

CITY OF SHERWOOD, OREGON

RESOLUTION NO. 222

A RESOLUTION AUTHORIZING THE ENTERING INTO OF AN INTERGOVERNMENTAL COOPERATION AGREEMENT TO FORM A JOINT COMMISSION WITH OTHER UNITS OF LOCAL GOVERNMENT TO COORDINATE THE DEVELOPMENT OF A CABLE COMMUNICATIONS SYSTEM, AND TO SELECT AN INITIAL COMMISSION

WHEREAS, it has been determined that it is in the public interest that the City of Sherwood enter into an intergovernmental cooperation agreement with other interested units of local government for the purposes related to the development and regulation of a cable communication system that are stated in said agreement, a copy of which is attached hereto, marked Exhibit A, and incorporated herein by reference; and

WHEREAS, it is necessary to appoint the city's representatives to the Board of Commissioners;

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The City of Sherwood hereby agrees to enter into the intergovernmental cooperation agreement (hereafter called Agreement) as set forth in Exhibit A attached hereto, and further authorizes the mayor and recorder to execute the agreement on behalf of the city.

Section 2. The City of Sherwood hereby appoints Mayor Clyde List to the Board of Commissioners of the Metropolitan Area Communications Commission (hereafter called Commission) as established by the terms of the Agreement, and appoints Jony Carasin as Alternate Commissioner who may attend all meetings and act in the capacity of the Commissioner in his(her) absence.

Section 3. The city further ratifies and approves Resolutions 81-2, 81-3, and 81-4 of the Metropolitan Area Communication Commission, attached to Exhibit A.

Section 4. A certified copy of this resolution, together with one original of the duly executed intergovernmental cooperation agreement, shall be forwarded immediately to the Mayor of Beaverton, Oregon, 4950 S.W. Hall Boulevard, Beaverton, Oregon 97005, who is coordinating the process, and the chairman of the Metropolitan Area Communications Commission.

PASSED by the City of Sherwood at its City Council meeting on Sept 23, 1981.

Clyde List
Clyde List, Mayor

ATTEST:

Polly Blankenbaker
Polly Blankenbaker, City Recorder

Exhibit C ~~Ordinance~~
Resolution

INTERGOVERNMENTAL COOPERATION AGREEMENT
METROPOLITAN AREA COMMUNICATIONS COMMISSION

THIS AGREEMENT, made and entered into the below set forth date by and among the undersigned cities of Beaverton, Tigard, Troutdale, King City, Milwaukie, Hillsboro, Lake Oswego, Gresham, Tualatin, Banks, Forest Grove, Durham and Cornelius, all municipal corporations of the State of Oregon and Washington County, a county formed under the laws of the State of Oregon, (all parties hereafter referred to as "unit(s) of local government" or "Party (ies)"). This Agreement is made pursuant to ORS 190.003 to ORS 190.110, the general laws and constitution of the State of Oregon, and the laws and charters of the units of local government.

Section 1. General Purposes of Agreement. To form, pursuant to the authority set forth in ORS 190.003 through ORS 190.110 as well as local charters and ordinances, a joint commission, consisting of representatives from certain units of local government to carry out the following purposes:

A. To provide a common means of addressing requests from cable television companies to provide cable television to the jurisdictions of the various parties;

B. To provide for the parties or, if a particular unit of local government prefers, assist a party in providing a Cable Communications System that best serves the public interest and provides the maximum level of services to the public in the most efficient manner;

C. To provide an organization to study the alternatives for providing a Cable Communications System, to take specific action, or recommend to the individual governing bodies of the units of local government, a method for proceeding with the provision of such services as well as a method for providing ongoing regulation of communications activity.

D. To provide a forum for intercommunication and consultation among the parties and to provide an opportunity for a joint and cooperative sharing of the expenses, data, expertise, experiences and plans of each unit of local government; and

E. To work towards development of a uniform approach for providing a Cable Communications System and, if feasible for and agreeable to some or all of the parties, take joint or common action to provide the appropriate level of communications services to the citizens of the various jurisdictions.

