cost of the project is estimated at \$840,000.

Background

North Locust Street between NE 4th Avenue and NE 10th Avenue is an older street with limited right of way (40 feet wide) and fully developed on both sides. The location of some of the structures don't meet the current setbacks. To preserve parking on one side, sidewalks can only be constructed on one side of the street. There is no likely potential for any developments or any lot partitioning along this stretch of the roadway.

Discussion

The City Engineers are very familiar with the street and the sewer system and the problems on North Locust Street and have completed several projects in the past within the City, including the collection system master planning. The engineering costs are very reasonable at approximately 15%.

During the meeting on-site with ODOT to discuss the project, we met many of the residents and they were eager to see the improvements taking place. This roadway has low intensity traffic most of the time except during the Clackamas County Fair. We are requesting this ordinance be approved with an emergency clause to permit the work to proceed immediately. The City can be ready to solicit bids this Fall.

Fiscal Impact

This project has been included in the budget for construction in 2020-2021 and is funded through the Street Reimbursement SDC, Sewer Reimbursement SDC and ODOT Fund Exchange revenues.

Recommendation

That the City of Canby approve Ordinance 1530 authorizing the City Administrator to execute a contract with Curran-McLeod, Inc. in the amount of \$90,000 for design and construction engineering services and declaring an emergency to allow soliciting bids as early as possible.

Proposed Motion

I move to approve Ordinance 1530 authorizing the City Administrator to execute a contract with Curran-McLeod, Inc. in the amount of \$90,000 for design and construction phase engineering services for reconstruction of the North Locust Street sanitary sewer and declaring an emergency.

Attachments

1. Ordinance 1530
2. Engineering Proposal Exhibit "A"
3. Contract for Construction

ORDINANCE NO. 1530

AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES TO COMPLETE IMPROVEMENTS TO N LOCUST STREET RECONSTRUCTION; AND DECLARING AN EMERGENCY.

WHEREAS, CURRAN-McLEOD, INC. City's Engineer of Record has provided preliminary planning, preliminary engineering and cost estimates for engineering and construction for the needed improvements to the North Locust Street Reconstruction; and

WHEREAS, CURRAN-McLEOD, INC. and the CITY OF CANBY have been working with ODOT to secure \$352,194.57 in Fund Exchange monies to pay for part of the construction cost on this project; and

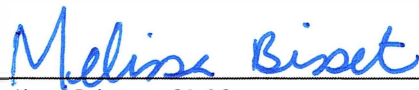
WHEREAS, the City of Canby has budgeted expenditures for this work in FY 2020-2021; Now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Interim City Administrator is 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 CURRAN-MCLEOD, INC for engineering services in an amount not to exceed \$53,700 for design phase services and \$36,300 for construction phase services in Fiscal Year 2020-2021, for a total contract amount of \$90,000.

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, July 15, 2020; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, August 5, 2020 after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 222 NE 2nd Avenue, Canby, Oregon.



Melissa Bisset, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of August 2020 by the following vote:

YEAS _____

NAYS _____

Brian Hodson, Mayor

ATTEST:

Melissa Bisset, CMC
City Recorder

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 15th day of July, 2020 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1530 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 16th day of July, 2020, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

1. Canby Civic Building – Front Doors
2. Canby Post Office
3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 5th day of August, 2020.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 22nd day of July, 2020.



Erin Elizabeth Burckhard
Notary Public for Oregon
My Commission Expires: 9/4/2022

CURRAN-McLEOD, INC.
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210
PORTLAND, OREGON 97223

June 23, 2020

Mr. Jerry Nelzen
City of Canby
182 N Holly Street
Canby, OR 97013

Exhibit "A"

**RE: CITY OF CANBY
N LOCUST STREET RECONSTRUCTION
ENGINEERING PROPOSAL**

Dear Jerry:

We appreciate the opportunity to assist the City of Canby in providing design engineering and construction management cost estimate for N. Locust Street reconstruction. The project is located between NE 4th Avenue and NE 10th Avenue. The existing street width is mostly 39 feet with old curbs along most of this stretch and with intermittent sidewalks.

North Locust Street is classified as a local street in the City Transportation System Plan. We have reviewed the anticipated scope of work based on the design and construction of approximately 1,375 lineal foot, 33-foot paved street width in 40-foot existing right-of-way. The improvements will include new curbs, 5-foot wide sidewalks on the west side only, ADA ramps at the intersections, driveways, street lights, excavation, paving, 8" sanitary sewer on NE 9th Avenue, reconstruct services and reconnect to new main, installing cleanouts at the existing individual sanitary sewer laterals and storm drain will be part of these improvements. Only minimal water and private utility line modifications will be needed because this area has already fully served. If water and franchise utility upgrades are desired, they can be accommodated as a component of the work before the placement of the final asphalt paving.

This street width will be narrowed to 33 feet to allow the improvements to fit within the limited right-of-way. Although narrow, on-street parallel parking will be permitted on both sides of the roadway.

The following is an estimate of cost for the project. No costs are included in the estimates for easements preparation and no easements should be required. Design surveys have already been completed prior to this proposal.

A. Site Preparation					
A.1	Mobilization (5% of the total cost)	All	Lump Sum	\$28,200.00	\$28,200.00
A.2	Temporary Protection & Direction of Traffic	All	LS	4,000.00	4,000.00
A.3	Erosion Control	All	LS	2,000.00	2,000.00

A.4	Clearing & Grubbing, Tree and Landscape Protection and Site Restoration	All	LS	8,000.00	8,000.00
A.5	Common Excavation(15" depth)	2,600	CY	20.00	52,000.00
A.6	Subgrade/ Trench Stabilization	50	CY	35.00	1,750.00
A.7	Sawcut Asphalt/ Concrete Pavement	300	LF	2.00	600.00
				Subtotal	\$96,550.00
B. Paving and Surfacing					
B.1	1"-0" Crushed Rock (12" deep)	5,100	SY	12.00	61,200.00
B.2	Type "C" Concrete Curb	2,800	LF	16.00	44,800.00
B.3	6" Concrete Driveway w/2" Leveling Rock	350	SY	75.00	26,250.00
B.4	4" Concrete sidewalk w/ 2" Leveling Rock	800	SY	60.00	48,000.00
B.5	ADA Cast-in-Place Truncated Dome Mats	6	Each	400.00	2,400.00
B.6	½" Dense Mix Asphalt Pavement (4" deep)	1,200	Tons	90.00	108,000.00
B.7	Pavement Striping	All	LS	2,000.00	2,000.00
				Subtotal	\$292,650.00
C. Storm Drainage					
C.1	12" Diameter HDPE w/Trench Excavation and Rock Backfill	150	LF	600.00	90,000.00
C.2	Type G-2 Catch Basins	6	Each	2,000.00	12,000.00
C.3	48" Diameter Sedimentation Manhole	3	Each	5,000.00	15,000.00
C.4	48" Diameter Drywells	3	Each	30,000.00	90,000.00
				Subtotal	\$207,000.00
D. Sanitary Sewer					
D.1	6" Cleanouts, All Depths	30	Each	1,500.00	45,000.00
				Subtotal	\$45,000.00
E. Utilities					
E.1	Utility Trenching including Shading and Rock or Sand Backfill (Single Trench)	900	LF	10.00	9,000.00
E.2	Excavate, Prep Rock Pad and Rock Backfill Vaults/ Transformers	5	Each	1,000.00	5,000.00
E.3	Excavate and Rock Backfill for Street Light Poles	6	Each	800.00	4,800.00
				Subtotal	\$18,800.00
Construction Cost					\$660,000.00
Canby Utility Cost					\$25,000.00
Engineering & Construction Phases Cost					\$90,000.00
Contingency (10%)					\$65,000.00
TOTAL CONSTRUCTION COST					\$840,000.00

Estimated costs of engineering work is listed below:

Design Phase Engineering Cost Estimate:

Field Research & Preliminary Layout	\$5,000
ODOT Prospectus Preparation & Submittal	2,200
Roadway Horizontal & Vertical Design	10,500
Utility Design, Storm, Sanitary & Electrical	12,700
Base Maps & Plan Sheet Graphics, 9 sheets	15,800
Contract Documents & Specifications	4,500
Preconstruction Monumentation Survey Filing	<u>3,000</u>
Total Design Phase Engineering	<u>\$53,700</u>

Construction Phase Engineering Cost Estimate:

Bid Procedure	\$4,500
Construction Staking	11,500
Contract Administration, As-builts	6,700
Project Closeout	3,700
Post-Construction Monumentation Survey Filing	3,100
Field Inspection, est 60 hrs	<u>6,800</u>
Total Construction Phase Engineering	<u>\$ 36,300</u>

We have attached for your review an estimate of construction costs and engineering costs and a copy of the Engineering Services Contract. The design engineering phase cost will be billed based on a lump sum and billed as percent complete while the construction engineering phase will be billed hourly, as needed, based on the standard hourly rates schedule not to exceed the estimated budget.

