



Multnomah County Oregon

Board of Commissioners & Agenda

connecting citizens with information and services

BOARD OF COMMISSIONERS

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JULY 15 & 17, 2008 BOARD MEETINGS FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:00 a.m. Tuesday Executive Session
Pg 3	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg 3	9:30 a.m. Thursday Briefing on Management of Large Contracts Audit Report
Pg 3	10:00 a.m. Thursday Approving Cable Franchise Agreement with Cascade Access, LLC
Pg 3	10:10 a.m. Thursday Approving a Lease for Property at SE Dora Street and Historic Columbia River Highway, Troutdale for New East County Library Branch
Pg 3	10:26 a.m. Thursday Order of Final Determination Denying the Ballot Measure 49 Claim Filed by Ray and Virginia Hausler

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Thursday, 9:30 AM, (LIVE) Channel 30
Saturday, 10:00 AM, Channel 29
Sunday, 11:00 AM, Channel 30
Tuesday, 8:15 PM, Channel 29

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Tuesday, July 15, 2008 - 9:00 AM
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(d),(e) and/or (h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by County Attorney Agnes Sowle. 15-55 MINUTES REQUESTED.
-

Thursday, July 17, 2008 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM **SHERIFF'S OFFICE**

- C-1 Intergovernmental Revenue Agreement 0809073 with METRO to Provide General Investigative Police Services for Enforcement of METRO Ordinances
- C-2 Intergovernmental Revenue Agreement 0809074 with METRO to Provide Inmate Work Crews for Illegal Dumpsite Cleanup

DEPARTMENT OF HEALTH

- C-3 Budget Modification HD-01 Authorizing One Position Reclassification within Integrated Clinical Services Division of the Health Department as Determined by the Class/Comp Unit of Central Human Resources

DEPARTMENT OF COUNTY HUMAN SERVICES

- C-4 ORDER Authorizing a Designee of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

REGULAR AGENDA
PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

AUDITOR'S OFFICE - 9:30 AM

R-1 Board Briefing on Management of Large Contracts Audit Report. Presented by LaVonne Griffin-Valade, Sarah Landis and Mark Ulanowicz. 30 MINUTES REQUESTED.

NON-DEPARTMENTAL - 10:00 AM

R-2 RESOLUTION Approving Cable Franchise Agreement with Cascade Access, LLC

R-3 First Reading of an ORDINANCE Amending Multnomah County Code Chapter 7.450 et seq. Relating to Art Acquisition and Approving Regional Arts and Culture Council Contract Renewal [The Board will be asked to reschedule this item to July 24, 2008]

DEPARTMENT OF LIBRARY SERVICES – 10:10 AM

R-4 RESOLUTION Approving a Lease of Real Property from Troutdale Partners, LLC, for Property Located at SE Dora Street and Historic Columbia River Highway, Troutdale, Oregon as the Site of the New East County Library Branch and Authorizing County Chair to Execute Appropriate Documents to Complete the Transaction

DEPARTMENT OF HEALTH – 10:25 AM

R-5 Second Reading and Adoption of a Proposed ORDINANCE Amending Multnomah County Code Chapters 15, Sheriff, and 21, Health, Relating to Specified Animals and Adding an Appeals Process for Health Licenses and Permits

DEPARTMENT OF COMMUNITY SERVICES – 10:26 AM

R-6 ORDER of Final Determination Denying the Ballot Measure 49 Claim Filed by Ray and Virginia Hausler for Property Located at 5514 SW Hewett Boulevard, Multnomah County, Oregon



Commissioner Jeff Cogen, District 2

MULTNOMAH COUNTY OREGON

501 SE Hawthorne, Suite 600

Portland, Oregon 97214

(503) 988-5219 phone

(503) 988-5440 fax

www.co.multnomah.or.us/cc/ds2/

district2@co.multnomah.or.us

MEMORANDUM

TO: Chair Ted Wheeler
Commissioner Maria Rojo de Steffey
Commissioner Lisa Naito
Commissioner Lonnie Roberts
Clerk of the Board Deb Bogstad

FROM: Marissa Madrigal
Chief of Staff to Commissioner Jeff Cogen

DATE: 6/11/2008

RE: Board Meeting Excused Absences

Commissioner Cogen will be out of town the week of July 14th, 2008, returning on Monday July 21st.



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
501 S.E. HAWTHORNE BLVD., Room 600
PORTLAND, OREGON 97204
(503) 988-5217

LISA NAITO • DISTRICT 3 COMMISSIONER

MEMORANDUM

TO: Chair Ted Wheeler
Commissioner Maria Rojo de Steffey
Commissioner Jeff Cogen
Commissioner Lonnie Roberts
Board Clerk Deb Bogstad

FROM: Keith Falkenberg
Staff to Commissioner Lisa Naito

DATE: June 30, 2008

RE: Commissioner Naito meeting excuses

Commissioner Naito will be leaving the board meeting on July 10, 2008 at 11am to fly out to the NACo conference. She will also be absent for the executive session and board briefing on July 15, 2008.

Keith Falkenberg



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/15/08
Agenda Item #: E-1
Est. Start Time: 9:00 AM
Date Submitted: 07/03/08

Agenda Title: Executive Session Pursuant to ORS 192.660(2)(d),(e)and/or(h)

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 15, 2008 **Amount of Time Needed:** 15-55 minutes
Department: Non-Departmental **Division:** County Attorney
Contact(s): Agnes Sowle
Phone: 503 988-3138 **Ext.** 83138 **I/O Address:** 503/500
Presenter(s): Agnes Sowle and Invited Others

General Information

1. What action are you requesting from the Board?

No final decision will be made in the Executive Session.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Only representatives of the news media and designated staff are allowed to attend. Representatives of the news media and all other attendees are specifically directed not to disclose information that is the subject of the Executive Session.

3. Explain the fiscal impact (current year and ongoing).

4. Explain any legal and/or policy issues involved.

ORS 192.660(2)(d),(e)and/or(h)

5. Explain any citizen and/or other government participation that has or will take place.

Required Signature

**Elected Official or
 Department/
 Agency Director:**

Date: 07/03/08



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: C-1
Est. Start Time: 9:30 AM
Date Submitted: 07/03/08

Agenda Title: **Intergovernmental Revenue Agreement 0809073 with METRO to Provide General Investigative Police Services for Enforcement of METRO Ordinances**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** N/A
Department: Sheriff's Office **Division:** Enforcement
Contact(s): Brad Lynch
Phone: 503-988-4336 **Ext.** 84336 **I/O Address:** 503/350
Presenter(s): Consent Calendar

General Information

1. What action are you requesting from the Board?

Approval of government contract 0809073.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Under the terms of this agreement the County, through the Sheriff's Office agrees to provide general investigative police service to METRO for enforcement of METRO ordinances, including those related to flow control and solid waste management. One FTE deputy sheriff shall be assigned to provide the investigative services. The agreement is effective July 1, 2008 through June 30, 2009.

3. Explain the fiscal impact (current year and ongoing).

Metro agrees to compensate the Sheriff's Office for providing this service in an amount not to exceed \$121,049.00. This revenue has been anticipated and is part of the FY 08 budget.

4. Explain any legal and/or policy issues involved.

This agreement has been reviewed by the County Attorney's office.

5. Explain any citizen and/or other government participation that has or will take place.

None other than stated above.

Required Signature

**Elected Official or
Department/
Agency Director:**

/s/ Bernie Giusto

Date: 06/30/08

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 0809073

Pre-approved Contract Boilerplate (with County Attorney signature) Attached Not Attached

Amendment #: _____

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Expenditure Contract
<input type="checkbox"/> PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	<input type="checkbox"/> PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	<input checked="" type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement
<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> INTER-DEPARTMENTAL AGREEMENT (IDA)

Department: Sheriff's Office Division/ Program: Enforcement Date: 06/23/08
 Originator: Chief Deputy Timothy Moore Phone: 503-988-4300 Bldg/Room: 503/350
 Contact: Brad Lynch Phone: 503-988-4336 Bldg/Room: 503/350

Description of Contract: Investigative and enforcement services for solid waste ordinances.

RENEWAL: PREVIOUS CONTRACT #(S): 0708052, 0607005, 0405126 EEO CERTIFICATION EXPIRES _____
 PROCUREMENT EXEMPTION OR CITATION #: 46-0130(1)(f) ISSUE DATE: _____ EFFECTIVE DATE: _____ END DATE: _____
 CONTRACTOR IS: MBE WBE ESB QRF State Cert# _____ or Self Cert Non-Profit N/A (Check all boxes that apply)

Contractor	Metro Solid Waste & Recycling			Remittance address (If different)	
Address	600 NE Grand			Payment Schedule / Terms: <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30 <input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other <input type="checkbox"/> Price Agreement (PA) or Requirements Funding Info:	
City/State	Portland, Oregon				
ZIP Code	97232				
Phone	503-797-1700				
Employer ID# or SS#					
Contract Effective Date	<u>07/01/08</u>	Term Date	<u>06/30/09</u>		
Amendment Effect Date		New Term Date			
Original Contract Amount	\$ 121,049.00			Original PA/Requirements Amount	\$ _____
Total Amt of Previous Amendments	\$ _____			Total Amt of Previous Amendments	\$ _____
Amount of Amendment	\$ _____			Amount of Amendment	\$ _____
Total Amount of Agreement \$	\$ 121,049.00			Total PA/Requirements Amount	\$ _____

REQUIRED SIGNATURES:

Department Manager _____ DATE _____
 County Attorney [Signature] _____ DATE 07/03/08
 CPCA Manager _____ DATE _____
 County Chair [Signature] _____ DATE 07-17-08
 Sheriff BERNIE GUSTO by pm _____ DATE 06-30-08
 Contract Administration _____ DATE _____

COMMENTS: _____

APPROVED : MULTNOMAH COUNTY BOARD OF COMMISSIONERS
 AGENDA # C-1 DATE 07-17-08
 DEBORAH L. BOGSTAD, BOARD CLERK

LYNCH Brad B

From: WEBER Jacquie A [jacquie.a.weber@co.multnomah.or.us]
Sent: Tuesday, July 01, 2008 4:16 PM
To: LYNCH Brad B
Cc: DUNAWAY Susan M
Subject: RE: Contract Review Request - METRO Investigations & Work Crews

These contracts may be circulated for signature.

From: LYNCH Brad B
Sent: Wednesday, June 25, 2008 8:51 AM
To: WEBER Jacquie A
Cc: DUNAWAY Susan M
Subject: Contract Review Request - METRO Investigations & Work Crews

Good morning Jacquie. Here I have the APRs, CAFs, and IGAs from Metro for both the investigations and work crews services for FY09.

Thank you, Brad

Brad Lynch
Multnomah County Sheriff's Office
Fiscal Unit
501 SE Hawthorne Blvd, STE 350
Portland, OR 97214
Phone (503) 988-4336
Fax (503) 988-4317
email: brad.lynch@mcso.us

<http://www.mcso.us/>

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INTERGOVERNMENTAL AGREEMENT

MCSO Contract No. _____
METRO Contract No. 928653

THIS AGREEMENT is made and entered into pursuant to the authority found in ORS 190.010, et seq. and ORS 206.345 between MULTNOMAH COUNTY by and through the Multnomah County Sheriffs Office (COUNTY) and METRO.

RECITALS

WHEREAS, Multnomah County (hereinafter "COUNTY") is a political subdivision of the State of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq; and,

WHEREAS, the Multnomah County Sheriff is authorized to enter into intergovernmental agreements jointly with and on behalf of the COUNTY, pursuant to ORS 206.345; and,

WHEREAS, METRO is a municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq. and,

WHEREAS, METRO desires to contract with the COUNTY for the performance of certain law enforcement functions, related to METRO's purpose and authority, to be performed by the COUNTY through the Multnomah County Sheriffs Office (hereinafter "MCSO"); and,

WHEREAS, the COUNTY through the MCSO is able and prepared to provide the services required by METRO under the terms and conditions set forth in this Agreement; therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

INVESTIGATION

1. The COUNTY shall provide general investigative police service to METRO at METRO's direction. Such police service shall include:
 - (a) Enforcement of all duly enacted ordinances of METRO, including those related to flow control investigation and solid waste management;
 - (b) Random and directed surveillance of persons collecting, transporting, storing, treating and disposing of solid and liquid waste to ensure such persons are complying with applicable laws relating to waste management;
 - (c) At METRO's request, investigation, case preparation, and prosecution assistance in cases involving offenses (including, but not limited to fraud, racketeering, and material breach of contract) allegedly committed by vendors, contractors, or subcontractors doing business with METRO or by facilities, firms or individuals subject to METRO ordinances and regulations, or by law or agreement;
 - (d) Investigations of suspected violations of environmental laws, rules, and ordinances; and,



INTERGOVERNMENTAL AGREEMENT

- (e) Other general investigative work as requested by METRO.
2. In accordance with ORS 206.345(2), during the existence of this Agreement, the sheriff and the deputies of the sheriff shall exercise such authority as may be vested in them by law or by terms of this Agreement, including full power and authority to cite violators, arrest for violations of applicable criminal laws, and take other enforcement action for violations of all duly enacted ordinances of METRO relating to flow control and waste management.

PERSONNEL MATTERS

3. The COUNTY shall provide for the performance of the duties hereunder one (1) FTE deputy sheriffs. These persons are hereinafter referred to as "ASSIGNED PERSONNEL." For the purpose of this Agreement, one (1.0) FTE position means an employee who is regularly scheduled to work at least 40 hours per week performing the services required under this Agreement.
4. One or more of the deputy sheriffs provided hereunder may be provided by a law enforcement agency other than MCSO. In such event, the other law enforcement agency hereinafter shall be referred to as a "PARTICIPATING AGENCY."
5. The deputy sheriffs provided as ASSIGNED PERSONNEL shall be certified in their respective disciplines by the State's Department of Public Safety Standards and Training.
6. For ASSIGNED PERSONNEL that have been assigned to METRO for one year or longer, METRO shall pay one-half of personnel costs for absences due to general law enforcement training. METRO shall not pay personnel costs for absences due to specialized law enforcement training that does not relate directly to the services provided under the terms of this Agreement.
7. The ASSIGNED PERSONNEL provided hereunder by MCSO or a PARTICIPATING AGENCY shall be and remain employees of the COUNTY or PARTICIPATING AGENCY. The ASSIGNED PERSONNEL shall be supervised by MCSO and shall perform their duties in accordance with the administrative and operational procedures of MCSO. METRO shall nevertheless retain the right, upon request and for cause stated, to have ASSIGNED PERSONNEL removed from assignment under this Agreement and replaced by other ASSIGNED PERSONNEL meeting the requirements of this Agreement.
8. METRO does not assume any liability for the direct payment of any wages, salaries, or other compensation to ASSIGNED PERSONNEL performing services pursuant to the terms of this Agreement or for any other liability not provided for in this Agreement.
9. The COUNTY shall maintain Workers' Compensation insurance coverage for ASSIGNED PERSONNEL, either as a carrier insured employer or a self-insured employer as provided in ORS Chapter 656.
10. Matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment regarding ASSIGNED PERSONNEL under this Agreement shall be governed by the provisions of existing collective bargaining agreements between the ASSIGNED PERSONNEL'S bargaining unit and their public employer.



INTERGOVERNMENTAL AGREEMENT

11. All labor disputes arising out of this Agreement shall be governed by the provisions of applicable collective bargaining agreements in effect during this Agreement, and the personnel rules of the COUNTY or PARTICIPATING AGENCY.
12. The COUNTY and METRO acknowledge that the ASSIGNED PERSONNEL will be absent from duty for various reasons, including but not limited to vacation, holiday, illness, injury, training, leave of absence, and administrative leave. The COUNTY and METRO also acknowledge that some employee absences are the result of paid leave that the ASSIGNED PERSONNEL earn and are entitled to take. The COUNTY and METRO also acknowledge that some employee absences are the result of actions taken by the employer, with or without the employee's consent. In accordance with the foregoing acknowledgments:
- (a) Except as provided in subsection (b) below, The COUNTY will not be responsible or otherwise obligated to replace any ASSIGNED PERSONNEL who is absent due to paid accrued leave, including but not limited to: vacation, holiday, sick leave or who is absent while participating in training directly related to the services-required by METRO. However, the COUNTY will make a good faith effort to schedule known, projected absences so as to minimize the impact on the COUNTY's ability to perform under this Agreement.
 - (b) This subsection provides when the COUNTY may invoice METRO, and when METRO shall pay, the personnel costs of an ASSIGNED PERSON in the event the COUNTY or PARTICIPATING AGENCY does not replace such ASSIGNED PERSON when the ASSIGNED PERSON is absent from work. For ASSIGNED PERSONNEL that have been assigned to METRO for six months or longer, METRO shall pay personnel costs for absences due to vacation leave and sick leave, up to a total combined annual maximum of 120 hours. In addition, METRO shall pay personnel costs for absences during the following nine annual designated holidays on which METRO's offices are closed:
 - (1) New Years Day;
 - (2) Martin Luther King Day;
 - (3) Washington's Birthday;
 - (4) Memorial Day;
 - (5) Independence Day;
 - (6) Labor Day;
 - (7) Veterans Day;
 - (8) Thanksgiving Day;
 - (9) Christmas Day.
 - (c) For ASSIGNED PERSONNEL that have been assigned to METRO for less than six months, the COUNTY will not invoice METRO for such personnel costs and METRO shall not pay for such personnel costs. In no event shall the COUNTY invoice METRO, and METRO shall not pay, for such personnel costs due to any kind of absence other than for vacation and sick leave, as provided in this subsection and training as provided in subsection 6 of the agreement.
13. The COUNTY shall rotate the deputy sheriffs assigned to METRO at staggered intervals such that the METRO program does not have both of its deputy sheriffs rotated out of the program within less than one year of each other.