Section 2. Definitions Applicable to this Agreement.

A. "Cable Communications System" or "System" means a system of antennae, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, receivers, home terminals, convertors, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital or other forms of electronic or electrical signals.

B. "Person" means any corporation, partnership, proprietorship, association, individual or organization authorized to do business in the State of Oregon, or any natural person.

Section 3. Commission Creation and Powers. There is hereby

created a Joint Commission, to be known as the "Metropolitan Area Communications Commission" hereafter referred to as the "Commission" to carry out the specific purposes set forth in this agreement. In carrying out the purposes of this Agreement, the Commission is vested with all the powers, rights and duties relating to those functions and activities that are vested by law in each separate unit of local government, its officers and agencies, subject to specific limitations, if any, contained in this Agreement. "Law" as referred to in this section shall mean and include, the federal laws and Constitution, the applicable general laws of the State, the Oregon Constitution, as well as the charters, ordinances and other regulations of each unit of local government.

Section 4. The Board of Commissioners.

A. The Governing Body. The governing body of the Commission shall be its Board of Commissioners (hereafter referred to as the "Board"). Each unit of local government shall select one representative, and may select one alternative representative who may attend all meetings and shall act in the absence of the primary representative, to serve as its Commissioner on the Board. Each unit of local government shall have one vote on any decision made by the Board.

B. Quorum and Voting. Except as expressly provided below, scheduled meetings or work sessions may be conducted by the Board without the requirement of a quorum and decisions on routine procedural matters may be made by a vote of a majority of those members of the Board present and voting on a matter before it. This

is intended to facilitate review and work in meeting the purposes of this Agreement by proceeding without unreasonable delay, but it shall not be applicable to meetings where substantive decisionmaking is necessary. In addition to other limitations that may be contained in this Agreement, no decision concerning the below listed or like subjects shall be made by the Board, unless a quorum is present, which shall consist of a majority of the entire Board, and a majority of those present and voting agree on a matter before it:

1. Any decision creating a monetary expense to a unit of local government;

2. Any decision which would lead to or have the effect of determining the manner in which a unit of local government will provide a System for its jurisdiction;

3. Any decision which would lead to or have the effect of selecting a person or persons who would provide, by franchise or otherwise, a System or Systems for a particular unit of local government;

4. Any decision which would provide a method for apportioning any revenues received by the Commission among the parties to this Agreement;

5. Any decision on agreements or contracts for personal services or the purchase of materials for the Commission;

6. Any decision concerning the adoption or supplementation of a budget, or an appropriation or an expenditure pursuant thereto; and

7. Any decision which a member of the Board present and

voting at a meeting desires to have deferred and voted upon when a quorum is present.

C. Term of Office and Succession. Members of the Board shall be appointed to serve until their successors are appointed and assume their responsibilities, but shall serve at the pleasure of the governing body of the unit of local government appointing them. A vacancy on the Board shall be filled by the governing body of the unit of local government whose position on the Board is vacant.

D. Ratification of Request for Proposal. If and when the Board has developed a Request for Proposal document (hereafter RFP) to be used to solicit competitive bids from any person(s) interested in obtaining a franchise to provide a System for the parties, it shall forward a copy of the RFP to the governing body of each member unit of local government for their ratification and further action. Those parties desiring to proceed pursuant to this Agreement with joint or common action to provide a System for the citizens of the various jurisdictions hereby agree, and shall so state in the document ratifying the RFP, to be jointly bound and contractually committed to the other parties and any person successfully bidding for the award of a franchise. If one or more parties to this Agreement hereafter fails or refuses to be bound by the actions of the Board or takes any action which constitute an actual or implied attempt to rescind or breach this Agreement, a majority of the members of the Board, excluding the member(s) representing the unit(s) of local government which have or may have breached this Agreement, may decide to bring a civil action in the

appropriate court, to seek redress, including, but not limited to, specific performance of the Agreement or injunctive relief.