Excluded from our estimates are the costs of publishing in the Daily Journal of Commerce and BOLI fee. Those expenses will be billed directly to the City and are estimated at approximately \$2,500.

The design on this project will proceed during the fall months of 2020 and be ready to bid in the winter or spring of 2021.

If you have any concerns or questions, please let me know.

Sincerely,

CURRAN-McLEOD, INC.


Hassan A. Ibrahim, PE

cc: Engineering Services Contract
Standard Hourly Rates (Exhibit "B")

**CITY OF CANBY
NORTH LOCUST STREET RECONSTRUCTION
AGREEMENT FOR ENGINEERING SERVICES**

This Agreement is made this _____ day of _____, 2020, by and between the **CITY OF CANBY**, Oregon, hereafter referred to as the OWNER, and **CURRAN-McLEOD, INC. Consulting Engineers**, Portland, Oregon, hereafter referred to as the ENGINEER.

The OWNER intends to construct the North Locust Street Reconstruction for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said improvements.

WITNESSETH

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - ENGINEERING SERVICES

The ENGINEER shall furnish engineering services to accomplish the work identified above and as more specifically identified in the correspondence dated June 23, 2020, attached as Exhibit A:

1. The ENGINEER will attend conferences with the OWNER, representatives of the State, or other interested parties as may be required for completion of the work previously described.
2. After the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary alignment determination, accomplish the detailed design of the projects, prepare construction Drawings, Specifications and Contract Documents, and prepare a final cost estimate based on the final design. It is also understood that if additional subsurface explorations (such as borings, soil tests, rock soundings and the like) are required, the ENGINEER will furnish coordination of said explorations without additional charge, but the costs incident to such explorations shall be paid for by the OWNER as set out in Section D hereof.

Statements of probable construction costs and detailed cost estimates prepared by the ENGINEER represent his best judgment as a design professional familiar with the Construction Industry. It is recognized, however, that neither the ENGINEER nor the OWNER has any control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding or market conditions. Accordingly the ENGINEER cannot and does not guarantee that bids will not vary from any statement of probable construction cost or other cost estimate prepared by the ENGINEER.

3. The Contract Documents furnished by the ENGINEER under Section A-2 shall include the State of Oregon Prevailing Wage Rates or the Federal Davis Bacon Prevailing Wage Rates as applicable, and OWNER, funding agency, and state requirements as appropriate.
4. Prior to the advertisement for bids, the ENGINEER will provide for each Construction Contract, not to exceed 10 copies of detailed Drawings, Specifications, and Contract Documents for use by the OWNER, and for appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, Specifications, and Contract Documents shall be included in the basic compensation paid to the ENGINEER. The OWNER pays the cost of permits and review fees as provided in Section F-2 of this Agreement.
5. The drawings prepared by the ENGINEER under the provisions of Section A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be provided by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof, unless this task is identified and included in the proposed scope of work herein.
6. The ENGINEER will furnish additional copies of the Drawings, Specifications and Contract Documents as required by prospective bidders, materials suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER three sets of the Drawings, Specifications and Contract Documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Drawings and Specifications as instruments of service are and shall remain the property of the ENGINEER whether the project for which they are made is executed or not. They are not to be used by the OWNER on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the ENGINEER.
7. The ENGINEER will require prospective contractors to file an approved Pre-qualification Form with the Oregon Department of Transportation and will require a Bid Bond not to exceed 10% in the Bidding Documents to secure the Bid.
8. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, make recommendations for awarding contracts for construction.
9. The ENGINEER will assist in the Preconstruction Conference, and will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by Contractors.

10. The ENGINEER will interpret the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the Contractor. The ENGINEER will not, however, guarantee the performance of any Contractor. Planning and design of the project and construction engineering services shall be accomplished with due diligence and in conformance with accepted industry standards of the practice of professional engineering.
11. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to assure conformance with the design concept.
12. The ENGINEER will establish baselines and grades for locating the work together with a suitable number of bench marks adjacent to the work as shown in the Contract Documents.
13. The ENGINEER, as representative of the OWNER during the construction phase, shall advise and consult with the OWNER and all of the OWNER'S instructions to the Contractor shall be issued through the ENGINEER. The ENGINEER shall have the authority to act on behalf of the OWNER to the extent provided in this Agreement.
14. Unless otherwise requested by the OWNER in writing, the ENGINEER will not provide Resident Construction Inspection. The ENGINEER'S undertaking construction inspection hereunder shall not relieve the Contractor of Contractor's obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.
15. The ENGINEER will review the Contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.
16. The ENGINEER will prepare and review necessary contract Change Orders on a timely basis for consideration of approval by the OWNER.
17. The ENGINEER and a representative of the OWNER will make an inspection of the project or project element to determine the status of completion. The ENGINEER may issue a Certificate of Substantial Completion consistent with the General Conditions of the Construction Contract Documents.
18. The ENGINEER will provide the OWNER with one set of record drawings on electronic media and three sets of prints at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction, as specifically required in the Construction Contract, and reviewed by the ENGINEER, and from the ENGINEER'S construction data.

19. If State statutes require notices and advertisements of final payment, the ENGINEER shall assist in their preparation.
20. The ENGINEER will be available for site visits to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of the Certificate of Substantial Completion of the facility. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of initiation of the 12 month warranty period.

SECTION B - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for services in accordance with the following schedule:

Design Phase Engineering:

- Fifty-Three Thousand Seven Hundred and No/100 Dollars (\$53,700)

Construction Phase Engineering:

- Thirty-Six Thousand Three Hundred and No/100 Dollars (\$36,300)

2. The compensation for the above Engineering Services shall be as follows:
 - a. Preliminary and Design Phase Services shall include items A-1 through A-5.
 - b. Billings shall be submitted monthly by the ENGINEER for Preliminary and Design Phase Services during the previous month. Payments shall be made for these billings within 30 days. Billings shall be based on percent of completion for Preliminary and Design Phase Services.
 - c. Construction Engineering Services and Construction Inspection shall include items A-6 through A-20 and shall be billed by the ENGINEER on an hourly basis. The total shall not exceed the budget figures under Article B.1 above without the express written authorization of the OWNER.
 - d. Where hourly rates are used, they shall be in accordance with the Standard Hourly Rate Schedule, attached herewith and referenced Exhibit B.
 - e. In the event of multiple construction contracts, the ENGINEER may negotiate revised figures under Article B.1.

SECTION C - RESIDENT CONSTRUCTION INSPECTION

If the OWNER requests the ENGINEER to provide Resident Construction Inspection, the ENGINEER will, prior to the Preconstruction Conference, submit a resume of the Resident Inspector's qualifications, anticipated duties and responsibilities for approval by the OWNER. The OWNER agrees to pay the ENGINEER for such services in accordance with the "Inspector" rate schedule set out in Exhibit B. The ENGINEER will render to OWNER for such services performed hereunder during such period, the same to be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period. A separate agreement shall be negotiated for Resident Construction Inspections Services setting out estimated hours required and maximum estimated fees and charges.

SECTION D - ADDITIONAL ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided UPON WRITTEN AUTHORIZATION OF THE OWNER.

1. Financial feasibility or other special studies.
2. Record boundary surveys or other similar surveys, excepting surveys required to locate the construction project, or as identified in the scope of work.
3. Laboratory tests, borings, specialized geological, soil, hydraulic, or other studies recommended by the ENGINEER.
4. Record property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
5. Necessary data and filing maps for storm water discharge permits, water rights, adjudication, and litigation.
6. Redesigns not initiated by the ENGINEER after final Plans and Specifications have been approved by the OWNER, except redesigns to reduce the project cost to within the funds available.
7. Appearances before courts or boards on matters of litigation or hearings related to the project and providing services as an expert witness in connection with any public hearing, arbitration proceeding, or the proceedings of a court of record.
8. Preparation of Environmental Assessments or Environmental Impact Statement (E.I.S.).
9. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A-12.
10. Preparing documents for alternate bids requested by the OWNER.

11. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth as previously mentioned in this Agreement as may be required in connection with the replacement of such work.
12. Providing professional services made necessary by the default of the Contractor in the Construction Contract.
13. Providing construction engineering and inspection services after the construction contract time has been exceeded.

Unless identified as included in the proposed scope of work herein, payment for the services specified in this Section D shall be as agreed in writing prior to commencement of the work. The ENGINEER will render to OWNER for such services an itemized bill, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by OWNER to the ENGINEER within 30 days.

SECTION E - OWNER'S RESPONSIBILITIES

1. The OWNER shall provide full information regarding his requirements for the project.
2. The OWNER shall designate, when necessary, a representative authorized to act in his behalf with respect to the project. The OWNER or his representative shall examine documents submitted by the ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ENGINEER'S work.
3. The OWNER shall furnish all pertinent existing mechanical, chemical or other laboratory tests, inspections and reports as required by law or the Contract Documents, and which may impact the design.
4. The OWNER shall furnish such legal, accounting and insurance counseling services as may be necessary for the project, and such auditing services as he may require to ascertain how or for what purposes the CONTRACTOR has used the moneys paid to him under the Construction Contract.
5. If the OWNER observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt oral notice with written confirmation thereof to the ENGINEER.
6. The OWNER shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

SECTION F - SPECIAL PROVISIONS

The following is agreed to by both parties:

1. That the OWNER reserves the right to request replacement of any Resident Inspector(s) furnished by the ENGINEER or to furnish the Resident Inspector(s) from the OWNER'S own forces, subject to the approval of the ENGINEER regarding the qualifications of the Resident Inspector(s). If the OWNER furnishes the Resident Inspector(s), the OWNER agrees that the Resident Inspector(s) will be under the direction and supervision of the ENGINEER.
2. That the OWNER shall pay for advertisement for bids, building or other permits, licenses, technical review fees, etc., as may be required by local, State or Federal authorities, and shall secure the necessary land easements and rights-of-way.
3. The ENGINEER will endeavor to assure compliance of his work with applicable State and Federal requirements.
4. That insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available, which will be returned upon project completion. ENGINEER will provide the OWNER a copy of survey notes establishing bench marks and location of improvements.
5. That if the engineering work covered in this Agreement has not been completed on or after the expiration of a twenty-four month period from the date of execution of this Agreement, the OWNER or ENGINEER may, at the option of either, on written notice, request a renegotiation of Sections B, C, and D (providing for the compensation to be paid the ENGINEER for services rendered) to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.
6. That this Agreement is to be binding on the heirs, successors and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. At least fifteen (15) days shall be allowed for such consent.
7. Attorney's fees: In the event a suit, arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provision of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon litigation or upon appeal.
8. Termination
 - a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten

- (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- b. The Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days' written notice, (delivered by certified mail, return receipt requested) of intent to terminate, and (2) opportunity for consultation with the terminating party prior to termination.
 - c. If termination for default is effected by the OWNER an equitable adjustment in the price provided for in the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.
 - d. Upon receipt of a termination action under paragraphs a. or b. above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER reproducible data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement whether completed or in process.
 - e. Upon termination under paragraphs a. or b. above, the OWNER may take over the work and may award another party a contract to complete the work under this Agreement.
 - f. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph c. of this clause.
9. The ENGINEER agrees to hold harmless and indemnify the OWNER against all claims, damages, losses and costs, including costs of defense, arising out of the negligent performances of engineering services under this Agreement. OWNER may make claim under applicable law against ENGINEER or ENGINEER'S insurance carriers for any loss, damage or cost arising out of ENGINEER'S negligent performance of services under this Agreement.

10. The ENGINEER agrees to acquire and maintain for the duration of this Agreement, Professional Liability Insurance in the nominal amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.
11. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees or agents.
12. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
13. ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, which would conflict in any manner or degree with the performance of his services under this Agreement. Any interest on the part of the ENGINEER or his employees must be disclosed to the OWNER.
14. INDEPENDENT CONTRACTOR. It is agreed that ENGINEER is providing the services hereunder as an independent contractor and not as an employee of OWNER.

OWNER shall have no right to control the manner of the performance of the services, but may place restrictions on ENGINEER relating to use of OWNERS premises. As an independent contractor, ENGINEER shall not be eligible to receive benefits otherwise provided to employees of the OWNER.

15. The records and documents with respect to all matters covered by the Agreement shall be subject at all times to inspection, review or audit by the OWNER, County, Federal or State officials so authorized by law during the performance of this contract. Required records shall be retained for a period of three (3) years after termination of this Agreement
16. No member or delegate to the Congress of the United States and no Resident Commissioner or City Official shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.
17. This CONTRACT shall be construed according to the laws of the State of Oregon. Any litigation between the OWNER and the ENGINEER or out of work performed under this CONTRACT shall occur in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

18. This Agreement, including Exhibits A and B, represents the entire integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

OWNER: CITY OF CANBY ENGINEER: CURRAN-McLEOD, INC.

SIGNATURE: _____ SIGNATURE: 

NAME: _____ NAME: HASSAD IBRAHIM

TITLE: _____ TITLE: PRINCIPAL ENGINEER

DATE: _____ DATE: 6-23-2020

STANDARD HOURLY RATES

Effective January 1, 2019

Senior Principal Engineer	\$ 138.00
Principal Engineer	128.00
Project Engineer/Manager	125.00
Design Engineer/Manager	90.00
Design Technician/Inspector	80.00
Graphics Technician	75.00
Word Processing	65.00
Sub-Consultants	At Cost

REIMBURSABLE EXPENSES

CURRAN-McLEOD, INC. does not routinely invoice any reimbursable expenses. Auto expense, meals, travel, lodging, communication, publishing, and miscellaneous operating costs are all included in our established hourly rates and project budgets.



City of Canby

PO Box 930
222 NE 2nd Ave
Canby, OR 97013

Phone: 503.266.4021
Fax: 503.266.7961
www.canbyoregon.gov

City Council Staff Report

DATE: August 5, 2020
TO: Honorable Mayor Hodson and City Council
FROM: Joseph A. Lindsay, Canby City Attorney
ITEM: Ordinance Number 1531: Granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby; and establishing an effective date.

Background

In 1979, the City originally granted Canby Telephone Association a nonexclusive franchise for providing telecommunication services in the City of Canby. The Franchise Agreement has been amended and extended through several ordinances over the years. The City's most recent Franchise Agreement with Canby Telephone Association (DirectLink) was granted through June 7, 2020. The City and DirectLink would like to extend the term of the Franchise Agreement for a ten year term retroactive to June 7, 2020.

As the tide of upcoming 5G small cell deployments hit Canby, FCC regulations are changing the amounts we can charge for telecommunications. The Internet Freedom Act requires a "level playing field" in how we regulate and charge telecommunications companies. In this spirit, we are offering a 5 percent franchise fee because the FCC has opined in their rulings that 5 percent is probably the most they would make a 5G telecom company endure before they saw it as cost prohibitive.

Attachments

1. Ordinance No. 1531
2. Franchise Agreement

Recommendation

Approve the Ordinance extending the Franchise Agreement with Direct Link for a ten year term.

Proposed Motion

"I move to adopt Ordinance No. 1531, An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby, and establishing an effective date."

ORDINANCE NO. 1531

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECT LINK) TO PROVIDE TELECOMMUNICATION SERVICES WITHIN THE CITY OF CANBY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", currently provides telecommunications services, more specifically, telephone services within the City of Canby (City); and

WHEREAS, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040, No. 1053, No. 1342, and No. 1425 expired on June 7, 2020; and

WHEREAS, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise with Grantee to provide telecommunication services to the citizens of Canby; and

WHEREAS, the City has evaluated the technical, legal and financial capability of the Grantee to continue to provide such service to its citizens, and believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way; and

WHEREAS, the City and Grantee have negotiated an updated nonexclusive Franchise Agreement to provide telecommunication service to customers within the City of Canby, Oregon; and


WHEREAS, the City Council finds based on its assessment of community needs that the proposed nonexclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated nonexclusive franchise agreement as requested, consistent with the terms and conditions of Exhibit "A".

NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a nonexclusive franchise on the otherwise same terms and conditions in the attached Exhibit "A", except as amended herein for a ten (10) year term from the effective date of June 7, 2020 and at a franchise fee rate of five (5) percent, to provide telecommunication services, specifically, telephone services, to its customers in the City of Canby.

Section 2. This ordinance shall retroactively take effect on June 7, 2020 as directed by the Canby City Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 15, 2020, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 5, 2020, commencing at the hour of 7:00 PM in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.



Melissa Bisset
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of August, 2020 by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Melissa Bisset, CMC
City Recorder

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 15th day of July, 2020 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1531 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 16th day of July, 2020, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

1. Canby Civic Building – Front Doors
2. Canby Post Office
3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 5th day of August, 2020.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 22nd day of July, 2020.



Erin Elizabeth Burckhard
Notary Public for Oregon
My Commission Expires: 9/4/2022

EXHIBIT A

FRANCHISE AGREEMENT BETWEEN THE

CITY OF CANBY, OREGON

AND

CANBY TELEPHONE ASSOCIATION,

AN OREGON COOPERATIVE CORPORATION

This Nonexclusive Franchise Agreement (Agreement) is by and between the City of Canby, Oregon (City) and Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", for the provision of telecommunication services to customers within the City of Canby, Oregon.

RECITALS

WHEREAS, Grantee, currently provides telecommunications services, including specifically, telephone services, within the City; and

WHEREAS, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040, No. 1053, No. 1342, and No. 1425 expired on June 7, 2020; and

WHEREAS, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise agreement with Grantee to provide telecommunication services to the citizens of Canby; and

WHEREAS, the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way; and

WHEREAS, the City and Grantee desire to leave no doubts as to their respective roles and by entering into this Agreement, in consideration of the premises above stated and the terms, conditions and agreements contained herein, **the Parties do hereby agree as follows:**

Section 1: Grant of Franchise. The City hereby grants to Grantee, a nonexclusive franchise to use the public rights-of-way within the City to provide telecommunications services to customers within the City. Grantee agrees to

comply with all applicable federal, state and local laws, ordinances, rules and regulations, including Canby Municipal Code (CMC) Chapter 12.36, as amended from time to time.

Section 2: Term. The term of this franchise shall be ten (10) years, commencing with the effective date set forth in Section 8. Notwithstanding the foregoing, the Grantee may terminate this franchise after providing six months' written notice to the City upon Grantee's conversion to providing telecommunication services using voice over internet protocol, provided that the Grantee has other lawful authority to maintain the facilities permitted by this franchise in the City's rights-of-way and termination is consistent with the Canby Municipal Code.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights-of-way throughout the City as the City limits may exist now or in the future.

Section 4: Franchise Fee.

- A. As consideration for the use of the City's rights-of-way, Grantee shall remit to the City seven percent (5%) of its "gross revenues" earned from the provision of telecommunications services (as defined in CMC 12.36.030) within the City. "Gross revenues" shall mean "any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitation imposed by federal or state law".
- B. Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45th day of each quarter shall be assessed interest at the rate of one and one half percent per month until paid.
- C. The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined in Section 4A above for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of the franchise. Any difference of payment due either the City or Grantee following audit shall be payable within thirty (30) days after written notice to the affected party.

Section 5: Franchise Acceptance, Proof of Insurance . Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Administrator (1) a written statement accepting the terms and conditions of this franchise grant substantially in the form set forth in Exhibit A, and (2) proof of the insurance required by CMC 12.36.0B0H. Timely filing of such acceptance and proof

of insurance shall be a condition of this franchise becoming effective.

Section 6: Franchise Nonexclusive. The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights-of-way.

Section 7: Changes in Law. This franchise authorizes only the provision of "telecommunications services" as that term is defined in CMC 12.36.030. The provision of other services by Grantee requires separate authority from the City. In the event of changes in applicable laws during the term of this franchise, such that additional services are deemed to be "telecommunications services" and/or additional revenues are eligible for calculation of franchise fees, this Agreement will operate to authorize Grantee's use of the City's rights-of-way for provision of the additional services, provided a corresponding change in the calculation of the franchise fee payable to the City is made.

Section 8: Effective date. This Agreement will become effective as of June 7, 2020.

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first written above.

CITY OF CANBY, OREGON,

A Municipal Corporation

By: _____

Name: Brian Hodson

Title: Mayor

APPROVED AS TO FORM:

Joseph Lindsay
City Attorney

City Administrator
City of Canby
PO Box 930
Canby, OR 97013

This is to advise the City of Canby, Oregon that Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1531 passed by the City Council on August 5, 2020 (the "Franchise") granting a Franchise for ten (10) years to Canby Telephone Association (DirectLink). The Grantee agrees to abide by each and every term of the Franchise.

CANBY TELEPHONE ASSOCIATION (DirectLink)

By: _____

Title: _____

Date: _____



City of Canby

PO Box 930
222 NE 2nd Ave
Canby, OR 97013

Phone: 503.266.4021
Fax: 503.266.7961
www.canbyoregon.gov

City Council Staff Report

DATE: August 5, 2020
TO: Honorable Mayor Hodson and City Council
FROM: Joseph A. Lindsay, Canby City Attorney
ITEM: Ordinance Number 1532: Granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date.

Background

In 2005, the City granted Canby Telephone Association a nonexclusive franchise to provide cable television service in the City of Canby. The 2005 Franchise Agreement was for a twelve year period and was extended by resolution for three years in 2017. The City's most recent Franchise Agreement was granted through March 4, 2020. The City and DirectLink would like to extend the term of the Franchise Agreement for a ten year term retroactive to March 4, 2020.

As the tide of upcoming 5G small cell deployments hit Canby, FCC regulations are changing the amounts we can charge for telecommunications. The Internet Freedom Act requires a "level playing field" in how we regulate and charge telecommunications companies. In this spirit, we are offering a 5 percent franchise fee because the FCC has opined in their rulings that 5 percent is probably the most they would make a 5G telecom company endure before they saw it as cost prohibitive.

Attachments

1. Ordinance No. 1532
2. Franchise Agreement

Recommendation

Approve the Ordinance extending the Franchise Agreement with Direct Link for a ten year term.

Proposed Motion

"I move to approve Ordinance No. 1532, An Ordinance granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date."

ORDINANCE NO. 1532

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECTLINK) TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF CANBY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", currently provides cable television service within the City of Canby (City); and

WHEREAS, the franchise granted to Grantee by Ordinance No. 1169, extended through March 4, 2020 and amended by Resolutions No. 1269 and No. 1349; and

WHEREAS, the City has evaluated the technical, legal and financial capability of the Grantee to continue to provide such service to its citizens, and believes it is in the best interests of the City to promote the offering of competitive cable television service, subject to the City's lawful authority to regulate the use of its rights-of-way; and

WHEREAS, the City and Grantee have negotiated an updated nonexclusive Franchise Agreement to provide cable television service to customers within the City of Canby, Oregon; and

WHEREAS, the City Council finds based on its assessment of community needs that the proposed nonexclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated nonexclusive franchise agreement as requested, consistent with the terms and conditions of Exhibit "A".


NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a nonexclusive franchise on the otherwise same terms and conditions in the attached Exhibit "A", except as amended herein for a ten (10) year term from the effective date of March 4, 2020 and establishing a new Franchise Fee rate of five (5) percent to operate and maintain a cable television system in the City of Canby.

Section 2. This ordinance shall retroactively take effect on March 4, 2020 as directed by the Canby City Council.

Section 3. The grant of franchise contained herein is conditioned upon the filing of an acceptance in substantially the form contained in Exhibit "B".

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 15, 2020, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 5, 2020, commencing at the hour of 7:00 PM in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.



Melissa Bisset
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of August, 2020 by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Melissa Bisset, CMC
City Recorder

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 15th day of July, 2020 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1531~~1~~ was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 16th day of July, 2020, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

1. Canby Civic Building – Front Doors
2. Canby Post Office
3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 5th day of August, 2020.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 20nd day of July, 2020.