INTERGOVERNMENTAL AGREEMENT

OFFICE SPACE

14. METRO shall provide the ASSIGNED PERSONNEL with sufficient office space, to include payment of costs for utilities, including telephone service, at METRO's premises or at a site mutually agreed upon by the COUNTY and METRO.

EQUIPMENT PURCHASE, USE AND DISPOSITION

15. Materials and supplies will be purchased for the use of ASSIGNED PERSONNEL as provided hereunder. For the purpose of this Agreement, "materials" includes capital equipment with a unit cost of \$1,000 or more. "Supplies" includes any item with a unit cost of less than \$1,000.
16. METRO shall purchase all materials and supplies necessary for the performance of this Agreement.
17. All vehicles and equipment purchased by METRO for use in fulfilling this Agreement, including capital equipment, shall be owned by METRO but under the control of the COUNTY for the COUNTY's use in performing its duties under this Agreement. Such vehicles and equipment shall not be used for any other purpose unless specifically authorized by METRO or unless exigent circumstances necessitate the use of such vehicles and equipment for non-METRO related law enforcement activity by ASSIGNED PERSONNEL. The COUNTY shall assume liability for damage to any METRO vehicles or equipment while being used for non-METRO law enforcement-related purposes. Upon termination of this Agreement, control of all remaining materials and supplies purchased hereunder, including capital equipment shall revert to METRO.
18. Notwithstanding the provisions of section 17, above, METRO may grant to the COUNTY an option to purchase from METRO any or all remaining materials and supplies at a price mutually agreed upon by the parties, not to exceed the fair market value of the items at the times of purchase. The COUNTY shall give METRO notice of the COUNTY's intent to exercise any option that may be granted under this section within sixty (60) days following termination of this Agreement.

CONTRACT COSTS

19. METRO shall pay COUNTY for all costs, services performed, and materials delivered for the term of this Agreement. By February 1 of each year, the MCSO shall provide METRO with a good faith projection of the cost of this Agreement for the following fiscal year. The actual amount to be paid by METRO will be determined through mutual agreement of the parties prior to each anniversary date of the execution of this Agreement. The amount to be paid by METRO for the term of the Agreement will not exceed ONE HUNDRED TWENTY-ONE THOUSAND FORTY-NINE AND NO/100'S DOLLARS (\$121,049.00). This maximum sum includes all fees, costs, and expenses of whatever nature to which COUNTY may become entitled for the term of this Agreement. All costs listed on Exhibit A, which is The Budget for the Agreement prepared by METRO, are on a "not to exceed" basis, and shall be billed quarterly for costs incurred, services performed, and materials delivered during the previous quarter. COUNTY shall submit itemized billings to METRO within fifteen (15) days of the end of each quarter of the contract year, and METRO shall make payment to COUNTY within thirty (30) days of receipt of approved billings.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

INTERGOVERNMENTAL AGREEMENT

INDEMNIFICATION AND LIABILITY

20. The COUNTY shall indemnify, defend, and hold harmless METRO, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of the ASSIGNED PERSONNEL acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.
21. METRO shall indemnify, defend, and hold harmless the COUNTY, its officers, employees, and agents, including ASSIGNED PERSONNEL from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of METRO or its assignees, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.

DISPUTE RESOLUTION

22. While the parties have attempted to make an Agreement anticipating and addressing their concerns, METRO and the COUNTY acknowledge the possibility that a claim, controversy, or dispute may arise out of this Agreement. METRO and the COUNTY agree that each party has an obligation and affirmative duty to make a good faith effort to resolve any claim, controversy, or dispute, including the giving of timely, written notification thereof to the other party.
23. All claims, controversies or disputes which arise out of this Agreement, and which have not been resolved through good faith efforts of the parties, shall be resolved by arbitration in accordance with the then effective arbitration rules of the Arbitration Service of Portland or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the rules of the organization selected, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

CONTRACT ADMINISTRATION

24. The Multnomah County Sheriff or his designated representative will represent the COUNTY in all matters pertaining to administration of this Agreement.
25. METRO designates its Solid Waste & Recycling Department Director or his designee to represent METRO in all matters pertaining to administration of this Agreement.
26. Any notice or notices provided for by this Agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

Multnomah County Sheriff
501 SE Hawthorne Blvd., Ste 350
Portland, Oregon 97214

Solid Waste & Recycling Department Director
METRO
600 NE Grand Avenue
Portland, Oregon 97232



INTERGOVERNMENTAL AGREEMENT

CONTRACT TERM, MODIFICATION, AND TERMINATION

- 27. This Agreement shall be effective from the 1st day of July, 2008, and shall run through the 30th day of June 2009, unless extended.
- 28. Either party to this Agreement may terminate said Agreement by giving the other party not less than ninety (90) days written notice.
- 29. This Agreement may be modified or amended by agreement of the parties. Any modification to this Agreement shall be effective only when incorporated herein by written amendments and signed by both METRO and the COUNTY.
- 30. This Agreement is not intended to benefit any individual, employee, group of employees, corporation, or other legal entity other than the parties to this Agreement. This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding whatsoever.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

MULTNOMAH COUNTY

METRO

By: BERNIE GIUSTO by TM
 Sheriff

By: _____
 Michael Jordan,
 Chief Operating Officer

Date: 06-24-08

Date: _____

By: [Signature]
 County Chair or Designee

Date: 07.17.08

APPROVED AS TO FORM:
 Multnomah County Attorney

APPROVED AS TO FORM:
 Metro Attorney

By: [Signature]
 Assistant County Attorney

By: _____
 Michelle Bellia,
 Assistant Metro Attorney

Date: 07-03-08

Date: _____

SK:clg
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APPROVED : MULTNOMAH COUNTY
 BOARD OF COMMISSIONERS
 AGENDA # C-1 DATE 07.17.08
 DEBORAH L. BOGSTAD, BOARD CLERK



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

INTERGOVERNMENTAL AGREEMENT

EXHIBIT A

CONTRACT BUDGET

		Detective (1.0 FTE)
50236	IG-Charges for Svcs	(121,049)
Total Revenues		(121,049)
60000	Permanent	70,846
60130	Salary Related Expenses	25,448
Subtotal		96,294
60140	Insurance	17,324
Total Personnel Costs		113,618
60170	Professional Services	-
Total M&S		-
60350	Indirect Costs (cntrl)	2,352
60355	Indirect Costs (dptml)	5,079
Total ISR's		7,431
60530	Building	
60550	Equipment	
93002	Assess Labor	
93007	Assess Int Service Exp	
93019	Assess Shared Svcs	
Total Budget		121,049

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MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: C-2
Est. Start Time: 9:30 AM
Date Submitted: 07/03/08

Agenda Title: **Intergovernmental Revenue Agreement 0809074 with METRO to Provide Inmate Work Crews for Illegal Dumpsite Cleanup**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** N/A
Department: Sheriff's Office **Division:** Corrections
Contact(s): Brad Lynch
Phone: 503-988-4336 **Ext.** 84336 **I/O Address:** 503/350
Presenter(s): Consent Calendar

General Information

1. What action are you requesting from the Board?

Approval of government contract 0809074.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Under the terms of this agreement the County, through the Sheriff's Office agrees to provide supervised inmate work crews to clean up illegal dumpsites within the jurisdictional boundaries of METRO. The Sheriff's Office has been providing these services to METRO since 1994. The agreement shall be effective from July 1, 2008 through June 30, 2009.

3. Explain the fiscal impact (current year and ongoing).

Metro agrees to compensate the Sheriff's Office for providing this service in an amount not to exceed \$185,409.00. This funding has been anticipated and is part of the FY 09 budget.

4. Explain any legal and/or policy issues involved.

This agreement has been reviewed by the County Attorney's office.

5. Explain any citizen and/or other government participation that has or will take place.

None other than stated above.

Required Signature

**Elected Official or
Department/
Agency Director:**

/s/ Bernie Giusto

Date: 07/02/08

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 0809074

Pre-approved Contract Boilerplate (with County Attorney signature) Attached Not Attached

Amendment #: _____

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Expenditure Contract
<input type="checkbox"/> PCRBR Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	<input type="checkbox"/> PCRBR Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	<input checked="" type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement
<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> INTER-DEPARTMENTAL AGREEMENT (IDA)

Department: Sheriff's Office Division/ Program: Corrections Date: 06/23/08
 Originator: Chief Deputy Ronald Bishop Phone: 503-988-4300 Bldg/Room: 503/350
 Contact: Brad Lynch Phone: 503-988-4336 Bldg/Room: 503/350

Description of Contract: Provide inmate work crews for illegal dumpsite clean-up.

RENEWAL: PREVIOUS CONTRACT #(S) 0708053, 0607006, 0405125 EEO CERTIFICATION EXPIRES _____
 PROCUREMENT EXEMPTION OR CITATION # 46-0130(1)(f) ISSUE DATE _____ EFFECTIVE DATE _____ END DATE _____
 CONTRACTOR IS: MBE WBE ESB QRF State Cert# _____ or Self Cert Non-Profit N/A (Check all boxes that apply)

Contractor	Metro Solid Waste & Recycling			Remittance address (If different)	
Address	600 NE Grand				
City/State	Portland, Oregon				
ZIP Code	97232				
Phone	503-797-1700				
Employer ID# or SS#					
Contract Effective Date	<u>07/01/08</u>	Term Date	<u>06/30/09</u>		
Amendment Effect Date		New Term Date			
Original Contract Amount	\$ 185,409.00			Original PA/Requirements Amount	\$
Total Amt of Previous Amendments	\$			Total Amt of Previous Amendments	\$
Amount of Amendment	\$			Amount of Amendment	\$
Total Amount of Agreement \$	\$ 185,409.00			Total PA/Requirements Amount	\$

REQUIRED SIGNATURES:

Department Manager _____	DATE _____
County Attorney <u>[Signature]</u>	DATE <u>07/03/08</u>
CPCA Manager _____	DATE _____
County Chair <u>[Signature]</u>	DATE <u>07.17.08</u>
Sheriff <u>[Signature]</u>	DATE <u>7-2-08</u>
Contract Administration _____	DATE _____

COMMENTS: _____

APPROVED : MULTNOMAH COUNTY BOARD OF COMMISSIONERS

LYNCH Brad B

From: WEBER Jacquie A [jacquie.a.weber@co.multnomah.or.us]
Sent: Tuesday, July 01, 2008 4:16 PM
To: LYNCH Brad B
Cc: DUNAWAY Susan M
Subject: RE: Contract Review Request - METRO Investigations & Work Crews

These contracts may be circulated for signature.

From: LYNCH Brad B
Sent: Wednesday, June 25, 2008 8:51 AM
To: WEBER Jacquie A
Cc: DUNAWAY Susan M
Subject: Contract Review Request - METRO Investigations & Work Crews

Good morning Jacquie. Here I have the APRs, CAFs, and IGAs from Metro for both the investigations and work crews services for FY09.

Thank you, Brad

Brad Lynch

Multnomah County Sheriff's Office
Fiscal Unit
501 SE Hawthorne Blvd, STE 350
Portland, OR 97214
Phone (503) 988-4336
Fax (503) 988-4317
email: brad.lynch@mcsso.us

<http://www.mcsso.us/>

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INTERGOVERNMENTAL AGREEMENT

MCSO Contract No. _____

Metro Contract No. 928652

THIS AGREEMENT is made pursuant to the authority found in ORS 190.010, et seq and ORS 206.345 between MULTNOMAH COUNTY ("COUNTY") by and through the Multnomah County Sheriff's Office (MCSO) and METRO.

RECITALS

WHEREAS, the COUNTY is a political subdivision of the State of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq; and

WHEREAS, MCSO is authorized to enter into intergovernmental agreements jointly with and on behalf of the COUNTY, pursuant to ORS 206.345(1); and

WHEREAS, METRO is a municipal corporation formed and operating under state law and the METRO Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq; and

WHEREAS, METRO desires to contract with the COUNTY for certain law enforcement functions to be performed by MCSO; and

WHEREAS, the COUNTY is able and prepared to provide the services required by METRO under the terms and conditions set forth in this Agreement; therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

ILLEGAL DUMPSITE CLEANUP - INMATE WORKCREWS

1. The COUNTY shall provide a minimum of 1.75 FTE corrections deputy ("supervisor") to supervise inmate work crews to clean up illegal dumpsites within METRO's jurisdiction. The COUNTY may provide additional personnel up to the "not to exceed" amount stipulated in section 25 of this Agreement.
2. The COUNTY shall clean up illegal dumpsites only as assigned by METRO.
3. The COUNTY shall provide supervisors trained and experienced in managing inmate work crews to supervise each work crew.
4. The COUNTY shall ensure that the supervisors are certified by the State's Department of Public Safety Standards and Training.
5. The COUNTY shall select for the work crews only sentenced inmates eligible for outside public works who pose a minimal threat to the public.
6. The COUNTY shall provide a trained replacement if a supervisor is absent for more than one day.
7. METRO shall provide one self-contained work crew vehicle furnished with equipment and tools appropriate to perform the work under this Agreement. The



INTERGOVERNMENTAL AGREEMENT

COUNTY shall use a County vehicle if an additional vehicle is required to perform the work under this Agreement.

8. METRO shall train each supervisor assigned to work under this Agreement to identify, collect, and retain evidence that may lead to successful prosecutions of persons dumping waste illegally.
9. The clean-up of illegal dumpsites containing known or suspected hazardous materials is beyond the scope, skill, training, and experience of the inmate work crews. If an inmate work crew discovers known or suspected hazardous materials at an illegal dump site, the supervisor shall immediately cease the clean-up activity until the appropriate hazardous materials authority inspects the site and declares or makes it safe.

PERSONNEL MATTERS

10. For the purpose of this Agreement, one (1.0) FTE position means an employee who is regularly scheduled to work at least 40 hours per week performing the services required under this Agreement.
11. The COUNTY shall ensure that any corrections deputy assigned as a supervisor has sufficient experience to perform the duties required by this Agreement. If a corrections deputy has not served previously as a supervisor under this Agreement, the COUNTY shall require the corrections deputy to observe a supervisor performing the duties under this Agreement for at least two weeks before beginning duty under this Agreement.
12. The supervisors shall be and remain COUNTY employees. The COUNTY shall ensure that the supervisors perform their duties in accordance with the administrative and operational procedures of MCSO.
13. METRO has the right, upon request and for cause stated, to have a supervisor removed from assignment under this Agreement and replaced by other supervisor meeting the requirements of this Agreement.
14. METRO will not pay wages, salaries, or other compensation directly to the supervisors performing services under this Agreement or for any other liability not provided for in this Agreement.
15. The COUNTY shall maintain Workers' Compensation insurance coverage for the supervisors and inmate work crews either as a carrier insured employer or a self-insured employer as provided in ORS Chapter 656.
16. The collective bargaining agreement between the supervisors and the COUNTY ("collective bargaining agreement") governs all matters related to benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment of the supervisors.
17. The collective bargaining agreement and the County personnel rules govern all labor disputes arising out of this Agreement.
18. The payment METRO makes to the COUNTY under this Agreement shall not include any amount for retroactive salary adjustments negotiated under the collective bargaining agreement.



INTERGOVERNMENTAL AGREEMENT

19. The supervisors may be absent from duty for various reasons, including but not limited to vacation, holidays, illness, training, leave of absence, and administrative leave. The COUNTY shall provide METRO with immediate notice of any absence of a supervisor. If the absence is planned, the COUNTY shall inform METRO as soon as the COUNTY is aware of the absence, but in any case no fewer than two weeks before the absence begins.

EQUIPMENT PURCHASE, USE, AND DISPOSITION

20. The parties will purchase materials and supplies necessary for this Agreement as provided in this section. "Materials" includes items with a unit cost of \$1,000 or more and "supplies" includes items with a unit cost of less than \$1,000.
21. METRO shall purchase all materials and supplies necessary for the performance of this Agreement. The COUNTY shall purchase any materials and supplies required for law enforcement functions not directly related to the clean-up of illegal dumpsites.
22. METRO shall own all vehicles and equipment it purchases for this Agreement, including without limitation capital equipment. The COUNTY shall use METRO's vehicles and equipment only to perform its duties under this Agreement and shall not use them for any other purpose without authorization from METRO. Except as provided in paragraph 23, upon termination of this Agreement the COUNTY shall return all materials and supplies to METRO.
23. Consistent with METRO Code Chapter 2.04.064, upon termination of this Agreement METRO may grant to the COUNTY an option to purchase from METRO any or all remaining materials and supplies purchased for this Agreement at a price mutually agreed upon by the parties, not to exceed the fair market value of the items at the times of purchase. The COUNTY agrees to give METRO notice of the COUNTY's intent to exercise this option within 60 days following termination of this Agreement.