Section 5. Meetings, Bylaws and Officers.

A. Meetings of the Board shall be conducted pursuant to the Oregon Public Meetings Law.

B. Bylaws. At the organizational meeting, or as soon thereafter as it reasonably may be done, the Board shall adopt bylaws governing its procedures and including at a minimum, the following:

- 1) Whether regular meetings will be held and if so, the frequency of those meetings,
- 2) The method and manner of calling special meetings,
- 3) The method, term and manner of election of officers and appointment of staff, if any; and
- 4) The procedures for execution of writings and legal documents.

C. Officers. At the organizational meeting of a quorum of the Board, the Board shall elect from its members a president, a vice-president and a secretary-treasurer. The president, and in his absence the vice president, shall preside at all meetings, call special meetings, and determine the order of business, until such time as formal written bylaws requiring otherwise are adopted. The secretary-treasurer, or his or her designate, shall be responsible for compliance with the Oregon Public Meetings Law, including the keeping of written minutes and the giving of notice of future meetings to the public and the Board, until contrary or superceding provisions are established in the bylaws.

Section 6. Expenses of Operation.

A. The Board shall comply with applicable state and local laws as to budget preparation and for audit of its books and records. All books and records shall be open to inspection by any member unit of local government or its designate.

B. Upon written request, any funds of a member unit of local government advanced or contributed for the operation of the Commission or for carrying out the purposes of this Agreement shall be reimbursed from any revenues received by the Commission in a manner provided by the Board and subject to any indebtedness of the Commission.

C. Subject to the limitations set forth in Section 4 of this Agreement, the Board shall determine, prior to the Board's adoption and forwarding for governing body ratification of an RFP pursuant to Section 4D of this Agreement, a method of equitably allocating expenses and revenues among the member units of local government, which shall be incorporated into and become a part of this Agreement.

Section 7. Actions of the Governing Bodies. The governing body of a unit of local government entering into this Agreement shall adopt an authorizing resolution, in the form or substantially the same form as set forth in the sample resolution set forth in "Exhibit A", attached hereto and incorporated by reference herein, and shall forward a certified copy to the Mayor of the City of Beaverton, Oregon, 4950 S.W. Hall Boulevard, Beaverton, Oregon 97005. The first meeting of the Commission shall be held on April 9, 1980, at a time and place to be determined and noticed by the

Beaverton Mayor. If for any reason the meeting is not held, then the initial meeting may be jointly called and noticed by any two parties to this Agreement.

Section 8. Duration of Agreement and Termination.

A. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, subject to subsection B), below.

B. Termination. Prior to the ratification of a joint RFP by a member unit of local government pursuant to Section 4D, any member unit may withdraw from this Agreement at any time by giving written ten (10) day notice to the secretary-treasurer. Any funds advanced or revenues receivable shall be prorated from the date of actual receipt of the written notice and returned to the terminating party by the secretary-treasurer. The Commission may also be terminated by mutual agreement of all the parties at any time, subject to contractual obligations in existence at said time. Except as provided above, parties to this Agreement may not unilaterally terminate following affirmative action under Section 4D. of this Agreement, unless said unilateral termination is agreed to by all other parties to this Agreement.

Section 9. General Terms.

A. Severability. The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part, shall not affect the remainder of the Agreement.

B. Interpretation. The terms and provisions of this

Agreement shall be liberally construed in accordance with the general purposes of this Agreement. Nothing in this Agreement shall be construed to limit the right of any governing body of any unit of local government to pursue an independent course of action for the same purposes or proceed based on a comparison of the merits of the development of an individual System with the merits of a joint, cooperative effort.

C. Increasing Member Units of Government. The Board may develop a method for allowing other units of local government to enter into this Agreement that decides not to enter into this Agreement or were not originally contemplated as possible members. A fee or cost for subsequent inclusion of a Party may be imposed upon an interested Party.