Erin Elizabeth Burckhard
Notary Public for Oregon

My Commission Expires: 9/4/2022



ORDINANCE NO. 1169

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF CANBY

WHEREAS, the City received a request from Canby Telephone Association of Canby, Oregon for a non-exclusive franchise to provide cable television service to customers within the City of Canby, Oregon; and

WHEREAS, the City has evaluated the technical, legal and financial capability of the proposed grantee to operate the cable television system; and

WHEREAS, the City Council finds based on its assessment of community needs that the proposed non-exclusive franchise agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the franchise as requested, consistent with the terms and conditions of Exhibit "A"; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a non-exclusive franchise on the terms and conditions in the attached Exhibit "A", for a period of twelve (12) years from the effective date of this ordinance, to operate and maintain a cable television system in the City of Canby.

Section 2. The grant of franchise contained herein is conditioned upon the filing of an acceptance in substantially the form contained in Exhibit "B" to the attached franchise as provided in Section 3.7 of the franchise, and upon the filing of all required financial and insurance documentation as required by Section 8 of the franchise.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 19, 2005 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, February 2, 2005, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Kimberly Scheafer
Kimberly Scheafer
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on February 2, 2005, by the following vote:

YEAS 6

NAYS 0

Melody Thompson
Melody Thompson, Mayor

ATTEST: Kimberly Scheafer
Kimberly Scheafer, City Recorder - Pro Tem

**CABLE TELEVISION
FRANCHISE AGREEMENT**
between
CANBY, OREGON
and
CANBY TELEPHONE ASSOCIATION
FEBRUARY, 2005

TABLE OF CONTENTS

1. PURPOSE AND INTENT.	1
2. DEFINITIONS.	1
3. GRANT OF FRANCHISE.	8
3.1 Grant.	8
3.2 Use of Streets and Public Ways.	9
3.3 Duration and Effective Date of Franchise/Franchise Review.	9
3.4 Franchise Not Exclusive.	10
3.5 Franchise Non-Transferable.	10
3.6 Change in Control.	11
3.7 Franchise Acceptance.	12
4. CONSTRUCTION AND SERVICE REQUIREMENTS.....	12
4.1 General.....	12
4.2 Right of Inspection of Construction.	13
4.3 Provision of Residential Service.	13
4.4 Erection of Poles.....	14
4.5 Trimming of Trees or other Vegetation.	14
4.6 Repair and Restoration of Streets and Public Ways.....	15
4.7 Construction Codes.....	15
4.8 Reservations of Street Rights.	15
4.9 Street Vacation and Abandonment.....	16
4.10 Movement of Facilities	16
4.11 Easements.	16
4.12 Undergrounding	16
4.13 As-Builts.	17
4.14 Emergency.	17
5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.....	18
5.1 System Configuration.	18
5.2 Channel Capacity.....	18
5.3 Satellite Earth Stations.....	18
5.4 Interconnection.	19
5.5 Emergency Alert Capability.....	20

5.6	Standby Power	20
5.7	Parental Control Lock	21
5.8	Technical Standards	21
5.9	Performance Testing	21
6.	SERVICES AND PROGRAMMING	21
6.1	Programming Categories	21
6.2	Changes in Video Programming Services	22
6.3	Interactive Residential Services	22
6.4	Leased Channel Service	23
6.5	Community Access and Local Programming	23
7.	FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS	27
7.1	Intent	27
7.2	Areas of Regulation and Administration	27
7.3	Rate regulation	28
7.4	Remedies for Franchise Violations	28
7.5	Remedies Not Exclusive	31
7.6	Consumer Protection Standards	31
8.	GENERAL FINANCIAL AND INSURANCE PROVISIONS	36
8.1	Compensation	36
8.2	Faithful Performance Bond	38
8.3	Damages and Defense	39
8.4	Liability Insurance and Indemnification	39
8.5	Incidental Payment	41
9.	RIGHTS RESERVED TO GRANTOR	41
9.1	Right to Purchase the System	41
9.2	Condemnation	42
9.3	Right of Inspection of Records	42
9.4	Right to Perform Franchise Fee Audit	43
9.5	Right of Inspection of Construction	43
9.6	Intervention	43
9.7	Right to Require Removal of Property	43
9.8	Inspection of Facilities	44
10.	RIGHTS OF INDIVIDUALS PROTECTED	44
10.1	Discriminatory Practices Prohibited	44
10.2	Unauthorized Monitoring or Cable Tapping Prohibited	45
10.3	Privacy and Other Rights	45
10.4	Permission of Property Owner Required	45
10.5	Sale of Subscriber Lists and Personalized Data Prohibited	45
10.6	Landlord - Tenant	46
11.	TERMINATION AND EXPIRATION	46
11.1	Revocation	46
11.2	Receivership	47
11.3	Expiration	48
11.4	Continuity of Service Mandatory	48

12. OPERATION AND MAINTENANCE.....	48
12.1 Open Books and Records.....	48
12.2 Communications with Regulatory Agencies.	49
12.3 Reports.....	50
12.4 Safety.....	51
13. MISCELLANEOUS PROVISIONS.....	52
13.1 Compliance with Laws.....	52
13.2 Severability and Preemption.	52
13.3 Captions.....	53
13.4 No Recourse Against the Grantor.....	53
13.5 Nonenforcement by Grantor.....	53
13.6 Force Majeure.....	53
13.7 Entire Agreement.....	53
13.8 Consent.....	54
13.9 Notices and Time Limit for Grantee Communications.....	54
13.10 Consistency of Franchise with Cable Act.....	54
13.11 Future Changes in Law.....	54
13.12 Comparability of Other Cable Franchises.....	55
13.13 Franchise Review.....	55
13.14 Notice.....	56
13.15 Public Disclosure.....	56
13.16 Time is of the Essence.....	56
EXHIBIT A	57
EXHIBIT B.....	58
EXHIBIT C	59
EXHIBIT D	60

1. PURPOSE AND INTENT.

- 1.1 The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Canby Telephone Association (hereafter Grantee) a non-exclusive 12-year Franchise, revocable as provided herein, to offer cable services over the Grantee's Telecommunications System in the City.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.
- 1.3 An additional purpose of the Franchise Agreement is to explicitly recognize and acknowledge that Grantor has granted to Grantee a prior franchise under Ordinance Number 1053 to provide Telecommunications Services. The Franchise under Ordinance Number 1053 authorizes Grantee to use Grantor's streets and public ways. Under this Franchise, Grantor recognizes that Grantee will offer Cable Services to its customers over Grantee's existing Telecommunications System. It is the intent of the parties that if this Franchise Agreement should terminate at any point, Grantee will continue to operate the Telecommunications System provided a Telecommunications Franchise Agreement is still in effect between Grantor and Grantee.

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 are defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (Cable Act) shall have the meaning specified in the Cable Act definition.

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

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

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

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

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

- c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the system and the point at which the drop connects to the subscriber's television receiver shall not be considered a major system upgrade.
- d. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- e. "Availability of Service" means the ability of a subscriber to obtain a service within 60 days by requesting the service and paying applicable installation and/or usage charges.
- f. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels. Basic Cable Service includes video service over Grantee's Telecommunications System.
- g. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.

- h. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- i. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- j. "Cable Service" means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service covered by the Cable Act.
- k. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Telecommunications System constructed and operated by the Grantee in Canby under the Franchise granted to Grantee under Ordinance Number 1053.
- l. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- m. "City" means the City of Canby, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
- n. "City Council" means the Council of the City of Canby.
- o. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.
- p. "Converter" means an electronic device for changing the frequency of a television signal. A set-top Converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune.
- q. "FCC" means the Federal Communications Commission.