CONTRACT COSTS

24. METRO shall pay the COUNTY for all costs as set forth in this Agreement. By February 1 of each year, the COUNTY shall provide METRO with a good faith projection of the cost of this Agreement for the subsequent term of the Agreement. The parties shall agree on the amount paid by METRO for the term of the Agreement before each anniversary date of the execution of this Agreement.
25. For the Agreement beginning July 1, 2008, METRO will pay the COUNTY no more than ONE HUNDRED EIGHTY-FIVE THOUSAND, FOUR-HUNDRED-NINE AND NO/100'S DOLLARS (\$185,409.00). This amount includes all fees, costs, and expenses to which the COUNTY is entitled for the term of this Agreement.
26. All costs listed on Exhibit A, which is the Budget for the Agreement prepared by METRO, are on a "not to exceed" basis. The COUNTY shall submit itemized billings to METRO no more than fifteen (15) days after the end of each quarter of the contract year, and METRO shall make payment to COUNTY within thirty (30) days of receipt of approved billings.



INTERGOVERNMENTAL AGREEMENT

INDEMNIFICATION AND LIABILITY

27. The COUNTY shall indemnify, defend, and hold harmless METRO and its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of the supervisors and inmate work crews acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.
28. METRO shall indemnify, defend, and hold harmless the COUNTY and its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of METRO acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.

DISPUTE RESOLUTION

29. If a claim, controversy, or dispute arises out of this Agreement, the complaining party shall give written notification to the other party of the nature of the claim and the remedy requested within ten (10) days of the incident that forms the basis of the dispute.
30. Oregon law shall govern this Agreement. The parties shall resolve all claims, controversies, or disputes that arise out of this Agreement by arbitration in accordance with the arbitration rules of the Arbitration Service of Portland or the American Arbitration Association. The party who first initiates arbitration shall designate an arbitration service by filing a claim in accordance with the rules of the organization selected. Such arbitration shall take place in Portland, Oregon and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

CONTRACT ADMINISTRATION

31. The Multnomah County Sheriff or his designated representative will represent the COUNTY in all matters pertaining to administration of this Agreement.
32. METRO designates its Solid Waste & Recycling Department Director or his designee to represent METRO in all matters pertaining to administration of this Agreement.
33. Any notice or notices provided for by this Agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

Multnomah County Sheriff
501 SE Hawthorne Blvd., Ste 350
Portland, Oregon 97214

Solid Waste & Recycling Department Director
METRO
600 NE Grand Avenue
Portland, Oregon 97232



INTERGOVERNMENTAL AGREEMENT

CONTRACT TERM, MODIFICATION, AND TERMINATION

- 34. This Agreement shall be effective from the 1st day of July 2008, and shall run through the 30th day of June 2009, unless extended.
- 35. Either party to this Agreement may terminate the Agreement by giving the other party not less than ninety (90) days written notice.
- 36. This Agreement may be modified or amended by agreement of the parties. Any modification to this Agreement shall be effective only when incorporated herein by written amendments and signed by both METRO and the COUNTY.
- 37. This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding whatsoever.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

MULTNOMAH COUNTY

METRO

By: Bruce Lister (RL)
 Sheriff

By: _____
 Michael Jordan,
 Chief Operating Officer

Date: 7-2-08

Date: _____

By: Ted Wacker
 County Chair or Designee

Date: 07.17.08

APPROVED AS TO FORM:
 Multnomah County Attorney

APPROVED AS TO FORM:
 Metro Attorney

By: [Signature]
 Assistant County Attorney

By: _____
 Michelle Bellia,
 Assistant Metro Attorney

Date: 07/03/09

Date: _____



INTERGOVERNMENTAL AGREEMENT

EXHIBIT A

CONTRACT BUDGET

		Work Crew (1.75 FTE)
50236	IG-Charges for Services	(184,355)
	Total Revenues	(184,355)
60000	Permanent	107,390
60130	Salary Related Expenses	38,574
	Subtotal	145,964
60140	Insurance	27,007
	Total Personnel Costs	172,971
60170	Professional Services	1,056
	Total M&S	1,056
60350	Indirect Costs (cntrl)	3,603
60355	Indirect Costs (dptml)	7,779
	Total ISR's	11,382
60530	Building	
60550	Equipment	
93002	Assess Labor	
93007	Assess Int Service Exp	
93019	Assess Shared Svcs	
	Total Budget	185,409

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MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (Budget Modification)

APPROVED : MULTNOMAH COUNTY
 BOARD OF COMMISSIONERS
 AGENDA # C-3 DATE 07-17-08
 DEBORAH L. BOGSTAD, BOARD CLERK

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: C-3
Est. Start Time: 9:30 AM
Date Submitted: 07/08/08

BUDGET MODIFICATION: HD-09-01

Agenda Title: **Budget Modification HD-01 Authorizing One Position Reclassification within Integrated Clinical Services Division of the Health Department as Determined by the Class/Comp Unit of Central Human Resources**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** N/A

Department: Health Department **Division:** Integrated Clinical Services

Contact(s): Lester A. Walker Budget & Finance Manager

Phone: (503) 988-3663 **Ext.** 26457 **I/O Address:** 167/2/210

Presenter(s): N/A (Consent Calendar)

General Information

1. What action are you requesting from the Board?

Approval of one staff adjustment resulting from the re-classification of an existing position. This change will not increase the Health Departments total FTE nor will there be any financial impact on the budget.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Reclassify a 1.0 Health Information Technician Senior to a 1.0 Operations Supervisor in the Integrated Clinical Services division of the Health Department. Class Comp approved reclassification effective 6/5/2008 (reclass # 998) to better suit the responsibilities of the position. This change is part of a reorganization within the centralized scanning and indexing unit of Medical Records; the position will supervise five Office Assistant 2s and the planned addition of six Health Information Technicians later this year. The change will move 1.0 FTE from Local 88 to exempt non-represented, but will have no financial impact for FY09.

3. Explain the fiscal impact (current year and ongoing).

There is no fiscal impact.

4. Explain any legal and/or policy issues involved.

N/A

5. Explain any citizen and/or other government participation that has or will take place.

N/A

ATTACHMENT A

Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why?**
No change in revenues
- **What budgets are increased/decreased?**
The Health Department's FTE budget will not change for FY09.
There is no financial impact from this change.
- **What do the changes accomplish?**
Change of classification of position 709552 to better fit the duties of that position within the Health Department as determined by the Class/Comp Unit of Central Human Resources.
- **Do any personnel actions result from this budget modification? Explain.**
Reclassify a 1.0 Health Information Technician to a 1.0 Operations Supervisor in the Integrated Clinical Services division of the Health Department.

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**
N/A
- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**
N/A
- **If a grant, what period does the grant cover?**
N/A
- **If a grant, when the grant expires, what are funding plans?**
N/A

NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.

ATTACHMENT B

BUDGET MODIFICATION: HD-09-01

Required Signatures

**Elected Official or
Department/
Agency Director:**

Lillian Shirley

Date: 07/01/08

Budget Analyst:

Angela Burdine

Date: 07/08/08

Department HR:

Patricia Miller Poe

Date: 07/01/08

Countywide HR:

Date: _____

ANNUALIZED PERSONNEL CHANGE										
Change on a <u>full year</u> basis even though this action affects only a part of the fiscal year (FY).										
							ANNUALIZED			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	6322	64700	408502	Health Info. Tech Senior	709552	(1.00)	(46,994)	(13,614)	(14,003)	(74,611)
1000	9025	64700	408502	Operations Supervisor	709552	1.00	46,994	13,614	14,003	74,611
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										0
TOTAL ANNUALIZED CHANGES						0.00	0	0	0	0

Reclass 998
Reclass 998

CURRENT YEAR PERSONNEL DOLLAR CHANGE										
Calculate costs/savings that will take place in <u>this FY</u> ; these should explain the actual dollar amounts being changed by this Bud Mod.										
							CURRENT YEAR			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	6322	64700	408502	Health Info. Tech Senior	709552	(1.00)	(46,994)	(13,614)	(14,003)	(74,611)
1000	9025	64700	408502	Operations Supervisor	709552	1.00	46,994	13,614	14,003	74,611
										0
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TOTAL CURRENT FY CHANGES						0.00	0	0	0	0

Reclass 998
Reclass 998



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: C-4
Est. Start Time: 9:30 AM
Date Submitted: 07/09/08

Agenda Title: **ORDER Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: Next Available **Amount of Time Needed:** N/A
Department: DCHS **Division:** MHASD
Contact(s): Jean Dentinger/Karen Zarosinski
Phone: (503) 988-5464 **Ext.** 27297 **I/O Address:** 167/1/520
Presenter(s): Consent Calendar

General Information

1. **What action are you requesting from the Board?**
 Requesting adoption of order and approval of designees. The Mental Health and Addiction Services Division is recommending approval of the designees in the accordance with ORS 426.215.
2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**
 Outpatient mental health agencies depend upon certain staff having the ability to assess clients for "Director Designee Custody". This certification allows the designee to direct a police officer or secure transportation provider to take into custody any individual with mental health issues who is found to be dangerous to self or to others. Police then transport the individual to a hospital or other approved treatment facility for further evaluation. As agencies experience staffing turnover or increases, new staff needs to be trained and certified as designees.
3. **Explain the fiscal impact (current year and ongoing).**
 None.
4. **Explain any legal and/or policy issues involved.**
 In accordance with ORS 426.215.

5. Explain any citizen and/or other government participation that has or will take place.

None.

Required Signature

**Elected Official or
Department/
Agency Director:**



A handwritten signature in cursive script, appearing to read "Joanne Fulmer". The signature is written in black ink and is positioned above a horizontal line.

Date: 07/09/08

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. _____

Authorizing a Designee of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

The Multnomah County Board of Commissioners Finds:

- a) If authorized by a county governing body, a designee of a mental health program director may direct a peace officer to take into custody a person whom the designee has probable cause to believe is dangerous to self or others and whom the designee has probable cause to believe is in need of immediate care, custody, and treatment of mental illness.
- b) There is a current need for specified designees of the Multnomah County Mental Health Program Director to have the authority to direct a peace officer to take an allegedly mentally ill person into custody.
- c) The designee listed below has been specifically recommended by the Mental Health Program Director and meets the standards established by the Mental Health Division.

The Multnomah County Board of Commissioners Orders:

1. The individual listed below is authorized as a designee of the Mental Health Program Director for Multnomah County to direct any peace officer to take into custody a person whom the designee has probable cause to believe is dangerous to self or others and whom the designee has probable cause to believe is in need of immediate care, custody or treatment for mental illness.
2. Added to the list of designees are:

Christa Hines
Sherie Chaney

ADOPTED this _____ day of _____, 2008.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLES, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

BY _____
Patrick Henry, Assistant County Attorney

SUBMITTED BY:
Joanne Fuller, Director, Dept. of County Human Services



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
 Agenda Item #: R-1
 Est. Start Time: 9:30 AM
 Date Submitted: 07/08/08

Agenda Title: Board Briefing on Management of Large Contracts Audit Report

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 Amount of Time Needed: 30 minutes
 Department: Non Departmental Division: Auditor's Office
 Contact(s): Judy Rosenberger
 Phone: 503 988-3320 Ext. 83320 I/O Address: 503/601
 Presenter(s): LaVonne Griffin-Valade, Sarah Landis and Mark Ulanowicz

General Information

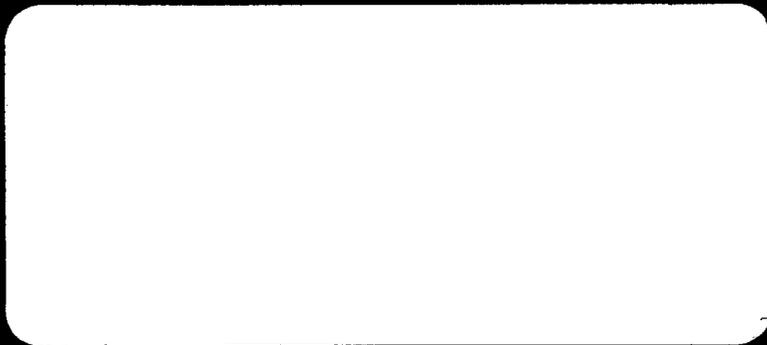
1. What action are you requesting from the Board?
 Board Briefing
2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.
 Auditors will brief the Board on the audit of the County's management of large contracts.
3. Explain the fiscal impact (current year and ongoing).
4. Explain any legal and/or policy issues involved.
5. Explain any citizen and/or other government participation that has or will take place.

Required Signature

Elected Official or
 Department/
 Agency Director:

LaVonne Griffin-Valade

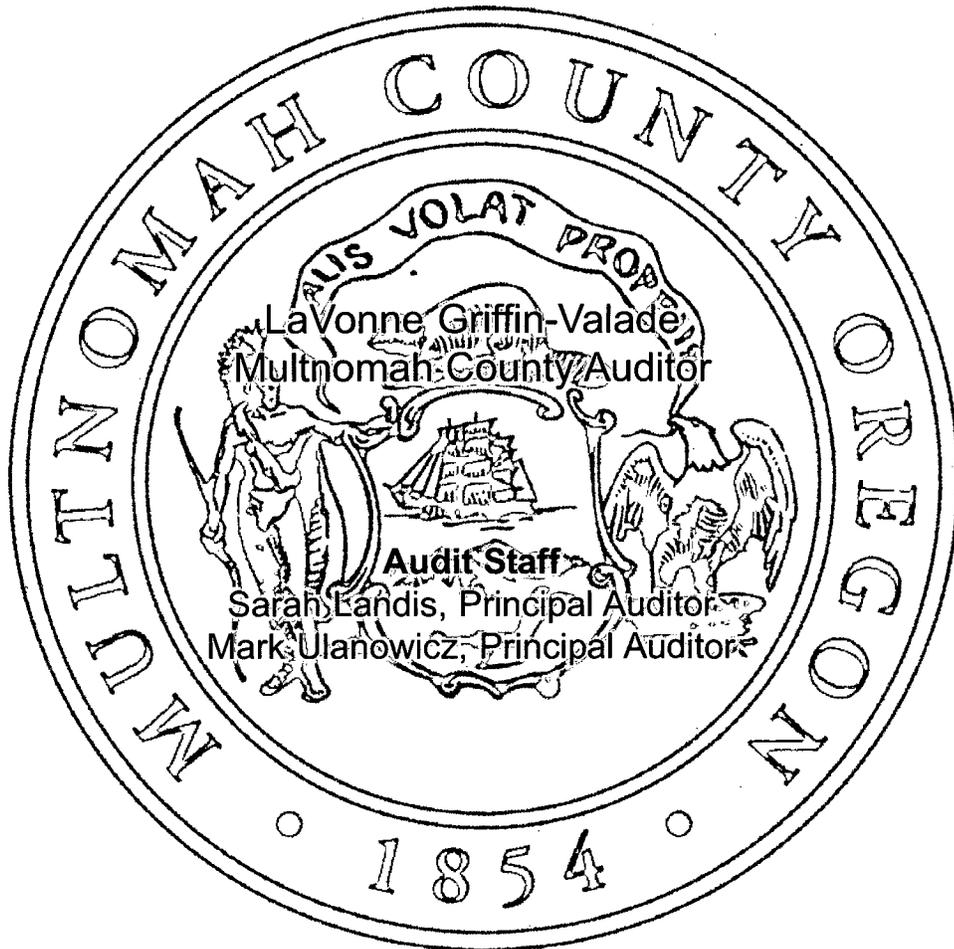
Date: July 11, 2008



MULTNOMAH COUNTY AUDITOR
PORTLAND, OREGON

Management of Large Contracts
Audit Report

July 2008



We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



LaVonne Griffin-Valade
Multnomah County Auditor

501 SE Hawthorne Room 601
Portland, Oregon 97214
Phone: (503) 988-3320

MEMORANDUM

Date: July 2, 2008

To: Ted Wheeler, Multnomah County Chair
Maria Rojo de Steffey, Commissioner, District 1
Jeff Cogen, Commissioner, District 2
Lisa Naito, Commissioner, District 3
Lonnie Roberts, Commissioner, District 4

From: LaVonne Griffin-Valade, County Auditor *LaVonne Griffin-Valade*

Subject: Management of Large Contracts Audit

The attached report covers our audit of Multnomah County's management of large contracts. In FY2007, the county spent over \$276 million on contracts, or nearly 40% of total spending in that year alone. Contracting carries significant risk, particularly with contracts of high dollar amounts and/or when complicated services are being provided to vulnerable populations. We believe the time is right to fundamentally re-evaluate the way in which contracts are managed, particularly given the exposure now facing the county as it works to address the financial instability of Cascadia Behavioral Healthcare.

We concluded that there were a number of areas where processes and oversight must be strengthened for the county to successfully manage its contracting system. We identified five problem areas that will require substantial support and commitment on the part of county leadership, departments, and line staff to re-think, re-tool, and implement needed improvements. Further, this commitment will require a major effort to build capacity and institutionalize many of the essential elements of contract administration that are currently missing.

We also recommend that the county build a contracting system that meets its business needs and clarifies roles, responsibilities, and accountability. Finally, we recommend that the county focus more proactively on issues of expected performance, both for contractors and for the contracting system overall.

We appreciate the cooperation and assistance we received from county staff throughout the audit.

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Audit Report
Management of Large Contracts – June 2008

Why Audit Large Contracts?