D. Effective Date. This Agreement shall become effective when it has been authorized by two or more of the units of local government and the authorizing resolutions have been received as is provided in Section 7 of this Agreement.

E. Amendments. Amendments to any term of this Agreement, except Section 8B, may be made by the Board, pursuant to the quorum and voting requirements of Section 4B of this Agreement for substantive decisions, until the Request for Proposal is approved and forwarded to the respective governing bodies of member units of local government in accordance with Section 4D. entitled "Ratification of Request for Proposal". Thereafter, the terms of this Agreement shall not be amended without the written authorization of the governing bodies of all member units of local government.

No amendment may be made to Section 8B of this Agreement which would result in a limitation of the right of any member unit of government to withdraw from this Agreement on ten (10) days notice prior to ratification of the Joint Request for Proposal by that member unit.

Subscribed to and entered into in duplicate original this _____ day of _____, 19____ by the appropriate officer(s) who are duly authorized by resolution to execute this Agreement on behalf of the governing body of the below named unit of local government.

CITY OF BEAVERTON

By: [Signature]
Title MAYOR

By: [Signature]
Title CITY ATTORNEY

Attest: [Signature]
Title CITY RECORDER

CITY OF Lake Oswego

By: [Signature]
Title Mayor

By: [Signature]
Title City Attorney

Attest: [Signature]
Title City Recorder

CITY OF TROUTDALE

By: [Signature]
Title MAYOR

By: _____
Title _____

Attest: [Signature]
Title FINANCE DIRECTOR / CITY RECORDER

CITY OF GRESHAM

By: CH Myers
Title MAYOR

By: [Signature]
Title [Signature]

Attest: _____
Title

CITY OF MILWAUKIE

By: Allen Manuel
Title - Mayor

By: Kenneth S. Burton
Title - City Manager

Attest: Dorothy E. Farrell
Title - City Recorder

CITY OF TUALATIN

By: [Signature]
Title MAYOR

By: [Signature]
Title Admin Recorder

Attest: _____
Title

CITY OF TIGARD

By: [Signature]
Title - Mayor

By: Raeidon R Barker
Title - City Administrator

Attest: Nomis Hartig
Title - City Recorder

CITY OF KING CITY

By: [Signature]
Title

By: [Signature]
Title ADMINISTRATOR

Attest: [Signature]
Title
Finance Officer
& Acting Recorder

CITY OF FOREST GROVE

By: [Signature] CITY
Title MGR.

By: [Signature] Mayor
Title

Attest: [Signature]
Title City Recorder

CITY OF Cornelius

By: [Signature]
Title

By: [Signature] Mayor
Title

Attest: [Signature]
Title City Recorder

CITY OF Hillsboro

By: [Signature] Mayor
Title

By: [Signature] Mayor
Title

Attest: [Signature]
Title City Recorder

Attest: Robert F. Pullett
Title
City Recorder

CITY OF Rainier
By: Howard D. Steinbach
Title Mayor
By: _____
Title

Attest: James L. Percy
Title
City Administrator/Recorder

CITY OF Trask
By: Robert S. Percy
Title Mayor
By: _____
Title

Attest: Polly Blankenbaker
Title Recorder/Treasurer

CITY OF Sherwood
By: Clyde R. J. J.
Title Mayor
By: _____
Title

Attest: Op Ann Johansen
Title - Clerk of the Board

COUNTY OF Washington
By: Miller M. Davis
Title - Chairman, Washington County Board of Commissioners
By: Dale O. Falt
Title - County Administrator

APPROVED AS TO FORM
Gregory S. Hathaway
County Counsel for
Washington County, Ore.

RESOLUTION NO. 81-2

A RESOLUTION AMENDING SECTION 8.B. OF THE INTERGOVERNMENTAL COOPERATION AGREEMENT - METROPOLITAN AREA COMMUNICATIONS COMMISSION TO PROVIDE FURTHER TERMINATION PROVISIONS.