- r. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- s. "Franchise Area" means all territory within of the City of Canby, at present or in the future.
- t. "Grantee" or "Franchisee" means Canby Telephone Association, an Oregon Cooperative Corporation, and the lawful successors, transferees, or assignees thereof.
- u. "Grantor" means Canby, a municipal corporation in the State of Oregon.
- v. "Gross Receipts" means gross revenues less any bad debts related to the operation of the System authorized by this Franchise.
- w. "Gross Revenues" means all amounts received by the Grantee, or any entity that constitutes a "Cable Operator" under the Cable Act definition, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. "Gross Revenues" shall be limited to all amounts derived from Grantee's provision of video services over the Telecommunications System. All existing services provided by Grantee over the Telecommunications System shall be excluded from the definition of Gross Revenues, as well as any future non-cable services provided over the Telecommunications System to the extent such services are not cable services. Gross Revenues shall include all Cable Services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, and all other revenues derived from the operation of Grantee's Cable System to provide cable services, regardless of whether initially recorded to another entity and however characterized. Gross Revenues shall not include revenue derived from the Grantee's operation as a telecommunications provider or any other non-cable service related activities.

"Gross Revenues" shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide cable services within the Franchise Area, including amounts for Cable services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home

shopping networks), installations, leasing, renting, or selling of system capacity and all other revenues derived from the operation of Grantee's Cable System. Gross Revenues shall not include revenues derived from Grantee's operation as a telecommunications provider or any other information services activities, nor transport through the Cable System to another service provider subject to separate franchising authority.

Any sales, excise or other taxes or fees levied directly upon subscribers by a local, state or federal government and collected by the Grantee for direct pass-through to such government shall not be included in "Gross Revenues".

Subject to the limits and restrictions of federal and state law copyright fees paid by the Grantee shall be excluded from Gross Revenues.

"Gross Revenues," however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute "Gross Revenues" of both the Grantee and the Affiliate, shall be counted only once for purposes of determining "Gross Revenues."

Revenues derived from an institutional network shall not be considered "Gross Revenues" for purposes of this Franchise, but shall be the subject of future and separate negotiations in the event an institutional network is built and/or operated by Grantee, subject to state and federal law.

The definition of "Gross Revenues" includes those revenues collected as franchise fees and paid to a local government.

- x. "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.
- y. "Institutional Network" means that part of a cable communications network designed principally for the provision of non-entertainment, interactive services to schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.
- z. "Institutional Subscriber" means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.

- aa. "Interactive Services" means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose. Any provision of interactive services by adding capabilities to the Telecommunications System shall not have the effect of permitting Grantor to purchase Grantee's Telecommunications System as otherwise permitted to do under Section 547 of the Cable Act (47 USC § 627).
- bb. "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.
- cc. "Local Origination Channel" means any channel or portion of a channel where the Grantee is the only designated programmer, or has delegated programming to a third party, and which is used to provide television programs to subscribers.
- dd. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- ee. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.
- ff. "Open Channel" means any channel that can be received by all subscribers having cable-ready television sets, without the necessity of special descrambling equipment.
- gg. "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.
- hh. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity doing business in the State of Oregon, or any natural person.
- ii. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the cable communications system.
- jj. "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.

- kk. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.
- ll. "Resident" means any natural person residing within the Franchise Area.
- mm. "Residential Service" means services delivered on the residential subscriber network.
- nn. "Residential Subscriber" means a subscriber who receives services on the residential subscriber network.
- oo. "Residential Network" means a cable communications network designed principally for the delivery of entertainment, community access, or interactive services to individual dwelling units.
- pp. "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, and which serve a minimum of twenty (20) students.
- qq. "Section" means any section, subsection, or provision of this Franchise Agreement.
- rr. "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.
- ss. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable communications system whether or not a fee is paid for such service.

- tt. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- uu. "Telecommunications System" means the infrastructure categorized in the Code of Federal Regulations, Part 32, including all wires, cables, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, terminals, switches, hubs, routers, distribution equipment, power supplies, and any other property and equipment as are necessary for the Grantee to construct, operate, and maintain in order to provide Telecommunications Services under Ordinance Number 1053.
- vv. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

3. GRANT OF FRANCHISE.

3.1 Grant.

Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a 12-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a cable communications system within the Franchise Area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Telecommunications System as required by the provisions of this Franchise Agreement.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general ordinances of the Grantor affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. In particular this Franchise supersedes any of Grantor's Ordinances in any matter in which the Franchise and the Ordinance are in conflict. The Grantor shall make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations.

Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

3.2 Use of Streets and Public Ways.

For the purpose of constructing, operating and maintaining a cable communications system in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the cable communications system. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantor of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

3.3 Duration and Effective Date of Franchise/Franchise Review.

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 12 years from the effective date of this agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be March 4, 2005, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

During the six-month period beginning seven (7) years after the effective date of this Franchise, the Grantor and Grantee shall undertake a review of Grantee's system and performance to date, in order to determine whether the Franchise should continue in effect for the full twelve (12) year term or should terminate early at the end of nine (9) years from the effective date. The Grantor may terminate the Franchise early if the Grantee has been guilty of a pattern of material violations of the Franchise; refuses by the end of the six-month period to make provision for the effective resolution of any evident patterns of customer service problems unanticipated in provisions of the Franchise; or, if requested by ordinance of the Grantor's City Council, declines to agree within 180 days thereafter to complete, by the end of the

ninth (9th) year of the Franchise, an upgrade or rebuild of the system such that the system as upgraded or rebuilt will be reflective of:

- (a) The non-experimental state of the art of cable communications systems, in technical capacity and proven performance; and
- (b) general parity of overall cable service with the most advanced non-experimental cable service provided in the Portland metropolitan area.

Any proposal by the Grantor to terminate the Franchise early shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the Franchise early as provided herein, the Franchise shall continue for its full twelve (12) year term.

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, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise, subject to the provisions of Section 13.11 herein.

3.5 Franchise Non-Transferable.

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

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed

transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

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

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

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

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an Affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.6 Change in Control.

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee or of Grantee's interest in the cable franchised system. There shall be no change of control of the cable franchised system without prior approval of the Grantor. Such change in control

shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

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

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

3.7 Franchise Acceptance.

- a. The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor shall file in the office of the City Manager a written acceptance executed by Grantee, in the form attached hereto as Exhibit B.

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

4. CONSTRUCTION AND SERVICE REQUIREMENTS.

4.1 General.

The Grantee shall maintain on its cable system a minimum practical capacity of one hundred (100) activated Channels, defined under the Cable Act of 1992 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.

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes.

When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts. While Grantee will have the rights and obligations under Section 4 of this Franchise, it is not anticipated that any construction will be required under this Franchise for the Grantee to meet its obligations to provide services under this Franchise.

4.2 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 construction or installation standards of this Franchise Agreement and other pertinent provisions of law.

4.3 Provision of Residential Service.

- a. In General. It is the City's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this section, Grantee shall provide Cable Service within 60 days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request.

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

- i. At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an outside wall for Residential Subscribers and a 125 foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the City;
- ii. At non-discriminatory monthly rates for Residential Subscribers; and

- iii. Notwithstanding Section 4.3(a), Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of Commercial Subscribers. For the purposes of Section 4.3.a, "Commercial Subscribers" means any Subscribers other than Residential Subscribers.
- b. 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 4.3.a unless otherwise authorized by the City.
- c. Transferred Franchising Jurisdiction. In the event that cable franchising jurisdiction is transferred to the City from another jurisdiction, then the terms of this Franchise shall apply within the area in which the transfer of cable franchising jurisdiction applies, so long as the application of this Franchise in that area is acknowledged in the governmental actions which implement the transfer of franchising authority.
- d. New Subdivisions. In new subdivisions, service will be made available no more than 60 days from first occupancy or from the date of completion of final construction grading, whichever comes first.

4.4 Erection of Poles.

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

4.5 Trimming of Trees or other Vegetation.

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

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

4.6 Repair and Restoration of Streets and Public Ways.

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

4.7 Construction Codes.

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

4.8 Reservations of Street Rights.

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

such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Street Vacation and Abandonment.

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.10 Movement of Facilities.

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

Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee.

4.11 Easements.

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

4.12 Undergrounding.

- a. Cable must be installed underground where:
 - i. all existing utilities are placed underground,

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

4.13 As-Builts.

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

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.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.

5.1 System Configuration.

a. Initial Configuration.

The communications system shall consist, at a minimum, of a residential network with addressability in its initial configuration.

b. System upgrade.

Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:

i. The upgraded Cable System will be equivalent to or comparable to the most advanced non-experimental state of the art cable systems provided in the Portland metropolitan area.

ii. The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.

c. As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted.