Contracting is a major business risk for Multnomah County:

- Contracts represent nearly 40% of county expenditures
- Many vulnerable clients are served through complex contracts that are challenging to manage
- Recommendations from prior audits have not been implemented

The objectives of this audit were to check the status of contracting-related recommendations from prior audits and to identify potential areas of risk and concern in Multnomah County's management of large contracts. While the audit covers the contracting process generally, we focused on very large contracts (over \$1 million per year) and on vendors who do a high volume of business with the county. Such contracts represent substantial investments and significant hazards for the county. They need careful, systematic management to ensure quality and value are provided.

Summary of Findings

While the county has accepted the increased risk of contracting for services rather than providing them in-house, we believe it has not done enough to structure its contracting system to minimize this risk. With a large and important part of the county's business conducted via contracts, careful contract management should be a high priority. However, we found that this was not uniformly the case. The county has made little progress toward implementing most of the contracting-related audit recommendations over the past 8 years. Some improvements have been made, but these have primarily been at the margins, without widespread or systemic changes. Organizational challenges in the form of budget reductions and re-organizations, as well as a lack of direction from top county managers, have all contributed to the current situation.

In this review, we found that:

- Audit recommendations remain largely unimplemented.
- Contracting in the county is intended to be directed by central policy and approval, but operates in a largely decentralized fashion, leading to a disconnect between expectation and practice.
- The county does not consistently apply commonly accepted contracting best practices.

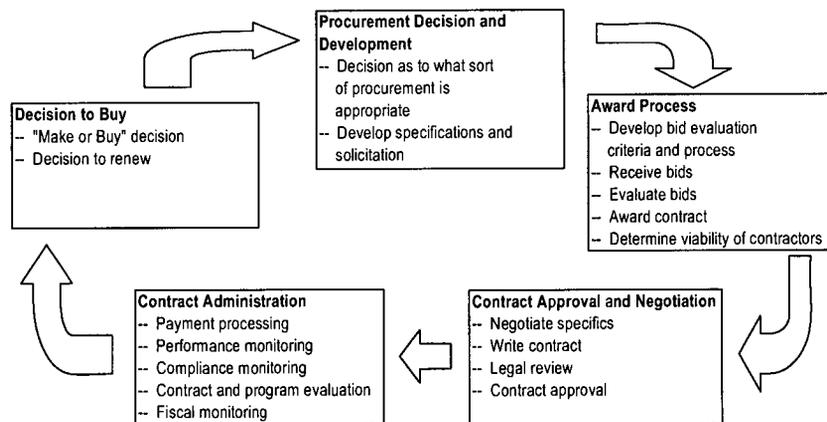
- The county does not have a systematic or comprehensive approach to managing the risks associated with contracting.
- The county lacks contract administration procedures and controls to ensure that it is receiving the services it pays for, vendors are held accountable, and necessary information is collected for program improvement.

Contracting Overview

Contracts play an important role in the way Multnomah County meets its statutory obligations and provides services to its clients and customers. Contracting is increasingly viewed as a way to provide services more cheaply, but it is not always clear whether savings are as high as anticipated or whether contracted services meet expectations.

Figure 1 shows what a model contracting management cycle *should* look like. The process begins with a “make or buy” decision, followed by development of specifications, procurement, and award of the contract. Management of the contract then moves into the phase commonly known as contract administration, where compliance and performance are monitored, payments are made and the performance of the contract is evaluated. The results of the evaluation should then feed into the ongoing discussion of whether to continue to contract in the future and whether to continue with the existing vendor.

Figure 1: Model Contract Management Cycle



Source: Auditor's Office

Risk is inherent in each phase of the contracting process. From procurement through contract signing, risks are generally associated with finding qualified vendors to provide services, defining specifications, securing a fair price, and writing a contract that is sufficient to protect the county. After the contract has been awarded, risk moves to vendor compliance, performance, and billing. Because the county is not providing these services directly, it must have a system in place to mitigate or manage the intrinsic risks in contracting.

Purchasing via contracts can be relatively straightforward with limited risk, or very challenging with much higher risk, depending on the nature of the goods or services being purchased. Contract purchases of relatively common services (such as legal or construction services) and commodity goods

(such as gasoline or computers) tend to be more straightforward because:

- The goods or services are widely available from a variety of vendors, ensuring competition on price and quality.
- Specifications are well understood, so both the purchaser and vendor are clear on what is being purchased.
- Measures of quality and/or success are understood and data to measure performance are available.

Purchasing human services, such as addiction or mental health treatment, housing, services for seniors, etc., via contracts is more challenging because:

- Fewer providers exist to perform services, making it more difficult to establish a fair price and limiting the leverage of the purchaser.
- Clear specifications are hard to develop, making it harder for purchaser and provider to have a clear understanding of what is being purchased.
- Success and quality are difficult to measure, decreasing the likelihood of including or enforcing performance requirements in the contract.

Multnomah County Contracting Profile

In Multnomah County, contracts account for nearly 40 percent of county expenditures, more than \$276 million in Fiscal Year (FY) 2007. The Department of County Human Services (DCHS) is the single largest user of contracts in the county, accounting for 45 percent of total contracting dollars in FY2007. DCHS uses contracts to provide human services to some of the county's most vulnerable clients, such as individuals with mental illness, alcohol and drug addictions, developmental disabilities, and those in poverty. These human service contracts are also some of the most difficult to develop and administer because of the small size of the provider pool, murky or process-oriented specifications, and difficult to measure outcomes.

**Figure 2: Comparison of Multnomah County Contracts to Total Expenditures
FY2002–FY2007**

(in millions)	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total Expenditures*	\$677.0	\$658.5	\$672.0	\$675.6	\$692.7	\$730.3
Contracts*	\$282.5	\$285.7	\$277.2	\$272.2	\$274.9	\$276.3
Contracts as Percent of Expenditures	41.7%	40.7%	41.3%	40.3%	39.7%	37.8%
DCHS Contracts	\$129.0	\$109.0	\$106.6	\$114.4	\$119.2	\$123.0
DCHS Contracts as Percent of Contracts*	45.7%	38.2%	38.4%	42.0%	43.4%	44.5%

* Contracts and expenditures do not include transfers to schools or for the roads fund.

Audit Results

Viewed as a system, we found that Multnomah County contracting lacks consistent, organization-wide controls across the contracting spectrum, but particularly during the post-procurement phase. This lack of adequate system-wide controls does not necessarily lead to contracting failure. However, it does increase the risk that failure will occur, and that the county will be ill-prepared to recognize or act on vendor performance problems, protect its assets, and ensure that clients receive quality services. This risk is the primary effect of the combination of problems identified in the findings below.

Finding 1: Prior Audit Implementation

Summary: Many of the audit recommendations we have made in the past identified needed improvements in how the county manages its contracts, but these remain unimplemented.

A number of previous audits reported on concerns with elements of the county's contracting system. The findings are generally related to three areas:

- Lack of leadership, appropriate authority, and systems-oriented approach to contract management;
- Low priority placed on monitoring and evaluation; and
- Documentation and procedural problems.

The largest and most wide-reaching of these audits, the *Human Services Contracting Audit*, was issued in 2000. A county-wide contracting team adopted the policy framework recommended in that audit which was then formally approved by the Board of County Commissioners. However, management never implemented most of the directives recommended in the audit and established in Board policy. Contracting recommendations from other audits have also gone largely unheeded. (See Appendix A).

We identified a number of barriers that contributed to the failure to implement audit recommendations or make other systematic improvements to the county's contracting system:

- Responsibility for leadership and implementation was identified in policies, but this responsibility has not been sufficiently supported to ensure that reforms were implemented.
- County culture resists change and conformity to organization-wide procedures.
- Multiple reorganizations and budget cuts curtailed attempts at innovation.

Finding 2: Organization

Summary: Although contracting authority in the county is designed to be directed centrally, it operates in a largely decentralized manner. This has created a fragmented, unresponsive, and inconsistent contracting system.

The county's contracting process has elements of both a centralized and a decentralized system; it does not appear to be rationally designed to best support contracting goals. Roles and responsibilities throughout the system are not always well-defined and there has not been clear leadership support to enforce those roles. Central Procurement and Contract Administration (CPCA) – a unit within the Department of County Management – technically possesses the authority to direct county-wide contracting policy and approve contracts throughout the county. However, it has not always been able to effectively enforce policies or initiatives because of departments' resistance and lack of adequate leadership support. Moreover, the departments have historically been responsible for their own contracting, heightening resistance to changing the balance of power between the central and department contracting units.

For procurement, most rule-setting, review, and compliance activities are conducted at the central level while planning, development, and accountability activities occur within departments or divisions. Contract administration – the set of activities that take place after a contract has been issued – is entirely at the discretion of departments or divisions. This is not a hub and spoke system, with a strong central unit directing the work of smaller contracting sub-units located within departments. Rather, departments can organize, staff, and direct their own contracting units or simply assign contracting responsibilities as add-on work for program staff. This creates a lack of consistency between departments or even among divisions within departments in how and whether contracting activities are carried out.

There is also a disconnect between existing county-wide procedures for contracting and actual practice. We found examples of weak controls around procurement exemption requests, payments on unsigned contracts, and lack of implementation on key initiatives that were designed to improve the contracting system. These examples are discussed throughout the report.

Finding 3: Best Practices

Summary: Many of the practices that help ensure effective contracting are inconsistently applied.

We drew a representative sample of large individual contracts that were either valued at more than \$1 million or were Class II (greater than \$150,000) with vendors that did more than \$1 million worth of business with the county during FY2007. We compared the contracts in this sample to established contracting best practices using an adapted contract review tool developed by the National State Auditor's Association. This tool identifies best practices in the areas of: decision to contract, performance requirements, request for proposal process, award process, award decision, contract provisions, and monitoring. The sample was made up of 57 procurements and associated contracts, selected from 52 vendors that matched our criteria. In addition to the file reviews, we conducted interviews with department staff to identify the contract management practices they had in place.

Across the county, we found an overall lack of uniformity in the quality of contracting processes and inconsistent alignment to best practices. Areas of concern we identified during the review include:

- The decision to contract, rather than provide the service directly, does not appear to always be deliberate nor is it documented.
- Performance and reporting requirements are not adequate in many cases.
- Monitoring responsibilities are often not adequately identified and resourced.
- Contract enforcement provisions are spotty.
- Payments are rarely tied to performance.
- There is no system for incorporating vendor performance back into contract management and future procurement decision making.

Finding 4: Risk

Summary: The county does not have a systematic or comprehensive approach to managing the risks associated with contracting.

Contract documents are an important part of mitigating risk in the purchase of goods and services by any organization. However, the existence of a contract alone is not sufficient to ensure that risk is being managed effectively. Successful management of contract risk requires system-wide controls, the

thoughtful deployment of resources and expertise, and effective controls over key processes in writing contracts and paying vendors. We found that in looking at the overarching county contracting system, controls are weak in most of these categories across the spectrum of contracting processes.

We reviewed the county's contracting system using COSO¹, an internationally accepted tool used to assess internal controls. Using the following overarching criteria to test the county's approach to contracting, we found controls to be fragmented and inconsistent at best:

- **Control Environment** – The county has dispersed control centers that make it difficult to set the tone, deliver a common message, or influence the “control consciousness” of employees throughout the organization.
- **Risk Assessment** – The county addresses some procedural and legal risks with contracting, but does not take a comprehensive approach to risk assessment that would include risks to the organization or its performance.
- **Control Activities** – The county has some controls over the procurement process, but strategic and performance control activities are generally missing or ineffective at the county-wide level.
- **Information and Communication** – Formal communication methods and existing technology are inadequate for data collection and sharing system-wide.
- **Monitoring** – Efforts to monitor and assess the performance of the contracting system are limited, sporadic, and not focused on organization-wide performance issues.

We also found that county contracting resources are not consistently allocated according to risk, with the majority of resources directed at the front-end of the contracting cycle: the procurement process and the development of the written contract. Even then, little effort is expended to ensure that providers are financially and organizationally able to fulfill the requirements of the contract. Contract administration and monitoring – areas of equal if not greater risk – receive no central resources aside from limited fiscal monitoring of some human services vendors.

During our sample review of contract files, we noted a number of common practices that can be vehicles to increase flexibility and potential savings, but may also represent short-cuts around the established rules that are designed to protect the county. We did not find intrinsic problems with these practices or with CPCA's handling of them, however introducing greater flexibility to the system by definition means reducing the level of control and oversight over these processes. In order to better mitigate risks, it may be necessary to increase controls later in the contracting process, such as during monitoring, when such tools are used. Each of these is discussed below:

- **Exemptions.** 46% of sampled contracts were based either wholly or partially on exemptions from the procurement process. Many of these are based on notices of intent that received only one respondent and vendors who are named in funding documents. There are also exemptions granted for convenience, to provide the county more time to prepare a procurement or because a program does not have the expertise, time, or desire to conduct a procurement process. However, exemptions also bypass requirements that help ensure that the most qualified vendor receives the contract for the fairest price via competitive procurement. CPCA exercises scrutiny over exemption requests to ensure they are permissible, but we also encountered a perception among departments that it was often easier

¹ In 1992, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission developed an integrated control framework, which established a common definition of internal controls, standards, and criteria to use in assessing control systems.

to ask for an exemption or to extend a current exemption than to adequately plan for and prepare a new competitive procurement.

- Requirements spending. 55% of sampled contracts were either wholly or partially funded through requirements spending, which allows the county to pay only for services it uses, as opposed to paying a set monthly or annual amount in exchange for providing a set service. Such contracts provide greater flexibility, but they also avoid the process of approving amendments unless there is a change in the scope of work. Because the amount shown in a contract is generally a ceiling and because multiple vendors are often awarded such contracts, there is a great deal of department discretion in how work and payments are distributed.
- Request for Programmatic Qualifications. 20% of contracts reviewed were originally based on RFPQs, which are similar to RFPs except in award determination. Vendors submit information and are rated as either qualified to provide a service or not. Programs may then make the determination about who is awarded a contract. There is no neutral third party (such as CPCA) to oversee and facilitate the award process, and documentation of award criteria is not maintained in the procurement file.

Finally, we found that the county lacks some process controls to ensure that it has important risk management tools in place: a competitive procurement and an executed (signed by both parties) contract.

- Contracts are frequently not finalized until after their effective starting date. The county makes payments on some of these contracts before they are signed, which is against county policy. These “retroactive” contracts represented 96% of our FY2007 sample. Although progress has been made since that time to significantly reduce this figure, additional controls could be put in place both centrally and in each department to ensure retroactive contracts are minimized.
- We initially found 58 outline agreements in the county’s accounting system in FY2007 for which contracts were not submitted for approval or signed, meaning that no record of these contracts existed with CPCA. Although most of these have been accounted for, they represent a control weakness in the contracting system in that payments can be made to vendors on what should be a contract without having to go through appropriate channels to approve the contract. The county could prevent these payments from occurring by activating security features in its accounting system (SAP), but this control has not yet been implemented.

Finding 5: Contract Administration

Summary: The county lacks system-wide contract administration procedures and controls to ensure that it is receiving the services it pays for, vendors are held accountable, and necessary information is collected for program improvement.

Contract administration refers to the oversight that should occur after a contract is signed and the contracted work commences. It can include payment processing, billing monitoring, performance monitoring, fiscal monitoring, contract and program evaluation, processing changes to the contract, working with vendors to ensure adherence to contract specifications, contract close out, and decision making for renewals. Because it is during this period that services are actually provided and payments are made to vendors, it is arguably the point of highest contracting risk.

The county does not have organization-wide standards or expectations for contract administration, nor does it deploy central resources to this end of the contracting spectrum. As a result, the county

has no way of consistently ensuring that it is getting value for its contracted dollars or that clients are receiving necessary services. Additionally, vendors who contract with multiple departments confront a montage of assorted approaches to contracting, diverse performance expectations, and different monitoring activities from the various county departments or programs with which they contract.

Departments can do as much in the way of contract administration as they have resources for or as they deem appropriate. Indeed, some divisions have comprehensive contract administration procedures and follow schedules of monitoring, evaluation, technical assistance, and performance enforcement. There is a limited fiscal monitoring function administered through the Department of County Management, but this only covers those vendors that are required by the federal government to have a fiscal compliance review because they are sub-recipients of federal funds. Thus, current fiscal monitoring efforts are not system-wide, and are not generally sufficiently detailed enough to analyze the fiscal health of a vendor. Additional resources would be necessary to expand the current program to other vendors. Comprehensive approaches to contract administration are the exception rather than the norm and the fragmented state of such efforts means that the county can have no general or widespread assurance that its contracted dollars are being spent effectively or appropriately.

Finally, we recognized that there could be some potential role conflict among those who are charged with supporting and administering a contracted program while simultaneously monitoring and evaluating the performance of its provider. These staff may be in a position of providing both advocacy and accountability, calling into question their ability to remain unbiased in their assessments.

Recommendations

The recommendations for this audit integrate many of the unimplemented recommendations from previous audits. A summary of these recommendations is provided as Appendix A.