WHEREAS, the existing Intergovernmental Cooperation Agreement of the Metropolitan Area Communications Commission (hereafter Commission), at Section 8.B. contains no provision for member withdrawal from the Commission following the termination or at the end of the term of a franchise agreement(s) entered into by the member units of local government comprising the Commission; and

WHEREAS, the Commission desires to reserve to its members the right to withdraw during a certain period of time in the event of termination or end of a franchise term; now, therefore,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION AS FOLLOWS:

Section 1. That Section 8.B. Termination. of that certain agreement, entered into by the member units of local government that comprise the Commission entitled "INTERGOVERNMENTAL COOPERATION AGREEMENT - METROPOLITAN AREA COMMUNICATIONS COMMISSION," is amended to read as follows:

"B. Withdrawal and Termination. Prior to the approval of a joint RFP by the Board any member unit of local government, or in the event a member decides not to adopt a franchise agreement in accordance with Section 4.D. of this agreement that particular member unit of local government, may withdraw from this Agreement and participation in the Commission

by giving ten (10) days written notice to the secretary-treasurer. In addition, provided notice of intent to withdraw at the end of any franchise term is received by the secretary-treasurer at least 180 days before the end of the term of a franchise, or written notice is received no later than 30 days following termination of a franchise, a member unit of local government may withdraw from this Agreement and participation in the Commission. Any net revenues (gross revenues minus any incurred or actual expenses) due and owing to the withdrawing member at the date of the end or termination of the term of franchise shall be paid. The Commission may also be terminated by mutual agreement of all of the parties, subject to contractual obligations in existence at said time. Except as provided above, a member unit of local government may not withdraw without the mutual consent of all other parties to this Agreement."

Section 2. A copy of this resolution shall be attached to and the amendment set forth in Section 1 of this resolution is hereby incorporated into and is a part of the Intergovernmental Cooperation Agreement - Metropolitan Area Communications Commission.

Adopted by the Board of Commissioners of the Metropolitan Area Communications Commission this 4th day of February, 1981.

Signed:



JACK R. NELSON, Chairman

RESOLUTION NO. 81-3

A RESOLUTION AMENDING SECTION 4.D. OF THE INTERGOVERNMENTAL COOPERATION AGREEMENT - METROPOLITAN AREA COMMUNICATIONS COMMISSION RELATING TO REQUEST FOR PROPOSAL RATIFICATION AND ADOPTION OF A FRANCHISE AGREEMENT.

WHEREAS, the existing Intergovernmental Cooperation Agreement of the Metropolitan Area Communications Commission (hereafter Commission), at Section 4.D. needs to be amended to clarify the present intent of the Commission to work towards developing a franchise agreement with a single cable company to be considered for adoption by the governing body of each member unit of local government comprising the Commission; and

WHEREAS, the Commission realizes that its members will need to study and have input into the process of developing a franchise agreement with a prospective franchisee that will be acceptable for adoption by the member governments; now, therefore,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION AS FOLLOWS:

Section 1. That Section 4.D. Ratification of Request for Proposal of that certain agreement, entered into by the member units of local government that comprise the Commission entitled "INTERGOVERNMENTAL COOPERATION AGREEMENT - METROPOLITAN AREA COMMUNICATIONS COMMISSION," is amended to read as follows:

"D. Ratification of Request for Proposal and Adoption of Franchise Agreement. Following development and approval of a Request For Proposal document (hereafter RFP) to be used to

incorporated into and is a part of the Intergovernmental Cooperation Agreement - Metropolitan Area Communications Commission.

Adopted by the Board of Commissioners of the Metropolitan Area Communications Commission this 4th day of February, 1981.

Signed:


JACK R. NELSON, Chairman

RESOLUTION 81-4

A RESOLUTION ESTABLISHING A METHOD OF ALLOCATING REVENUES AND EXPENSES RESULTING FROM ANY CABLE COMMUNICATIONS FRANCHISE AGREEMENT REGULATED AND ADMINISTERED THROUGH THE METROPOLITAN AREA COMMUNICATIONS COMMISSION.