5.2 Channel Capacity.

The residential cable system shall be installed with a minimum channel capacity of one hundred (100) Channels outbound.

5.3 Satellite Earth Stations.

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites that carry cable television services accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.

5.4 Interconnection.

- a. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise, including the interconnections listed in Exhibit C.
- b. Initially, Grantee shall Interconnect the Cable System with all other major, contiguous cable systems in Clackamas County, specifically including but not limited to Oregon City and Clackamas County and specifically Clackamas Community College, but only to the extent that this is technically feasible or practical given the differences between a Telecommunications System and a traditional Cable System. The system shall provide the capability to transmit Upstream Channels and Downstream Channels, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Local Origination Programming produced by Grantee and other major, contiguous cable systems in Clackamas County; selected Access Programming carried on those cable systems; and the exchange of selected Institutional Network video and data communications applications by local and state public and nonprofit organizations, including forward and reverse applications between and among the Grantee and contiguous cable systems as shall in the future have significant institutional network capacity or services determined by the Grantor through an ascertainment of community needs and interests to warrant interconnection.
- c. Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for Institutional Network and PEG access signals.

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

assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

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

- d. Grantee's interconnect obligation is conditioned upon the consent of the cable operators in the affected neighboring jurisdictions.

5.5 Emergency Alert Capability.

- a. In accordance with the provisions of FCC Regulations Par 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg Section 11.51 and other applicable state and local laws.
- b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS equipment by the Grantor, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, the Grantor shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other cable system equipment which may be used during a declared emergency.

5.6 Standby Power.

Grantee shall provide standby power generating capacity at the cable communications system control center. Grantee shall maintain standby power system supplies, rated at least at four (4) hours duration at each node or remote location. In addition, Grantee shall have in place and have filed with the Grantor throughout the Franchise term a

plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours.

Standby power to those portions of the Cable System serving city-owned facilities will be provided within one hour of notice from the City to Grantee of the need for such standby power.

5.7 Parental Control Lock.

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

5.8 Technical Standards.

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

5.9 Performance Testing.

Grantee shall perform all system tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise.

Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection upon request.

6. SERVICES AND PROGRAMMING

6.1 Programming Categories.

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

- a. News & Information

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

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

6.2 Changes in Video Programming Services.

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

6.3 Interactive Residential Services.

The Grantee shall make Interactive Services available to residential subscribers not later than on or about the date on which any other cable system in the Portland

metropolitan area provides interactive services on a non-experimental basis subject to the limitations of paragraph 2(cc) above.

6.4 Leased Channel Service.

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

6.5 Community Access and Local Programming.

a. Designated PEG Access Providers.

- i. The City may designate Public, Educational and Government "PEG" Access Providers, including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the City, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Franchise; such rules shall not be designed to control the content of public access programming.
- ii. Grantee shall cooperate with Designated PEG Access providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with designated PEG Access providers as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.
- iii. Except as provided in this Franchise, the City shall allocate Access Resources to Designated Access Providers only. Grantee shall cooperate with the City in such allocations, in such manner as the City shall direct.
- iv. For the purpose of Section 6.5:
 1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by PEG Access; and

2. "Access Resources" means all operating support and other financial means by which PEG Access is exercised, including, but not limited to, Access Capital Cost support under Section 6.5.

v. The requirements of this Section 6.5 shall be subject to the Franchise Review provided for in Section 13.12.

b. Channel Capacity.

i. Downstream Channels. Grantee shall provide 3 Downstream Standard Video Channels for distribution of PEG Access programming to all Residential Subscribers.

ii. Closed Channels. Following the system upgrade in this agreement, Grantee shall provide operating Closed Channels sufficient to enable character-generated, prerecorded and live cablecasts from the Hardwired Programming Origination Points as described in Exhibit A and Access centers, and to and from all Interconnection points on the Cable System, and to enable the distribution of PEG Access to Residential Subscribers on Access Channels and to all Interconnection points on the Cable System. For the purposes of this Section, "Closed Channel" means an upstream Channel which is not available for Residential Subscribers.

c. Support for Access Costs.

i. Grantee Financial Support

Beginning with the effective date of this Agreement, and continuing throughout its term, Grantee shall provide four and one half percent (4½%) of its Gross Revenues earned providing cable services within the City as support for PEG access. This contribution shall be payable to Grantor or its designated access provider after notice to Grantee's Subscribers of the contribution. The content of such notice shall be provided to the Grantor for review.

Grantee shall make such payments monthly. Each payment shall be due and payable no later than thirty (30) days after the end of each month. The Grantor recognizes that these commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement, and

that the Grantee has the right to include these costs on the bills of cable customers.

ii. **Studio Facility**

Grantee shall help financially support the studio facility by paying \$1,600 per month to Grantor towards the costs of providing a studio facility. In addition, Grantee recognizes that this support is in addition to support provided by the incumbent cable operator in the Franchise Area. In the event of the incumbent's abandonment of the system or failure by the incumbent or a successor to provide Cable Service, Grantee agrees to assume the obligations currently being funded by the incumbent cable operator within thirty (30) days of written notice from Grantor.

iii. **PEG Access Support Not Franchise Fees**

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

d. **Hardwired Origination Points.**

Grantor shall install and maintain a hardwired programming origination point for each facility listed in Exhibit A, to the extent such origination points do not already exist.

e. **Cable Service to Public Facilities.**

The Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet of Basic Cable, expanded Basic service, and Internet access services to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are within the Service Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Initially, such installations shall be provided to the facilities shown on Exhibit D within sixty (60) days of Grantee's commercial launch of Cable Services. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlet shall not be located in

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

f. Access Interconnections.

- i. The Grantee shall install and maintain all access interconnections of PEG access channels in accord with the requirements of Section 5.4.
- ii. In addition, Grantee shall, in a timely manner considering the technical and operational issues involved, cooperate with the Grantor, other cable franchisees, and Designated Access Providers to establish an interconnection point at Clackamas Community College, to allow for the receipt and delivery of programming from participating access centers to the extent technically feasible or practical given the technical differences between a Telecommunications System and a traditional Cable System. Grantor shall coordinate with the Designated Access Provider for distribution on the existing access channel.

g. Change in Technology.

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Access Providers or Access Programmers are not diminished or adversely affected by such change.

h. Technical Quality.

- i. Grantee shall maintain all Upstream and Downstream Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by this Franchise and all

other applicable laws, rules and regulations for Residential Subscriber Channels.

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

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent.

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

7.2 Areas of Regulation and Administration.

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

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b. Coordination of the operation of public, government, and educational access channels.
- c. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as 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, 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. Bundling.

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

c. Payment of Franchise Fees.

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than 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), or the deposit of \$100,000 in a restricted account satisfactory to the City, 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 Council 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.

8.5 Incidental Payment.

In consideration of this grant of Franchise on an expedited basis and based on the complexity of the review and grant of a cable Franchise over an existing Telecommunications System, Grantee agrees to an incidental payment to Grantee in the amount of \$ 8,000, to be paid at the time of acceptance of this Franchise pursuant to Section 3.7 and Exhibit B.

9. RIGHTS RESERVED TO GRANTOR.

9.1 Right to Purchase the System.

Grantee shall have the right to purchase the Cable System, consistent with applicable law and recognizing that Grantee will provide Cable Services over Grantee's Telecommunications System over which it offers Telecommunications Services under Ordinance Number 1053. Grantee's Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise Agreement, or in the event of expiration of the initial

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

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

9.2 Condemnation.

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

9.3 Right of Inspection of Records.

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

- a. With respect to the cable system and its operation to provide cable service, authorized under this Franchise, and to the extent deemed necessary by the Grantor for the enforcement of this Franchise, information pertaining to the operations of the Grantee as it relates to providing Cable Service over the Telecommunications System and not as it relates to providing telecommunications services under Ordinance Number 1053, and, for the specific purpose of a bona fide Franchise enforcement effort the operations of any parent company, and any Affiliate or Cable Operator, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise, and of the maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; interest on debt; wear and tear or depreciation; and all amounts and sources of income.
- b. The amount collected by the Grantee or any parent or Affiliate of the Grantee from users of services of the Grantee's cable communications system under

this Franchise, but only to the extent that it relates to providing Cable Services and the character and extent of the service rendered therefor to them.