Build a contracting system that meets the county's business needs and clarifies roles, responsibilities, and accountability. Aspects of this system design should include:

- Strategic and risk-based approach to planning, implementing, and monitoring contracting county-wide
- Appropriate and meaningful authority to enforce adopted policies
- Resolution of the centralized vs. decentralized disconnect in the current system
- Procedures and expectations that span the life of a contract
- Measurable goals and objectives for contracting
- Deployment of procurement and contracting resources based on risk, i.e. large contracts/vendors

Increase the focus on issues of performance, both of vendors and of the contracting system overall. Such performance efforts should include:

- Adoption and enforcement of common contract administration procedures county-wide to ensure that all contracts have proper oversight once executed
- Training of contract administration staff to ensure dissemination and adoption of contract administration procedures
- Establishment and support of a centralized standard-setting, policy development, and enforcement function
- Development and support of a county-wide contractor performance information repository
- Implementation of a process to vet vendors' administrative qualifications prior to contract award
- Increasing controls over exceptions to the traditional procurement and contracting process (retroactive contracts, procurement exemptions, RFPQs, requirements spending, amendments)
- Monitoring of contracting system goals and performance
- Monitoring of individual contract escalation
- Expansion of fiscal monitoring program

Scope and Methodology

Through interviews and document review, we assessed progress on the most significant of prior audit contracting recommendations. In addition, we compared a sample of existing county contracts and contracting processes to established best practices. Finally, we examined risks and controls in county contracting processes. We focused on county-wide processes and on individual contracts valued at more than \$1 million in Fiscal Year (FY) 2007. We also looked at contracts with vendors that did more than \$1 million worth of business with the county during FY2007.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A

Most contracting related recommendations from prior audits released by this office have not been implemented and are still salient. Listed below are those we felt most in need of attention by county management.

- To ensure effective human services delivery and build successful contracting relationships, the county should formalize a strategic framework for contracting the delivery of human services.
- To increase stability and accountability in the system, the county should assign a single entity or position the responsibility for implementation and maintenance of the strategic framework. Responsibility should be accompanied by a high level of authority to ensure organizational buy-in. Responsibility should be at the policy level and not transferred to an operational level.
- Strengthen contract monitoring systems by adapting best practices already found within the county
- Strengthen evaluation systems and clarify appropriate formal evaluation methods
- Evaluate whether current approaches, such as the lead agency model, are appropriate
- Consider re-establishing the Qualified Vendor Status Application process or a similar process that pre-qualifies contractors by establishing their fiscal and administrative capacity.
- To determine the effectiveness of human service programs, the county should re-establish program evaluation capacity and ensure that formal program evaluations occur where specified by contract
- Determine the staffing capacity necessary to conduct fiscal monitoring of all contractors to whom the requirement applies.
- Study causes of payments made on unexecuted contracts and take steps to reduce them
- Address skill deficiencies among staff in managing and monitoring contracts
- Increase technical assistance to departments and programs who do not have procurement or contracting expertise

Audit Responses



Ted Wheeler, Multnomah County Chair

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To: LaVonne Griffin-Valade, County Auditor

Fm: Ted Wheeler, Multnomah County Chair

Re: Large Contract Audit

Dt: July 2, 2008

Thank you and your staff for your extremely useful audit of Multnomah County's management of large contracts. I share your frustration that recommendations made eight years ago have not been implemented. I have had growing concerns about the contracting process since I took office in 2007, but the scope of the problems was not clear to me until my review of this audit. Your recommendations will be an important tool that I will use to bring needed changes.

The current crisis involving Cascadia Behavioral Healthcare and our entire mental health system provides a stark example of the human cost of problematic contracts. While I have no doubt that county employees on one side and service agencies on the other have good motivations and enter the contracting process with the desire to meet public needs, I absolutely agree with you that good stewardship of public resources requires the consistent application of rules and policies that reflect best practices.

Perhaps the best news in your audit findings is that some parts of county government are doing well in their contracting. We can and we will build a new system of contracting that preserves those best practices where they exist and makes them the standard for our entire organization.

Because the problems with contracting have existed for a long time and are widespread, I will take the additional step of bringing in experts from the community to advise us as we improve the system and to help the public in holding us accountable for progress. In the coming weeks I will introduce a resolution before the Board of County Commissioners to create an external council that reviews county-wide contracting practices and will make recommendations for system improvements. I hope that you and your staff will meet with this council regarding your audit.

Thanks again for your solid analysis and your comprehensive recommendations. Clearly we have a great deal of work to do, but you have gotten us off to a good start.



Department of County Management

MULTNOMAH COUNTY OREGON

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To: LaVonne Griffin-Valade, County Auditor

From: Carol Ford, Department of County Management Director

Carol M. Ford

Date: July 3, 2008

Re: Audit of Large Contracts

The Department of County Management and Central Procurement and Contract Administration (CPCA) would like to thank you for your recommendations and look forward to working with the Auditor's Office and our purchasing partners throughout the County to implement the solutions outlined below.

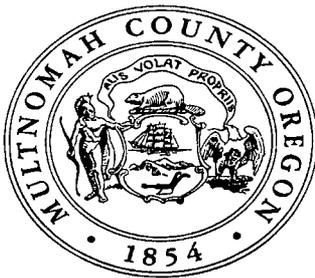
CPCA is pursuing several initiatives that will address many of the County's contracting risks. We are currently developing a system control within SAP that will eliminate making payments on contracts that are not finalized. This involves creating a release strategy that prevents creation of a release order- the first step in the payment process- until a finalized contract has been received in CPCA. Additionally, CPCA will modify its procurement process so that when a Request for Proposer Qualifications (RFPQ) is conducted, documentation of the Department's award criteria is maintained in the procurement file.

We are also in the initial stage of developing a funding request for a common procurement and contracting environment across the County. Procurement for the Public Sector (PPS) is a module of the County's enterprise financial system, SAP. Implementation of PPS will involve an enterprise-wide adoption of a broader SAP centered e-procurement strategy. We expect this initiative to drive procurement and contracting reform by creating more consistent procurement and contracting processes across all County Departments. The County owns the PPS module but has yet to allocate resources for implementation. CPCA is currently finalizing the proposal to the IT advisory board, requesting funding for implementation from the IT Innovations Fund.

CPCA plays a key role in supporting the Departments in their contract administration activities. We have recently developed a new organizational strategy to combine work units within the broader Finance and Risk Management Division, which have roles in the County's business relationships with our contractors and partners. The strategy is intended to create a single unit that will assist vendors in all business dealings with the County, from bid, to selection, to payment for services. In implementing the new combined work unit, we will be examining standards and controls with the intention to achieve a higher degree of consistency across the County. Additionally, in the last six months we have revitalized the training offerings for County purchasing staff. During the next few months, we will finish developing and delivering the remaining procurement and contract trainings that make up a complete suite of basic purchasing trainings. Among these is training in contract administration built around a set of organization-wide expectations for contract administration.

Thank you for the care you took in completing this study.

C: Mindy Harris, Chief Financial Officer
Brian Smith, Interim CPCA Manager



**LaVonne Griffin-Valade
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Audit Report: *Management of Large Contracts*
Report #08-04, June 2008
Audit Team: Sarah Landis and Mark Ulanowicz

The mission of the Multnomah County Auditor's Office is to ensure that county government is honest, efficient, effective, equitable, and fully accountable to its citizens.

The Multnomah County Auditor's Office launched the **Good Government Hotline** in October 2007 to provide a mechanism for the public and county employees to report concerns about fraud, abuse of position, and waste of resources.

The **Good Government Hotline** is available **24 hours a day, seven days a week**. Go to GoodGovHotline.com or call 1-888-289-6839.



The Multnomah County Auditor's Office received the **2007 Bronze Knighton Award** from the Association of Local Government Auditors for the *Elections Audit* issued in June 2007.



LaVonne Griffin-Valade
Multnomah County Auditor

Audit Staff
Sarah Landis
Mark Ulanowicz

Board of County Commissioners Briefing Summary Management of Large Contracts Audit – July 17, 2008

Why Audit Large Contracts?

Contracting is a major business risk for Multnomah County:

- Contracts represent nearly 40% of county expenditures
- Many vulnerable clients are served through complex contracts that are challenging to manage
- Recommendations from prior audits have not been implemented

Objectives:

1. Check the status of contracting-related recommendations from prior audits
2. Identify potential areas of risk and concern in Multnomah County's management of large contracts.

Scope:

The audit covers the contracting process generally, but is focused on very large contracts (over \$1 million per year) and on vendors who do a high volume of business with the county. Our sample was drawn from contracts active in FY2007.

Audit Results

Overall, we found that:

- Lack of leadership, appropriate authority, and resistance to change have prevented improvements to the contracting system
- The county lacks a systems-based approach to managing contracting risks
- Accountability is virtually impossible to achieve in the current contracting system

Finding 1: Prior Audit Implementation

Many of the audit recommendations we have made in the past identified needed improvements in how the county manages its contracts, but these remain unimplemented.

- Human Services Contracting audit in 2000 largely not implemented
- Low priority placed on monitoring and evaluation
- Documentation and procedural problems

Finding 2: Organization

Although contracting authority in the county is designed to be directed centrally, it operates in a largely decentralized manner. This has created a fragmented, unresponsive, and inconsistent contracting system.

- System does not appear to be rationally designed to best support contracting goals
- Roles and responsibilities throughout the system are not always clearly defined or supported
- High degree of department-level control over contracting efforts and resistance to change
- Contract administration – those activities that should occur after a contract is signed and executed – are completely at the discretion of departments

Finding 3: Best Practices

Many of the practices that help ensure effective contracting are inconsistently applied.

- Performance, reporting, and enforcement requirements often inadequate
- Monitoring responsibilities not adequately identified and resourced
- Feedback loop on vendor performance is lacking

Finding 4: Risk

The county does not have a systematic or comprehensive approach to managing the risks associated with contracting.

- County-wide resources not allocated according to the associated risk
- County-level assessment of internal controls revealed significant weaknesses in the control environment, risk assessment, control activities, information and communication, and monitoring
- Fundamental contracting controls were not always in place

Finding 5: Contract Administration

The county lacks system-wide contract administration procedures and controls to ensure that it is receiving the services it pays for, vendors are held accountable, and necessary information is collected for program improvement.

- No county-wide standards or expectations for contract administration
- Few, if any, negative consequences for poor vendor performance
- No concerted effort to evaluate vendor performance and share information

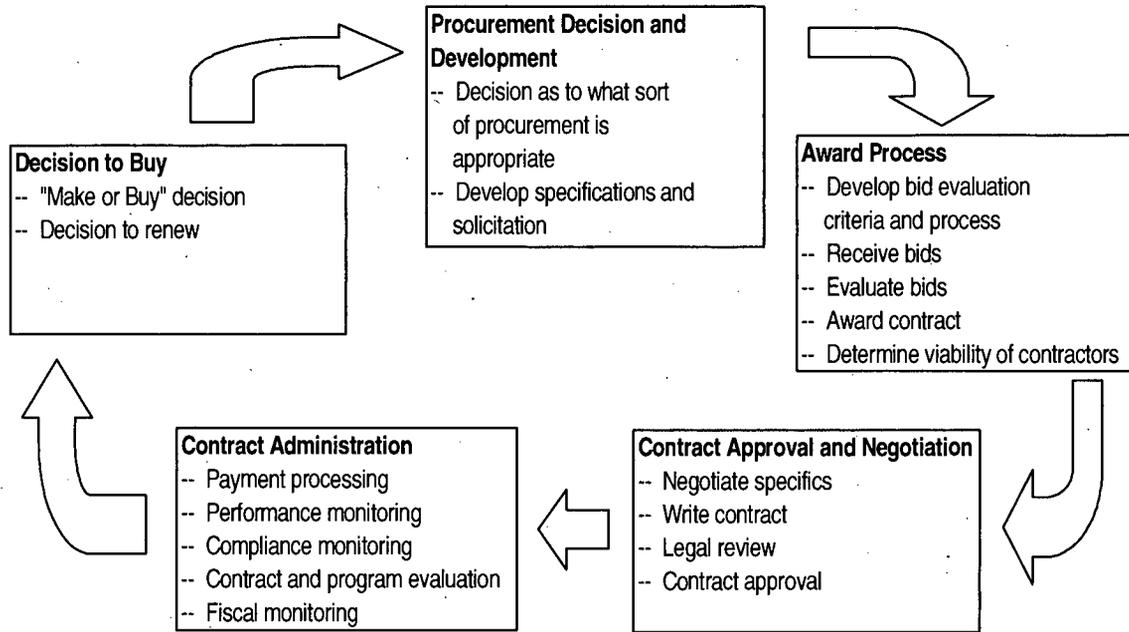
Recommendations Summary

(a complete list follows this summary)

We urge the county to mitigate risks inherent in the current contracting system by implementing the following recommendations:

- Build a contracting system that meets the county's business needs and clarifies roles, responsibilities, and accountability.
- Increase the focus on issues of performance, both of vendors and of the contracting system overall.

Figure 1: Model Contract Management Life Cycle



Source: Auditor's Office

**Figure 2: Comparison of Multnomah County Contracts to Total Expenditures
FY2002–FY2007**

(in millions)	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total Expenditures*	\$677.0	\$658.5	\$672.0	\$675.6	\$692.7	\$730.3
Contracts*	\$282.5	\$285.7	\$277.2	\$272.2	\$274.9	\$276.3
Contracts as Percent of Expenditures	41.7%	40.7%	41.3%	40.3%	39.7%	37.8%
DCHS Contracts	\$129.0	\$109.0	\$106.6	\$114.4	\$119.2	\$123.0
DCHS Contracts as Percent of Contracts*	45.7%	38.2%	38.4%	42.0%	43.4%	44.5%

* Contracts and expenditures do not include transfers to schools or for the roads fund.

Audit Recommendations

Recommendations

The recommendations for this audit integrate many of the unimplemented recommendations from previous audits.

I. Build a contracting system that meets the county's business needs and clarifies roles, responsibilities, and accountability. Aspects of this system design should include:

- Strategic and risk-based approach to planning, implementing, and monitoring contracting county-wide
- Appropriate and meaningful authority to enforce adopted policies
- Resolution of the centralized vs. decentralized disconnect in the current system
- Procedures and expectations that span the life of a contract
- Measurable goals and objectives for contracting
- Deployment of procurement and contracting resources based on risk, i.e. large contracts/vendors

II. Increase the focus on issues of performance, both of vendors and of the contracting system overall. Such performance efforts should include:

- Adoption and enforcement of common contract administration procedures county-wide to ensure that all contracts have proper oversight once executed
- Training of contract administration staff to ensure dissemination and adoption of contract administration procedures
- Establishment and support of a centralized standard-setting, policy development, and enforcement function
- Development and support of a county-wide contractor performance information repository
- Implementation of a process to vet vendors' administrative qualifications prior to contract award
- Increasing controls over exceptions to the traditional procurement and contracting process (retroactive contracts, procurement exemptions, RFPQs, requirements spending, amendments)
- Monitoring of contracting system goals and performance
- Monitoring of individual contract escalation
- Expansion of fiscal monitoring program



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: R-2
Est. Start Time: 10:00 AM
Date Submitted: 07/09/08

Agenda Title: **RESOLUTION Approving Cable Franchise Agreement with Cascade Access, LLC**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** 10 minutes – time certain
Department: Mt Hood Cable Regulatory Commission **Division:** _____
Contact(s): Mary Beth Henry
Phone: 503-823-5385 **Ext.** _____ **I/O Address:** 106/1305
Presenter(s): Mary Beth Henry (staff), Andrea Cano (Multnomah County Rep) & Norm Thomas (MHCRC Chair)

General Information

1. What action are you requesting from the Board?

The Mt. Hood Cable Regulatory Commission (MHCRC) recommends the Board of County Commissioners approve the cable services franchise agreement with Cascade Access, LLC for the provision of competitive cable service in the Corbett area of unincorporated Multnomah County.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Cascade Access (CA) (dba Reliance Connects) contacted the MHCRC in the fall of 2007 to discuss a cable franchise. Cascade Access is an affiliate of Cascade Utilities (<http://www.cuaccess.com/>). Cascade Utilities, Inc. is a local telecommunications access provider with about 8,500 customers in Estacada, Corbett, Haines and Elkton. It offers both traditional telephone products and services as well as advanced telecommunications services. The affiliate, Cascade Access, plans to implement fiber to the home (FTTH) technology to deliver cable service (TV).

In April the MHCRC unanimously approved Resolution 2008-03 which directed MHCRC staff to develop necessary and appropriate franchise documents for the provision of competitive cable

service in the Corbett area of unincorporated Multnomah County; provide for a MHCRC public hearing and comment process prior to transmittal to Multnomah County.

Pursuant to the Resolution the Commission held a public hearing in Corbett on June 2. Five citizens and one organization (MetroEast Community Media) submitted written or oral testimony on the proposed franchise. Overall citizen and organizational response was supportive of the franchise as presented citing support for competitive marketplace, universal access to services and public interest obligations.

Cascade Access represents the only foreseeable competitive alternative to the incumbent cable operator (Comcast) in the Corbett area. The recommended Cascade Access Cable Services Franchise Agreement is reasonably commensurate with the obligations of the incumbent cable operator but appropriately tailored to a small system operator based on principles of maximizing citizen choice and access to state of the art technology, while also providing for fair and even-handed regulation and franchising.

3. Explain the fiscal impact (current year and ongoing).

Potential additional franchise fees to Multnomah County, but cannot be projected until Cascade Access, LLC begins to offer service in Corbett, which will likely not be until late 2009.

4. Explain any legal and/or policy issues involved.

None. Comcast (competitor to Cascade Access's proposed cable television service and the incumbent cable services provider) did not raise any issues in the public review process.