WHEREAS, Section 6.C. of the Intergovernmental Cooperation Agreement - Metropolitan Area Communications Commission (hereafter Agreement) requires that the Board of Commissioners (hereafter Board) of the Metropolitan Area Communications Commission (hereafter Commission) determine a method of equitably allocating expenses and revenues among the units of local government which elect to proceed with regulation and administration of a cable communications franchise through continued membership in the Commission; and

WHEREAS, at its meeting of February 11, 1981, the Board of the Commission unanimously made such a determination by motion and authorized its chairman to sign a resolution memorializing that decision; now, therefore,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION AS FOLLOWS:

Section 1. Except as otherwise provided in this resolution, the method of distribution of the franchise fee revenues of the units of local government which are members of the Commission which result from an adopted Franchise Agreement shall be as follows:

A. Based upon the requirements of the Request for Proposal developed by the Commission, total franchise fee revenues payable

to the Commission shall be five percent (5%) of the gross revenues (as defined by the franchise agreement) of any person granted a franchise by the member units of local government which comprise the Commission.

B. Forty percent (40%) of the franchise fee (or, stated another way, two percent (2%) of franchisee's total gross revenues paid according to a franchise agreement as part of a franchise fee) shall be retained by the Commission to offset the expenses of regulation, administration and operation of the Commission, including promotion, development, support and encouragement of community access channels and other aspects of the cable communications system. Any of such retained revenues which exceed expenses for any fiscal year shall be distributed to the member units of local government of the Commission, based upon the population of each unit of local government. Annual population shall be determined, if necessary, by the methods set forth in ORS 190.520 - 190.540, or as hereafter provided by state law.

C. The remaining sixty percent (60%) of the franchise fee (three percent (3%) of franchisee's total gross revenues paid according to a franchise agreement as part of a franchise fee) shall be distributed by the Commission to its member units of local government in the following manner:

1) that portion representing revenues generated from the residential subscriber network (entertainment uses) shall be distributed on the basis of a determination of the amount of the revenues generated within the jurisdictional boundaries of each member unit of local government; and

2) that portion representing revenues generated from the institutional subscriber network (non-entertainment commercial uses), or from any and all other sources, shall be distributed on the same population basis as set forth in subsection B., of this section, which pertains to distribution of revenues in excess of annual expenses of the Commission.

D. For the purposes of any distributions to Washington County pursuant to subsections A., B., or C. of this section, it is understood that the distributions will be based on the population or the boundaries of the unincorporated area of the County as presently or hereafter exists.

Section 2. For the purposes of allocation of the expenses of the Commission, individual expenses of the units of local government which are members of the Commission which may be not attributed directly to Commission expenditures, but which are determined by the Commission to be related to Commission activities, shall be paid from revenues retained by the Commission in accordance with Section 1, subsection B. of this resolution. The Commission shall establish a method for processing and reviewing such expenditures.

Section 3. Until such time as total revenues from franchise fees exceed the actual expenses of the Commission, including any advance payments by franchisee of franchise fees to fund the Commission's expenses, the entire five percent (5%) franchise fee, reduced by any credits to reimburse franchisee for said advance payments, shall be utilized by the Commission for its expenses. Since the two percent set forth in Section 1, subsection B. of this

resolution may not be sufficient to satisfy all expenses of the Commission during the initial period of any franchise, franchise fees which are subject to the distribution provisions of Section 1, subsection D. of this resolution shall be utilized as necessary to satisfy the expenses of the Commission. However, all revenues in excess of expenses shall be distributed to the member units of local government in the manner provided by Section 1, subsection D. of this resolution.

Section 4. This resolution shall have an effective date of February 11, 1981, the date of the adoption of the motion by the board of the Commission establishing the method of allocating revenues and expenditures to its member units of local government.

METROPOLITAN AREA COMMUNICATIONS
COMMISSION

By:


JACK R. NELSON, Chairman