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

9.4 Right to Perform Franchise Fee Audit.

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

Grantor shall not have the right to require the removal of any portion of the Telecommunications System in the event of a forfeiture or revocation as provided herein if Grantee continues to operate a Telecommunications System pursuant to a Telecommunications Franchise with Grantor.

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 Council 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.

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 Future Changes in Law.

If future change to finding federal or state law affect any material provision of the Franchise, including but not limited to the scope of Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within sixty (60) days, either party may: 1) seek appropriate legal remedies to amend the Franchise, or 2) shorten the Franchise to thirty-six (36) months from the date following conclusion of the sixty (60) day period, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

13.12 Comparability of Other Cable Franchises.

- a. If the Grantor issues a franchise to a Cable Operator to enter upon the streets and public ways for the purpose of operating a Cable System to provide Cable Service to any part of the Franchise Area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise;

providing, however, that the Grantor shall not be prohibited from granting any franchise containing requirements which are, taken together, greater than those of this Franchise, nor from granting any franchise containing individual requirements which are greater or lesser than the requirements of this Franchise. This paragraph recognizes that Grantee currently operates a Telecommunications System under authority from Grantor using the streets and public ways.

- 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.

13.13 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.

13.14 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: Canby Telephone Association
P.O. Box 880
Canby, OR 97013

13.15 Public Disclosure.

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

13.16 Time is of the Essence.

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

EXHIBIT A

HARDWIRED PROGRAMMING ORIGINATION POINTS

Canby City Hall – Council Chambers

Canby High School

Canby Adult Center

Studio Facility - OCTS

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 Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____, passed by the City Council on _____, 2005 (the Franchise) granting a Franchise for twelve (12) years to Canby Telephone Association. The Grantee agrees to abide by each and every term of the Franchise.

CANBY TELEPHONE ASSOCIATION

BY
TITLE
DATE

EXHIBIT C

Existing 2-Way Active Interconnections

Canby System Interconnected to

Location of Interconnect

Clackamas Community College

Clackamas Community College

EXHIBIT D

City Owned Property

Canby Adult Center	1250 S Ivy St	503-266-2970
Canby City Hall / Planning Bldg	182 N Holly	503-266-4021
Canby Police Station / Court	122 N Holly	503-266-1104
Canby Pool	1150 S Ivy St	503-266-2761
Canby Public Library	292 N Holly St	503-266-3394
Council Chambers	155 NW 2 nd Ave	
Canby Finance Dept	133 NW 2 nd Ave	503-266-4021
Canby Public Works	1470 NE Territorial Rd	503-266-4021

RESOLUTION NO. 1269

**A RESOLUTION AMENDING THE CABLE TELEVISION FRANCHISE
AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE
ASSOCIATION DBA DIRECTLINK**

WHEREAS, Canby Telephone Association, an Oregon cooperative corporation, doing business as DirectLink, hereinafter referred to as "Grantee", currently provides cable television services to its customers within the City of Canby; and

WHEREAS, the City of Canby granted a twelve-year cable television Franchise to Grantee, which was only granted through March 4, 2017; and


WHEREAS, the City and Grantee wish to extend the term of the Franchise Agreement; and

WHEREAS, the City finds it is in the public interest to extend the Franchise Agreement as set forth in this Resolution.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City of Canby Council as follows:

1. The City hereby agrees to extend the franchise granted to Canby Telephone Association, doing business as DirectLink for a three (3) year term from the effective date of March 4, 2017, and authorizes the City Administrator to sign the extension agreement attached hereto as Exhibit A on behalf of the City.
2. This Resolution shall take effect on June 21, 2017.

ADOPTED this 21st day of June 2017, by the Canby City Council



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

Exhibit "A"

FRANCHISE EXTENSION AGREEMENT

WHEREAS, Canby Telephone Association, an Oregon cooperative corporation, doing business as DirectLink, currently provides cable television services to its customers within the City of Canby; and

WHEREAS, the City of Canby granted a twelve-year cable television Franchise to DirectLink, which was only granted through March 4, 2017; and

WHEREAS, the City and DirectLink wish to extend the term of the Franchise Agreement for a period of three (3) years, retroactive to March 4, 2017; and

WHEREAS, the City finds it is in the public interest to extend the Franchise Agreement so that cable service to the public will not be interrupted; and

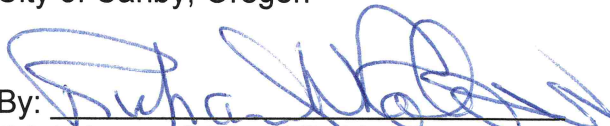
WHEREAS, City acknowledges that the duration of the term of the franchise extension granted hereby is less than the 30-month minimum advance notice required under Section 626 of the Cable Communications Policy Act of 1984, as amended (the "§626 Renewal Notice") for DirectLink to timely exercise its franchise renewal rights under federal law. Accordingly, City agrees that DirectLink shall be deemed to have provided its §626 Renewal Notice to City in a timely manner and City hereby irrevocably waives and relinquishes any right to take a contrary position.

NOW, THEREFORE, the City of Canby and DirectLink agree as follows:

1. The Franchise shall be extended to expire on March 4, 2020, or until a new Franchise Agreement is negotiated, whichever comes first.
2. All provisions and amendments to the Franchise, other than duration of the Franchise, shall remain in full force and effect through this agreed upon extension date.

APPROVED this 21st day of June 2017.

City of Canby, Oregon

By: 

Print Name: Richard Robinson

Title: City Administrator

ACCEPTED this 10 day of July 2017.

Canby Telephone Association (dba
DirectLink)

By: 

Print Name: Paul E. Hauer

Title: President

ORDINANCE NO. 1349

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE ASSOCIATION AND DECLARING AN EMERGENCY.

WHEREAS, on February 2, 2005, the City of Canby granted a twelve year cable television franchise to Canby Telephone Association, effective March 4, 2005 (the "Franchise"); and

WHEREAS, the City of Canby granted a cable television franchise to the predecessor of WaveDivision VII, LLC prior to granting the Franchise, the terms of which are nearly identical to the Franchise; and

WHEREAS, the City is considering amending the terms of its cable franchise with WaveDivision VII, LLC, and to ensure compliance with the Cable Act and the rules enacted by the Federal Communications Commission, and to maintain competitive equity between the two cable operators, the City is offering the same substantive amendments to Canby Telephone Association; and

WHEREAS, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance; now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby hereby amends the Franchise with Canby Telephone Association as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. The phrase "and continuing throughout its term," shall be deleted from the first sentence of Section 6.5(c)(i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: "No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs." After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: "Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1,

2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”

- B. Section 6.5(c)(ii) shall be deleted in its entirety and replaced with the following: “Grantee shall help financially support the studio facility by paying \$1,724 per month to the Designated Access Provider (“DAP”) through October 31, 2014. Commencing on November 1, 2014, Grantee shall contribute eight hundred sixty two dollars (\$862.00) per month to the DAP and such amount shall be paid directly to the DAP. Grantee acknowledges and agrees that the DAP will forward this amount to WaveDivision VII, LLC (“Wave”), the incumbent cable operator in the City, which is obligated in its cable franchise with the City to provide the studio facility at Wave’s cost. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven percent (87%) of the leased space, the remainder of which is used by Wave). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Wave and the owner of the leased space, Grantee shall contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP’s proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this paragraph shall be increased or decreased in proportion to the change. Grantee’s obligation to make the payment set forth in this paragraph shall cease if the DAP stops using the access facility. In the event Wave no longer provides cable services in the City, Grantee agrees to assume the obligations currently being funded by Wave within thirty (30) days of written notice from Grantor.”
- C. Section 9.1 shall be deleted in its entirety and replaced with the following: “The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act. Notwithstanding the foregoing, Grantee’s Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.”

Section 2. Emergency declared. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading, provided that Canby Telephone Association files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If

Canby Telephone Association fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.


SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular council meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.


Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of October, 2011 by the following vote:

YEAS 6

Nays 0


Randy Carson
Mayor

ATTEST:


Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

ACCEPTANCE

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

The undersigned, Canby Telephone Association, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No. 1349, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1349 by the City of Canby at second reading on October 19, 2011.

CANBY TELEPHONE ASSOCIATION

BY: 

TITLE: President

DATE: 10/19/11