5. Explain any citizen and/or other government participation that has or will take place.

Significant citizen participation was evident in the MHCRC process, including the MHCRC's public hearing held on June 2, 2008.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 07/09/08

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approving Cable Franchise Agreement with Cascade Access, LLC

The Multnomah County Board of Commissioners Finds:

- a. The Mt. Hood Cable Regulatory Commission (MHCRC), created by Intergovernmental Agreement dated December 24, 1992 (IGA), carries out cable regulation and administration on behalf of Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village (Jurisdictions). The MHCRC acts in an advisory capacity to the Jurisdictions in connection with any decision to grant a franchise agreement.
- b. On January 27, 2000, by Resolution 00-016, the Board authorized the MHCRC to develop and negotiate documents with potential providers, including proposed franchise agreements for competitive cable, services other than cable, and broadband communications services in Multnomah County.
- c. As provided in the MHCRC IGA, Section 4.B., Multnomah County reserves full authority to accept, reject, or modify proposed franchise agreements for cable, broadband or other services recommended by the MHCRC.
- d. In the fall of 2007, the MHCRC was contacted by Cascade Access (CA) (dba Reliance Connects) to discuss a franchise agreement. The MHCRC has developed such a franchise agreement with Cascade Access, LLC, and recommends that the County approve the attached franchise with Cascade Access, LLC to provide competitive cable service to residents in the Corbett area of unincorporated Multnomah County.

The Multnomah County Board of Commissioners Resolves:

1. The attached Franchise Agreement between Cascade Access, LLC and Multnomah County is approved.
2. The Chair of the Multnomah County Board of Commissioners is authorized to execute the attached Franchise Agreement on behalf of Multnomah County.

ADOPTED this 17th day of July 2008.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:
Commissioner Lonnie Roberts



Comcast Cable
9605 S.W. Nimbus Avenue
Beaverton, OR 97008

July 16, 2008

VIA FACSIMILE

Board of Commissioners
Multnomah County
501 SE Hawthorne Blvd.
Portland, OR 97214

Re: Resolution Approving Cable Franchise Agreement with Cascade Access, LLC
July 17, 2008, Regular Meeting

Dear Chairperson Wheeler and Commissioners Rojo De Steffey, Cogen, Naito and Roberts:

Thank you for the opportunity to share our comments on the proposed cable franchise to Cascade Access (dba Reliance Connects) for a portion of unincorporated East Multnomah County known as Corbett. We understand that the proposed franchise is unique in the sense that the initial area where Cascade Access plans to provide cable services is limited to within Corbett (see Exhibit A to proposed franchise), and that Cascade Access will be required to make cable services available to all dwelling units within the initial service area within three (3) years from the date Cascade Access first offers cable services to one or more customers within the service area (see Section 4.1 of proposed franchise).

In general, while we do not oppose the proposed franchise, Comcast supports fair competition particularly in a regulated environment. Our current franchise requires that the material provisions of a cable franchise issued to a competitor must be "reasonably non-discriminatory and competitively neutral with respect to the material provisions [of Comcast's franchise], unless otherwise restricted by law." (Section 1.4 (B) (1), East Multnomah County franchise). Since our franchise with the County is scheduled to expire on December 31, 2010 and is currently within the renewal window under federal law, Comcast reserves its rights to address all competitive issues during the renewal process of its current franchise with the County.

In addition, while Cascade Access will be a local franchise facility based competitor for cable services, we continue to face significant competition from direct broadcast satellite providers who are not regulated by local governments such as the County.

Again, thank you for the opportunity to share our comments.

Sincerely,

Sanford Inouye, Vice-President
Government Affairs

Cc: Mt. Hood Cable Regulatory Commission

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 08-105

Approving Cable Franchise Agreement with Cascade Access, LLC

The Multnomah County Board of Commissioners Finds:

- a. The Mt. Hood Cable Regulatory Commission (MHCRC), created by Intergovernmental Agreement dated December 24, 1992 (IGA), carries out cable regulation and administration on behalf of Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village (Jurisdictions). The MHCRC acts in an advisory capacity to the Jurisdictions in connection with any decision to grant a franchise agreement.
- b. On January 27, 2000, by Resolution 00-016, the Board authorized the MHCRC to develop and negotiate documents with potential providers, including proposed franchise agreements for competitive cable, services other than cable, and broadband communications services in Multnomah County.
- c. As provided in the MHCRC IGA, Section 4.B., Multnomah County reserves full authority to accept, reject, or modify proposed franchise agreements for cable, broadband or other services recommended by the MHCRC.
- d. In the fall of 2007, the MHCRC was contacted by Cascade Access (CA) (dba Reliance Connects) to discuss a franchise agreement. The MHCRC has developed such a franchise agreement with Cascade Access, LLC, and recommends that the County approve the attached franchise with Cascade Access, LLC to provide competitive cable service to residents in the Corbett area of unincorporated Multnomah County.

The Multnomah County Board of Commissioners Resolves:

1. The attached Franchise Agreement between Cascade Access, LLC and Multnomah County is approved.
2. The Chair of the Multnomah County Board of Commissioners is authorized to execute the attached Franchise Agreement on behalf of Multnomah County.

ADOPTED this 17th day of July 2008.

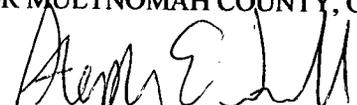


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:
Commissioner Lonnie Roberts

MULTNOMAH COUNTY / CASCADE ACCESS, LLC FRANCHISE

July 17, 2008

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) Multnomah County does hereby grant to Cascade Access, LLC who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and Institutional Services in the Streets of Corbett as outlined in the map attached as Exhibit A.

(B) Throughout this Franchise, Multnomah County, Oregon, shall be referred to as the "County" and Cascade Access, LLC shall be referred to as the "Grantee".

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining hereto, shall expire on December 31, 2018, unless terminated sooner as provided in this Franchise.

1.3 Effective Date. The Effective Date of this Franchise shall be on the later of either July 18, 2008, or 7 days after the passage date of this Franchise by the County, unless the Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 22.1, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original of this Franchise, as stamped by the County Clerk.

1.4 Franchise Not Exclusive.

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

(B) Competing Cable Systems.

(1) The parties acknowledge that there is an incumbent cable operator already authorized to provide cable services within the Corbett area. The incumbent cable operator is required to provide capacity on its cable system for PEG Access Channels, to provide PEG Access Capital funding, to provide I-Net capacity and support and has existing assignments for the PEG Access Channels. The parties acknowledge that this Agreement reflects their best, good faith efforts to reflect the PEG Access and I-Net obligations set forth in the incumbent cable operator's franchise with the County. The parties agree that the obligations set forth in Sections 6, 7 and 8 are intended to require Grantee to provide PEG Access Channels, I-Net capacity and PEG Access Capital funding that is substantially equivalent to that required by the incumbent franchised cable operator.

(2) If, after the effective date of this Franchise, there are changes as to franchise requirements for the incumbent franchised cable operator relating to PEG Access

Channels, PEG Access Capital funding and I-Net capacity, the parties agree that the corresponding obligations in this Franchise will be modified to substantially reflect the franchise obligations of the incumbent franchised cable operator. The parties agree that they will attempt in good faith to negotiate these modifications. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation in accordance with Section 21.3 or by arbitration in accordance with Section 21.2.

(C) Additional Provisions.

- (1) Grantee agrees and acknowledges that, solely for the purposes of Section 1.4(B), the provisions of any other franchise issued or administered by the County with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.
- (2) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other Person.

1.5 Charter and General Ordinances. This Franchise is subject to the Charter of Multnomah County and general ordinance provisions passed pursuant thereto, affecting matters of general County concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid or the manner of construction.

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

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

Section 2. INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

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

Section 3. DEFINITIONS

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

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

3.2 "Access" means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community to acquire, create and distribute Non-Commercial Programming not under the Grantee's editorial control, including, but not limited to:

(A) "Public Access" means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated Programmers or users having editorial control over their Programming;

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

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

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

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

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

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

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

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

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

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

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

3.11 "Cable Regulatory Commission" ("Commission") means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the County Commission.

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

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

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

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

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

3.17 "County" means Multnomah County, Oregon, an Oregon home rule county, and all of the territory within its corporate boundaries, as such may change from time to time.

3.18 "County Commission" means the Multnomah County Commission.

3.19 "Designated Access Provider" means the entity or entities designated by the County under Section 6.1 to provide Access in the Franchise Area, and whose duties may include the management of certain Access Facilities and Resources.

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

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

3.22 "Facility" means any tangible component of the Cable System.

3.23 "FCC" means the Federal Communications Commission.

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

3.25 "Fiber Distribution Hub" or "FDH" means the cabinet/site that houses the Passive Optical Network (PON) splitter assembly that aggregates the distribution fibers found in the public right of way from that point to the subscribers.

3.26 "Fiber Distribution Infrastructure" means those fiber optic cables and associated access equipment placed within the public right of way that are used to distribute signals the final 6,000 feet to the customers, excluding the optical subscriber drops placed on the subscribers private property.

3.27 "Franchise" means this franchise agreement, as fully executed by the County and the Grantee.

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

3.29 "Gross Revenues" means all amounts, in whatever form and from all sources, earned either by the Grantee from the operation of Grantee's Cable System within the County, or by any Affiliated Entity only to the extent such amounts are earned from the operation of the Cable System to provide Cable Services within the Franchise Area. "Gross Revenues" shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues

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

3.30 "Hazardous Substances" has the meaning given by ORS 465.200(16) (2007).

3.31 "Headend" means Grantee's Facility for reception and dissemination of Signals on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors, equipment for the Interconnection of the Cable System with adjacent cable systems or other separate communications network, and all other related equipment and Facilities.

3.32 "Initial Service Area" means the portion of the Franchise Area as outlined in Exhibit A.

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

3.34 "Interconnect" or "Interconnection" means the provision by Grantee of technical, engineering, physical, financial, and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Access Facility, cable system or other separate communications network so that Cable Services and I-Net services of technically adequate quality may be sent to and received from such other systems.

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

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

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

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

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

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

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

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

3.43 "Programming" means the process of causing television programs or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted or capable of being transmitted, on the Cable System.

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

3.45 "Residential Services" means Cable Services delivered to single or multiple Dwelling Units.

3.46 "Residential Subscriber" means any Subscriber receiving Residential Services.

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

3.48 "Service Date" means the date that Grantee first offers, or plans to offer, Cable Services on a commercial basis to one or more Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall be incorporated into and be a part of this Franchise.

3.49 "Section" or "Subsection" means a provision of this Franchise, unless specified as part of another document.

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

3.51 "Standard Installation" means an installation of a drop of no more than 335 feet from a Dwelling Unit requesting Cable Service to the nearest point from which the FTTP Network is designed to serve the site.

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

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

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

3.55 "Tier" means any package or cluster of Standard Cable Services offered by Grantee to Subscribers.

3.56 "Upstream" means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

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

Section 4. FRANCHISE AREA

4.1 Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the unincorporated portion of Multnomah County outlined in Exhibit A. Grantee shall make Cable Service available to significant numbers of Dwelling Units in the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall make Cable Service available to all Dwelling Units in the Initial Service Area within three (3) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by a Jurisdiction; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other

providers; (E) in areas, developments or buildings where Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; and (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; and (G) in areas where the Dwelling Unit density does not meet the density requirements set forth in Sub-section 4.2

4.2 **Density Requirement:** Grantee shall make Cable Services available to Dwelling Units in all areas of the Service Area where the average density is equal to or greater than 20 Dwelling Units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network. After the time stated for providing Cable Service as set forth in Subsection 4.5, should an area within the Initial Service Area meet the density requirements through new construction, Grantee shall provide Cable Service to such area within ninety (90) days of receiving a request for service.

4.3 **Availability of Cable Service:** Grantee shall make Cable Service available to all Dwelling Units and may make Cable Service available to businesses within the Service Area in conformance with Section 4.1 and Grantee shall not discriminate between or among any Person or Subscriber in the availability or provision of Cable Service.

4.4 **Standard and Non-Standard Installations:** In Initial and Additional Service Areas, Grantee shall be required to connect, at a standard installation charge, all residential Dwelling Units that qualify as a Standard Installation under this Franchise. Grantee shall have no obligation to provide Cable Services to Dwelling Units which require an installation in excess of a Standard Installation, unless the Subscriber requesting such connection agrees to pay Grantee's actual costs incurred for the portion of the residential installation that exceeds a Standard Installation or actual costs incurred to connect any non-residential Dwelling Unit Subscriber.

4.5 **Service Date.** Grantee shall notify the County, within three (3) months from the Effective Date of this Franchise, of a Service Date as provided in Section 3.48.

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

Section 5. PROGRAMMING AND CHANNEL CAPACITY

5.1 Channel Capacity.

(A) Grantee shall provide a minimum Downstream Channel capacity of 870 Standard Video Channels to all Residential Subscribers.

5.2 Broad Programming Categories.

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

- (1) Arts, culture and performing arts;

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

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

5.4 Parental Control Device. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

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

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

Section 6. PEG ACCESS

6.1 Designated PEG Access Providers.

(A) The County may designate up to three (3) Non-Commercial PEG Access providers, including itself, to control and manage the use of any or all Access Facilities and Resources provided by the Grantee under this Franchise. To the extent of such designation by the County, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

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

6.2 Access Channel Capacity on the Residential Network.

(A) Initial Access Channels. Grantee shall provide eight Downstream Channels for distribution of Access Programming to all Residential Subscribers, with such Channel assignments as are set forth in Section 6.3(A).

(B) Additional Access Channels. Grantee shall Activate up to a total of 18 Channels, inclusive of the Access Channels under Section 6.2(A), upon request by the County for PEG Access use in order to meet a community need identified by a Designated Access Provider. These Channels shall have the

capacity to carry entertainment quality and motion equivalent Channels, but may be reconfigured, at the County's direction, to carry Channels which require less capacity.

6.3 Access Channel Assignments and Programming Information

(A) PEG Channel Assignments. Grantee shall provide the following Channel assignments for PEG Access:

- (1) Channel 11 - public access
- (2) Channel 21 - public access
- (3) Channel 22 - public access
- (4) Channel 23 - public access
- (5) Channel 27 - educational access
- (6) Channel 28 - educational access
- (7) Channel 29 - government access
- (8) Channel 30 - government access

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

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

(D) Access Programming Information in Programming Guides.

- (1) Grantee shall include the PEG Access Channels and Programming information in any program guides provided to its Cable Services Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and Programming information in the programming guides.
- (2) The Designated Access Providers shall provide to the Grantee, or its designee, the Access Channel and Programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

6.4 Access Channel Interconnect

(A) Access Channel Origination Point. The County has designated MetroEast Community Media, located at 829 NE Eighth Street, Gresham, Oregon, or its successors or assignees, as the Designated Access Provider, which serves as the PEG Access Channels point of origination. However, Grantee and the County acknowledge that the PEG Access Channels origination point is not physically located within Grantee's Cable Services Franchise Area.

(B) Interconnect Capacity. Grantee shall provide Activated Interconnection of the Cable System to other contiguous franchised cable services operators' systems in order to enable the carriage and routing of Access Channels and Programming. The Access Channel Interconnect shall enable the Designated Access Providers to use their Channel origination points as central collection, switching and dissemination points for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems.

(C) The County acknowledges that the Access Channel Interconnection requires cooperation from other cable services operators as to engineering, design, technical and operational issues. Therefore, the County shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable services operators necessary to establish the Activated Interconnects, and Grantee's Interconnection obligations under Section 6 shall be subject to such cooperation being obtained.

(D) Grantee shall implement and continue in effect all Access Channel Interconnections in a manner that permits the transmission of Access Channel signals on the Cable System which meet technical standards for transmission of local broadcast signals.

(E) Changes in Access Channel Origination Points. If the County designates new Access Channel origination points within the Franchise Area or if Grantee's Franchise Area changes so that the PEG Access Channels point of origination under Section 6.4(A) is within the Franchise Area, Grantee shall provide an Activated Interconnect for the PEG Access Channel signals at the Designated Access Provider's site.

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

6.6 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the County or to any Designated Access Provider, except as specifically provided in this Section 6.

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

6.8 Technical Quality.

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

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

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

Section 7. PEG INSTITUTIONAL NETWORK

7.1 Institutional Network ("I-Net")

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

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

(C) The County and Grantee may mutually agree on I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 8.1(A).

7.2 Interconnections. Upon request by the County based on an identified community need, Grantee shall provide an Activated Interconnect, within 120 days of such request, for the carriage and routing of I-Net Signals to and from any I-Net facilities provided by Grantee and I-Net facilities provided by other franchised cable service providers, including cable service providers serving jurisdictions contiguous with the Franchise Area. If the County authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against payments made under Section 8.1(A).

Section 8. PEG ACCESS CAPITAL FUNDING

8.1 3% Gross Revenue Annual Setaside.

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

(B) The County intends to use one percent (1%) of funds paid under Section 8.1 to provide support for Designated Access Provider Capital Costs; one percent (1%) for grants to PEG Institutions for Capital projects related to use of the Cable System; and one percent (1%) to fund PEG Institutions' Capital requirements for use of the I-Net.

8.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the County under Section 8.1 for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

8.3 PEG Access Support not Franchise Fees; Applicable Federal Law. Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 8 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the County, subject to the requirements of Federal law. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 8 may total more than five percent of Grantee's Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

8.4 Audit Rights.

(A) The Grantee and its agents and representatives may arrange for and conduct audits, upon no less than thirty (30) days prior written notice and during normal business hours, for payments made under Section 8 to ensure that the PEG Access Capital funding has been utilized for PEG Access and Institutional Network Capital Costs in accordance with this Franchise. Grantee shall provide written notice to the County of the auditors' conclusions. The County shall have thirty (30) days to provide a written response. If the parties are unable to agree upon the auditors' conclusions, either party may submit the issue to arbitration under Section 21.2.

Section 9. SERVICE, CONSTRUCTION, AND INTERCONNECTION

9.1 Fiber Distribution Hub (FDH) Service Radius. For purposes of Section 9, "FDH Service Radius" means an area within 6,000 feet from an Activated FDH, capable of providing Residential Cable Services to Residential Subscribers, providing the associated fiber distribution infrastructure is in place.

9.2 Universal Service. Subject to Section 4, following the Service Date, Grantee shall provide Cable Services under non-discriminatory rates and reasonable terms and conditions to all Subscribers in the Cable Services Franchise Area who reside in Dwelling Units within an activated FDH Service Radius. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within an activated FDH Service Radius within the Cable Services Franchise Area. Grantee shall provide information to the County clearly identifying an FDH Service Radius immediately upon the Activation of the Remote Terminal which serves the area.

9.3 Service Availability. Except as otherwise provided in this Franchise, where Grantee chooses to activate a FDH Service Radius located within the Franchise Area, Grantee shall provide Cable Services at its standard installation rates within seven (7) days of a request by any Person within an activated FDH Service Radius. A request for Cable Services shall be deemed made on the date of

signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

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

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

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

Section 10. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

10.1 Technical and Safety Standards.

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

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

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

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

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

10.2 Performance Testing.

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

(1) All tests required by the FCC; and

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

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

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

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

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

Section 11. CUSTOMER SERVICE AND CONSUMER PROTECTION

11.1 County's Cable Television Consumer Protection Policy. Grantee shall comply with the County's Cable Television Consumer Protection Policy.

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

Section 12. COMPENSATION AND AUDITING

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

12.2 Payments and Quarterly Reports.

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

(B) Quarterly Reports. Each payment shall be accompanied by a written report to the County, verified by Grantee, containing an accurate statement in summarized form, as well as in detail, of

Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the County.

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

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

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

12.6 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to Section 8 or Section 12 of this Franchise shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the County may have for further or additional sums payable. All amounts paid under Section 8 or Section 12 of this Franchise shall be subject to audit by the County, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the County notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the County for:

(A) Interest on any underpayment of an amount due under Section 8 or Section 12 of this Franchise that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the County, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the County, then interest shall be compounded daily from the date on which the payment was due until the date the County receives the payment.

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

12.7 Escrow. If the Grantee disputes the County's determination of underpayment under Section 8 or Section 12 of this Franchise, the Grantee shall place the disputed amount in an escrow account at a financial institution with instructions agreed to by the County until final resolution.

12.8 Authority to Audit.

(A) The County and its agents and representatives shall have authority to arrange for and conduct audits under Section 12, within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 12.8, the County may determine the scope of audit in each instance.

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

- (1) The reasonable costs of such audit if the audit discloses that the Grantee has paid 95% or less of the fees owing under Sections 8 and 12 for the period at issue; or
- (2) One half of the reasonable costs of such audit if the audit discloses that the Grantee had paid more than 95% but less than 98% of the fees owing under Sections 8 and 12 for the period at issue.
- (3) The Grantee shall reimburse the County within 30 days of receipt of an invoice from the County showing such costs were actually incurred and were directly related to the audit. The County's costs which may be reimbursed shall not exceed \$7,500.00 per audit.

12.9 Liability for Licenses and Taxes. Except as provided in Section 12.5, payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the County, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The County's right to impose any such license fee, tax or charge shall be subject to any limitations on the County under applicable law.

Section 13. GENERAL INDEMNIFICATION AND INSURANCE

13.1 Indemnification.

(A) General Indemnification. Grantee agrees and covenants to indemnify, defend and hold the County, its officers, agents and employees, harmless from any direct claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any injury or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages, arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee to keep its system in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the County or its officers, agents or employees. The County shall provide Grantee prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of the County which

approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the County while conducting its defense of the County and the County shall fully cooperate with the Grantee.

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

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

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

13.2 Insurance.

(A) Grantee shall maintain commercial general liability insurance and commercial automobile insurance that protects the Grantee and the County, 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 Grantee's operations under this Franchise or in connection therewith, as set forth in subsection 13.2.(B).

(B) Grantee shall obtain, at Grantee's expense, and keep in effect during the term of this Franchise:

(1) Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Franchise. The following will be carried:

Coverage	Limit
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Coverage	Limit
Fire Damage (Any on Fire)	\$50,000

(2) "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined Single Limit per occurrence shall not be less than Five hundred thousand dollars (\$500,000).

(C) Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated B+ or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

(D) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County 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.

(E) 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 Section 15.2 without thirty (30) days written notice first being given to the County's cable regulatory office. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of Section 15.2 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.

(F) Grantee shall provide the County's cable regulatory office, within fifteen (15) days of the effective date of this Franchise, a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Counsel as to the adequacy of the certificate and of the insurance certified under the requirements of Section 15.2. Failure to maintain adequate insurance as required under Section 15.2 shall be cause for immediate revocation of this Franchise by the County.

(G) In the alternative to providing a certificate of insurance to the County certifying liability insurance coverage as required in Section 13.2 (A), Grantee may provide the County with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the County, its officers, agents and employees, as otherwise required under Section 13.2(A). The adequacy of such self-insurance shall be subject to the County Counsel's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 13.2 (C), any failure by the Grantee to maintain adequate self-insurance shall be cause for the County to declare a forfeiture of this Franchise under and subject to Section 20.1(C) of this Franchise.

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

13.3 Faithful Performance Bond.

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

(B) During the term of the Franchise, Grantee shall file with the County Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the County exercise its rights against the performance bond under this Section 13.3 if a bona fide, good faith dispute exists between the County and the Grantee.

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

13.4 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a permit from the County, Grantee shall post a faithful performance bond, a cash deposit or irrevocable letter of credit, as is required for the County's permit, running to the County, with good and sufficient surety approved by the County, in the sum required by the permit. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the County. Upon such approval, the County agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the Jurisdiction a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval of the County as to its adequacy under the requirements of this Section 13.4.

Section 14. GENERAL STREET USE AND CONSTRUCTION

14.1 Construction.

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

within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the County to Grantee.

(B) Construction Schedule and Maps.

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

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

(D) In the event that emergency repairs are necessary, Grantee shall immediately notify the County of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. Grantee shall comply with all applicable County regulations relating to such excavations or construction, including the payment of permit or license fees.

14.2 Locates. Grantee shall comply with the Oregon Utility Notification (ORS 757.542 through 757.562 and ORS 757.993 (2007)), and the rules and regulations promulgated thereunder in OAR Chapter 952.)

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

14.4 Restoration of Streets.

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

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. The County may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The County reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the County Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 14.4 shall be done in strict compliance with all rules, regulations and ordinances of the County.

14.5 Maintenance and Workmanship.

(A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the County, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the Streets by or under the County's authority.

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

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

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

14.7 Reservation of County Street Rights. Nothing in this Franchise shall prevent the County from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Cable System shall be removed or replaced in the manner the County

shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the County Engineer's written notice to Grantee, the County may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the County due to Grantee's delay.

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

14.9 Common Users.

(A) For the purposes of this Section:

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

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

governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

(C) If the Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, the Grantee and the Licensee shall enter into binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate. The binding arbitration shall be conducted in accordance with the Uniform Arbitration Act ORS 36.600 to 36.740 (2007).

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

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

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

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

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

(H) As needed and as specified by the County in an Annual duct capacity plan provided to Grantee, County will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under Section 14.9 and subject to a separate written agreement between the County and Grantee specifying the terms of such access and usage by the County.

14.10 Abandonment of Facilities.

(A) If Grantee intends to permanently abandon a Facility within all or part of a particular portion of the Streets by physically disconnecting it from its operating System, Grantee shall submit to the County Engineer a completed application describing the structures or other Facilities and the date on

which Grantee intends to permanently abandon such Facilities. Grantee may elect to remove the abandoned Facilities or request that the County allow them to remain in place. Grantee's sale of a portion of its System shall not, by itself, be considered abandonment under this Section 14.10.

(B) **Removal or Modification.** Upon receiving notice from Grantee of the intent to abandon a Facility by permanently disconnecting it from its operating system, the County may consent to having the ownership of the abandoned Facilities in the Streets transfer to the County and Grantee shall have no further obligation therefore. Notwithstanding Grantee's request that any abandoned Facility remain in place, the County Engineer may require Grantee to remove the Facility from the Street or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The County Engineer may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the County Engineer. The County Engineer shall have unlimited discretion in determining a reasonable schedule for removal or modification of the abandoned Facility, based upon the Engineer's consideration of the total circumstances of the schedule. Until such time as Grantee removes or modifies the Facility as directed by the County Engineer, or until the rights to and responsibility for the Facility are accepted by the County or by another Person having authority to construct and maintain Facilities with the Streets, Grantee shall continue to be responsible for all necessary repairs and relocations of the abandoned Facility, as well as restoration of the Street, in the same manner and degree as if the abandoned Facility were in active use, and Grantee shall retain all liability for the abandoned Facility.

14.11 Hazardous Substances.

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

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

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

14.12 **Undergrounding of Cable.** Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable

shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the County or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the County grants an exception.

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

14.14 Construction and Use of Poles.

(A) In the event Grantee cannot obtain the necessary poles and allied facilities agreements, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper County authorities, and each pole shall be set whenever practicable at an extension of a lot line. A County shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when, in the opinion of the County, the public convenience requires such change, and the expense thereof shall be paid by the Grantee.

(B) The terms of Section 14.14(A) shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

14.15 Tree Trimming.

(A) When Permits Needed. Upon obtaining proper permits from a County, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree or vegetation in or overhanging the Streets which interferes with Grantee's Cable System. Tree and vegetation pruning will only be done in accordance with the County's ordinances, rules and regulations and, if the tree or vegetation is located on private property, with the permission of the property owner.

(B) Blanket Permits. The County may, at its own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the County. The County shall have the discretion to cancel the permit if, at any time, the Grantee or its agents fails to use proper arboricultural practices.

Section 15. TRANSFER OF GRANTEE'S CABLE SYSTEM

15.1 Transfer Defined. For purposes of Section 15, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

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

15.3 Review.

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

(B) No Transfer for which the County's consent by ordinance is required may occur until the successor, assignee, lessee or transferee has complied with the requirements of Section 13 of this Franchise, including, but not limited to, providing certificates of insurance, unless the County Commission waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the County, Grantee shall file with the County Auditor an executed counterpart or certified copy thereof.

15.4 Leases. Grantee shall not lease any portion of its franchised Cable System without the County's prior consent as expressed by ordinance. However, and notwithstanding Section 15.2, Grantee may lease any portion of its Grantee System in the ordinary course of its business without otherwise obtaining the County's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Cable System. A lessee of any portion of Grantee's Cable System shall not obtain any rights under this Franchise.

15.5 Sales.

(A) Notwithstanding Section 15.2, Grantee may sell portions of its Cable System in the ordinary course of its business, without otherwise obtaining the County's consent by ordinance, so long as Grantee complies with the following conditions:

- (1) The sale is to the holder of a current existing, cable system franchise, license, permit, or other similar right granted by the County;
- (2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the County, describing the portions of the Cable System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the mapping requirements of Section 14.1(B)(2) and providing an executed counterpart or certified copy of the sales documents;
- (3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Cable System; and,
- (4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the County that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid cable system franchise, license, permit or other similar right granted by the County. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

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

(C) Bankruptcy or Dissolution. Grantee shall immediately report to the County, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

(D) Consent. No consent by the County, which is required under this Section, shall be unreasonably denied or delayed.

Section 16. COUNTY REGULATORY AUTHORITY

16.1 County Regulatory Rights.

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

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

16.2 County Regulatory Actions. Subject to the conditions set forth in Section 1.6, Grantee shall comply with any and all lawful actions of the County affecting Grantee's operations under this

Franchise, including, without limitation, all applicable ordinances, orders, contracts, and regulatory actions taken pursuant thereto, in all respects and without exception, so long as such actions do not materially affect the rights of Grantee hereunder. Subject to the conditions set forth in Section 1.6, in the event of any direct conflict between County orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

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

16.4 Rate Discrimination. All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 16.4 shall be construed to prohibit:

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

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

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

16.5 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the County a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the County. Nothing in this Section 16.5(A) shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

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

16.6 Changes in Rates and Charges.

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

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

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

16.8 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

- (1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in this Franchise. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or Tiers.
- (2) Unless otherwise provided by law, Grantee may impose Downgrade Charges only if:
 - (a) The Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;
 - (b) The Downgrade Charge does not exceed the Grantee's actual Incremental, direct costs of performing the downgrade; and
 - (c) The downgrade is from a level of service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request.

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

Section 17. RECORDS AND REPORTS

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

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

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

17.2 Annual Reports. Grantee shall Annually present a written report to the County (the "Annual Report") setting out such information as the County deems necessary to determine compliance by Grantee with its obligations under this Franchise. Grantee shall submit the Annual Report no later than May 1 of each Year, following the end of the Grantee's calendar fiscal year. Except as otherwise provided by the County, the Annual Report shall include, at a minimum, information as may be required concerning the Grantee's operations within the Franchise Area for the immediately previous Year in a form prescribed by the County. Specifically, the Annual Report will include the following information:

(A) Cable System structure and operating information:

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

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

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

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

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

17.6 Public Records.

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

(B) Grantee may identify information, such as trade secrets, submitted to the County as confidential. Grantee shall prominently mark each page for which it claims confidentiality as "Confidential" prior to submitting such information to the County. The County shall treat any information so marked as confidential, until the County receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the County shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the County, before the County may disclose any of the requested confidential information. If the County determines that it will be necessary to reveal the information, the County shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released.

Section 18. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISES

18.1 Equal Employment Opportunity.

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

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

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

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

Section 19. RIGHTS OF INDIVIDUALS

19.1 Discriminatory Practices. Grantee shall not deny Cable Services, deny access, or otherwise discriminate on the availability, rates, terms or conditions of Cable Services provided to Subscribers, Programmers or any other Persons on the basis of race, color, religion, ancestry, age, national origin,

gender, sexual orientation, familial status, marital status, status with regard to public assistance or physical or mental disability. Grantee shall comply at all times with all applicable federal, state or local laws, rules and regulations relating to non-discrimination.

19.2 Unauthorized Monitoring or Cable Tapping.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or Subscriber outlet or receiver for any purpose, except as provided in Subsection 19.2(B), and as is necessary for billing purposes.

(B) Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

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

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

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

19.5 Sale of Subscriber Lists and Personalized Data.

(A) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Data pertains, except as otherwise permitted by federal law. For purposes of Section 19, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

(B) Grantee shall be subject to the provisions of applicable law regarding limitations on Grantee's collection and use of personalized data, and other issues involving the protection of Subscriber privacy.

Section 20. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

20.1 Remedies for Franchise Violations.

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

- (1) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation;
- (2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
- (3) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. For purposes of this Subsection, "Subscriber Class" means any group of actual or potential Subscribers identified by the Grantee on the basis of specified characteristics for the purpose of providing, marketing or establishing any combination or package of Cable Services, rates or charges, or for the purpose of providing or directing customer services or marketing in any form;
- (4) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
- (5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
- (6) Revoke this Franchise.

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

(C) The County also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 20.1(A)(4) and (5) upon the occurrence of any of the following acts or events:

- (1) Grantee fails to meet the Service Date requirements under Section 4.2 of this Franchise;
- (2) Grantee fails to comply with the requirements of Section 13 of this Franchise, including but not limited to, providing insurance or performance bonds;
- (3) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the County; or
- (4) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

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

- (1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by the County; and
- (2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the County, duly approved by the County 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.

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

20.2 Notice and Opportunity to Cure.

(A) The County shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 20.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the County within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the County shall not exercise its rights under Section 20.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the County to remedy the stated reason, then the County may exercise any or all of the remedies available under Section 20.1 or such other rights as the County may possess.

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

20.4 Expiration.

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

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

(B) Until such time as the County exercises its rights under Section 20.4, the Grantee's rights and responsibilities within the County shall be controlled by the terms of this Franchise.

20.5 Removal of Plant and Equipment. If the County has by ordinance declared a forfeiture of this Franchise as provided in Section 20.1, or if this Franchise has expired without being renewed or extended, or in the event of the County's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the County may require. In the event of a failure by the Grantee to properly perform such work, then the County may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by County.

Section 21. MISCELLANEOUS PROVISIONS

21.1 Compliance with Laws.

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

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

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

21.2 Arbitration.

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

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

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

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

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

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

(F) The arbitrators shall have such powers as are described in the Uniform Arbitration Act ORS 36.600 to 36.740 (2007.)

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

21.3 Mediation. The County and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties, and

unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the County and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the County and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 21.2, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

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

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

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

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

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

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

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

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

If to the County: Multnomah County
 c/o The Mt Hood Cable Regulatory Commission
 1120 SW Fifth Avenue, Room 1305
 Portland, Oregon 97204
 FAX No. (503) 823-5370

With a copy to: County Attorney's Office
 501 SE Hawthorne Blvd. Suite 500
 Portland, OR 97214
 FAX No.(503) 988-3377

If to the Grantee: Cascade Access, LLC
 P.O. Box 189
 287 SW 3rd Avenue
 Estacada, OR 97023
 FAX No. (503)-630-8934

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

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

21.13 Force Majeure.

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

(B) If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the County prompt notice of such Force Majeure,

describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

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

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

Section 22. WRITTEN ACCEPTANCE.

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

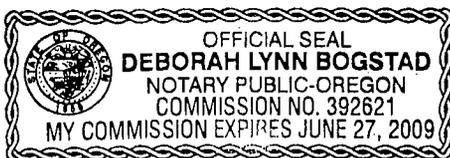
22.2 Failure to File Acceptance. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this Ordinance shall thereupon be null and void.

MULTNOMAH COUNTY:

By: Ted Wheeler
Ted Wheeler, Chair
Multnomah County Board of Commissioners

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Agreement was acknowledged before me this 30th day of July 2008, by Ted Wheeler, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad
Deborah Lynn Bogstad, Notary Public for Oregon;
My Commission expires: 6/27/09

ACCEPTANCE

Mm Dd, Yyyy

Multnomah County Auditor
501 SE Hawthorne, Room 601
Portland, OR 97214

This is to advise Multnomah County, Oregon that Cascade Access, LLC hereby accepts the terms and provisions of the Franchise Agreement, approved by the Multnomah County Board of Commissioners on July 17, 2008 by Resolution No. _____ and in consideration of the benefits received thereunder, Cascade Access, LLC agrees to abide by and perform each and all of the terms and provisions thereof.

(Signature – Title)*

Steve Crosby
General Manager
Cascade Access, LLC
303 SW Zobrist
PO Box 189
Estacada, OR 97023

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.

**MT. HOOD CABLE REGULATORY COMMISSION
INTERGOVERNMENTAL AGREEMENT
AS AMENDED MARCH 1998**

THIS AGREEMENT is between each of the cities of Fairview, Wood Village, Troutdale, Gresham and Portland, all municipal corporations duly incorporated under the laws of the State of Oregon, and Multnomah County, a home rule county formed under the laws of the State of Oregon, hereinafter referred to as the "Jurisdictions." 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 Jurisdictions.

Section 1. General Purposes. The Jurisdictions have each separately entered into various franchise agreements providing for the construction and operation of cable communications systems within their boundaries. The City of Portland created the Portland Cable Regulatory Commission, and Multnomah County, Gresham, Troutdale, Fairview and Wood Village created the Multnomah Cable Regulatory Commission, each with the general purpose to regulate and administer cable franchise agreements for the Jurisdictions. The Jurisdictions wish to form a unified cable regulatory commission. The formation of a unified regulatory commission serves the public interest in that the boundaries of the Jurisdictions do not necessarily coincide with the service areas of the Grantees, or with the needs of the citizens within each Jurisdiction or franchise, regarding cable communications. In addition, a unified commission can provide enhanced public benefits in franchising and regulation, and economies of scale in its operation.

To further this public interest and these purposes, the Jurisdictions desire to create a unified cable regulatory commission to jointly regulate and administer franchise agreements within their boundaries. The commission will further serve as an advisory body to the Jurisdictions on matters relating to cable communications and function as the Jurisdictions' representative for regional, state or national cable communications policy matters.

Section 2. Definitions.

A. "Cable Communications System" or "System" - any system of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, receivers, home terminals, converters, 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. "Commission" means the Mt. Hood Cable Regulatory Commission as formed under this Intergovernmental Agreement.

C. "Grantee" - any person who is authorized by a franchise agreement or seeks authority to construct, operate and maintain a cable communications system operated within the territories of

the Jurisdictions.

D. "Jurisdiction" - any municipality or county which enters into this Agreement.

E. "Multnomah Community Television" means the designated provider of PEG access for the cities of Fairview, Gresham, Troutdale and Wood Village, and Multnomah County.

F. "PEG" means public, educational and governmental cable access within the meaning of franchise agreements administered by the Commission, and applicable law.

G. "Person" - 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. A unified regulatory commission, the Commission is created to carry out the purposes set forth in this Agreement and to administer the cable communications franchises granted by the Jurisdictions. The Commission is vested with all the powers, rights and duties necessary to carry out these purposes that are vested by law in each Jurisdiction, its officers and agencies, subject only to the limitations contained in this Agreement and in the cable communications franchise agreements. "Law" includes the federal laws and Constitution, the Oregon constitution and laws as well as the charters, ordinances and other regulations of each Jurisdiction.

A. **Regulatory Authority.** The Commission has the authority to act on behalf of the Jurisdictions jointly and separately, and in its own right, to oversee and regulate any cable communications system operated pursuant to the cable communications franchise agreements entered into by the Jurisdictions. The Commission has full authority to take any action necessary to enforce or administer franchise agreements for operation of cable communications systems, except where the power to take a specific action is either limited or reserved to the Jurisdictions by the provisions of Section 4 of this Agreement.

B. **Contracting Authority.** The Commission may make such contracts, grants, and take such other action as it deems necessary and appropriate to accomplish the general purposes of this Agreement. All contracts made shall conform to the requirements of Oregon law.

Section 4. Powers Retained by Jurisdictions.

A. **Discretionary Review.** Commission action to; (1) find a Grantee in violation of its franchise agreement, or; (2) impose any penalty or financial remedy, or; (3) regulate, establish or approve any Grantee rate or charge, or; (4) determining PEG capital grant purposes and evaluation criteria as set forth in Section 9.E.2 of this Agreement, shall become effective 30 days after the Commission's final decision. Any such Commission final decision shall not be effective unless a copy of the final decision is filed with the Recorder of each affected Jurisdiction within 10 days of such action. Such final decisions are subject to review by the governing body of each affected

Jurisdiction. Within a 30-day period, any affected Jurisdiction may notify the Commission of its intent to exercise review authority. The Commission shall notify all affected Jurisdictions within 10 days of receiving the review notice. If a majority of the affected Jurisdictions acts within 60 days to overturn the Commission's final decision, such decision shall not become effective, and the matter shall be returned to the Commission for further proceedings as directed by the affected Jurisdictions.

1. Affected Jurisdiction means any Jurisdiction which is a party to the franchise agreement with the Grantee to which the Commission's final decision applies.

2. Recorder means a Jurisdiction's Clerk, Recorder or Auditor.

B. Full Authority. As set forth herein, the Jurisdictions reserve the authority to act on their own behalf. Each Jurisdiction agrees to make a good faith effort to weigh the impact of such actions on the overall operation of a cable system and the continuity of the Commission. Each Jurisdiction agrees to take no action in these areas until the Commission has had a prior opportunity to consider the matter.

Authority retained by the Jurisdictions includes:

1. Any decision to grant, revoke, terminate, extend, amend, renew or refuse to renew a franchise agreement.

2. Any decision concerning a change of ownership or control of a cable communications system or a Grantee.

3. Any decision to purchase or condemn a Grantee's interest, in part or in whole, whether or not pursuant to a termination, revocation or expiration of a franchise agreement.

4. Any decision regarding cable regulation which requires adoption of any ordinance or resolution by the Jurisdictions.

5. Any decision which requires the amendment of this Agreement.

6. Any authority which is reserved to or retained by the Jurisdictions by franchise agreement and which may not otherwise be delegated to the Commission.

Section 5. Commission Members.

A. The Composition. The Commission shall be composed of Commissioners appointed by the Jurisdictions. Each Jurisdiction, except Portland, shall select and appoint one representative to serve as its Commissioner. Portland shall select and appoint three representatives to serve as its Commissioners.

B. **Quorum and Voting.** The majority of the members of the Commission shall constitute a quorum. No Commission action shall be in effect except on a majority vote by those Commissioners present.

C. **Term of Office and Succession.** Commissioners shall be appointed to serve until their successors are appointed and assume their responsibilities, but shall serve under procedures authorized by the governing body of the Jurisdiction appointing them. However, a Jurisdiction's appointee shall not have any ownership interest in a Grantee. A vacancy on the Commission shall be filled by the governing body of the Jurisdiction whose position on the Commission is vacant.

Section 6. Meetings, Rules of Procedure and Officers.

A. **Meetings to be Public.** Meetings of the Commission shall be conducted pursuant to the Oregon Public Meetings law.

B. **Rules of Procedure.** At the first organizational meeting, or as soon thereafter as practicable, the Commission shall adopt rules governing its procedures including, but not limited to:

1. Times and places of regular meetings;
2. The method and manner of calling special meetings;
3. The method, term and manner of election of officers;
4. The responsibilities and duties of officers; and
5. The procedures for execution of writings and legal documents.

C. **Officers.** At the first organizational meeting, the Commission shall elect from among its members an interim chairperson and an interim vice-chairperson. The chairperson, and in his or her absence the vice-chairperson, shall preside at all meetings, call special meetings, and determine the order of business, until such time as rules requiring otherwise are adopted.

Section 7. Administration and Staffing Services.

The Commission shall contract with the City of Portland (the City) for administrative services as described in the attached Administrative Services Agreement (Exhibit 1). The Commission is authorized to amend, extend, or terminate the Administrative Services Agreement.

Section 8. Transfer of Staff and Assets.

A. **Transferred Employees.**

1. Upon termination of the administrative services agreement between the Commission and Multnomah County (the County), the County shall transfer Julie S. Omelchuck to the City's Office of Cable Communications and Franchise Management (Cable Office), providing that the County is no longer performing any cable regulatory services. Pursuant to ORS 236.630, Julie S. Omelchuck shall be placed in a position found by the City to be comparable to the position she enjoyed under the County's employment. The City shall consider Julie S. Omelchuck's education and physical qualifications, experience, and the salary, duties and responsibilities of her prior employment. The County shall furnish all of Julie S. Omelchuck's employment records to the City at the time of transfer. No affected employee shall be deprived of their employment by the County solely because of the transfer of administrative cable regulatory services to the City. The County shall find positions of employment within the County for all other affected employees.

2. The County shall pay each transferred employee all holiday and compensatory time, and any vacation leave time in excess of eighty hours, accumulated by such employee up to the date of the transfer. In addition, funds shall be transferred to the City from within the existing County cable office budget to cover accumulated sick leave, up to the date of transfer, for each transferred employee. The final amount of the payment for accumulated sick leave shall be determined by mutual agreement between the City and the Commission. The County shall reimburse the City for insurance premium costs, if any, resulting from health insurance coverage of preexisting conditions for any transferred employees. If at any time in the future Julie S. Omelchuck transfers back to the County by operation of the terms of Section 8A, the obligations for holiday, compensatory time and vacation leave time under this subsection shall apply equally to the City.

3. Any employees transferred by the County to the Cable Office shall be returned to the County if the transferred employee remains in a comparable employment position within the Cable Office and any one of the following events occurs: 1. The administrative services agreement between the City and the Commission is terminated; 2. The City withdraws from this Agreement; 3. The County withdraws from this Agreement; or 4. The Commission is dissolved under the terms of this Agreement.

4. This consolidation has presented unique circumstances resulting in the employee transfer provisions set forth in this Section. Due to these unique circumstances, the agreements contained in this Section shall not serve as precedent for any future employee transfer discussions between the City and the County.

B. Equipment assets, as listed in Exhibit 2, and general office supplies of the Multnomah Cable Regulatory Commission shall physically transfer to the City and shall become assets of the Commission.

C. The Jurisdictions shall share in the start up costs of the Commission proportionate to the FY 1993-94 budget contribution percentage of the respective Jurisdictions.

Section 9. Receiving and Distributing Funds.

A. The Commission shall comply with applicable state and local laws as to budget preparation and for audit of its books and records. The Jurisdictions may inspect all Commission books and records.

B. The annual budget adopted by the Commission shall be transmitted to the Jurisdictions by April 1. Each Jurisdiction shall review the Commission adopted budget prior to June 1 of each year. Upon approval by all Jurisdictions, the Commission-adopted budget shall become effective. If one or more Jurisdictions does not approve, the budget shall be returned to the Commission for modification and resubmitted to the Jurisdictions for approval. If all Jurisdictions do not approve a Commission budget by July 1, the previous fiscal year budget, less 10 percent, shall continue in effect until all Jurisdictions approve a Commission budget.

The Commission shall have the authority, subject to its approved annual budget, to expend funds for any lawful purpose up to the total amount of the approved budget. The Commission must seek approval by the Jurisdictions of budget amendments over the total amount of the approved budget. All Jurisdictions must approve such budget amendments for them to become effective. No Jurisdiction may amend, reduce or increase the approved Commission budget.

C. The cost allocation of each Jurisdiction in support of the Commission's approved budget shall be determined by the Commission during the annual budget process. The annual approved budget shall establish the specific cost allocation of each Jurisdiction and a schedule for all payments.

D. 1. The Commission is authorized to receive and collect cable franchise fees for all the Jurisdictions except Portland. The Commission shall distribute such franchise fees according to the terms of the franchise agreements with the Grantees, and the Commission budgets approved by the Jurisdictions. However, the Commission shall allocate, on an annual basis, sixty percent (60%) of cable franchise fees received from the cities of Fairview, Gresham, Troutdale, and Wood Village, and Multnomah County, to Multnomah Community Television for the provision of PEG access services within those Jurisdictions as the designated PEG provider. Fees collected in excess of budgeted amounts shall be returned to the Jurisdictions from which such fees are attributable.

2. The Commission shall not collect the City of Portland cable franchise fees. The City of Portland agrees to transfer quarterly its share of the cost allocation in accordance with the approved Commission budget.

3. All other funds arising out of cable franchise agreements shall be collected by the Commission. The Commission shall allocate such funds in accordance with the franchise agreements and the Commission budgets approved by the Jurisdictions.

E. 1. The Commission shall serve as the Grantmaking Board for decisions on

distributing PEG capital funds as grants, as provided in the cable franchise agreements administered by the Commission under this Agreement. The Commission shall establish procedures and timelines for decisions on distributing such grant funds.

2. The Commission shall establish the purposes for PEG capital grants, and evaluation criteria for grant applications, compatible with the terms and conditions of the cable franchise agreements. The Commission shall review such purposes and evaluation criteria at least biennially. Commission determinations of such purposes and evaluation criteria under this Section 9.E.2 shall be subject to review by the Jurisdictions under Section 4 of this Agreement.

3. The Commission shall distribute grants of PEG capital funds based upon such purposes and evaluation criteria as have been developed under Section 9.E.2.

4. The total amount of PEG capital funds, including the total amount of grant funds to be distributed by the Commission under this Section 9.E., shall be included in the Commission's annual budget as transmitted to the Jurisdictions under Section 9.B.

Section 10. Effective Date. This Agreement shall become effective upon its adoption by all Jurisdictions. Any Jurisdiction entering into this shall adopt an authorizing ordinance and shall forward a certified copy to the City of Portland. Within 30 days of the effective date of this Agreement, the City of Portland shall forward copies of the authorizing ordinances to the Secretary of State.

Section 11. Duration and Termination.

A. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, subject to subsection 11.B. The Commission shall forward this Agreement to the Jurisdictions every three years for their review.

B. Termination. In order for any Jurisdiction to withdraw from this Agreement and to prevent obligations for its financial contribution to the Commission for the ensuing year, a Jurisdiction may only withdraw from the Commission by filing a written notice of withdrawal with the Commission by November 1 of any year, effective at the end of that fiscal year. Membership shall continue until the effective date of the withdrawal. However, the withdrawing Jurisdiction shall not take action on the Commission's annual budget. Prior to the effective date, the member Jurisdiction may rescind its withdrawal notice at any time.

Section 12. Assets. If a Jurisdiction withdraws before dissolution of the Commission, the Jurisdiction shall have no claim against the assets of the Commission. In the event of dissolution, all remaining assets of the Commission, after payment of obligations, shall be distributed among the then existing Jurisdictions in proportion to the most recent budget cost allocation percentage of the respective Jurisdictions. Jurisdictions may agree to buy out each others portion of assets.

Section 13. Dissolution. The Jurisdictions may dissolve the Commission and terminate this Agreement at any time by mutual agreement of all Jurisdictions. The Commission shall continue to exist after the dissolution for such period, no longer than three months, as is necessary to wind up its affairs but for no other purposes.

Section 14. General Terms.

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

B. Interpretation. The terms and provisions of this Agreement shall be liberally construed in accordance with its general purposes.

C. Increasing Member Units of Government. The Commission may develop a method for allowing other units of local government to enter into this Agreement, subject to the full authority provision of subsection 4.B. A fee or cost for such entrance may be imposed.

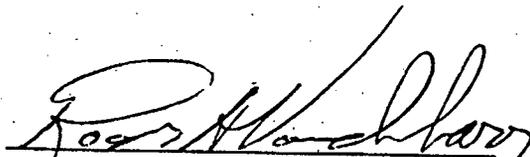
D. Amendments. The terms of this Agreement shall not be amended without the written authorization of the governing bodies of all Jurisdictions.

E. 1. General Indemnification. Each Jurisdiction shall be responsible for the negligent acts or omissions of the Jurisdiction, or its officers, agents or employees, in carrying out the terms of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq., and the Oregon Constitution, Article XI, Section 9.

2. By entering into this Agreement, the Jurisdictions are creating a public body under ORS Chapter 190 which is separately responsible for providing coverage for its officers, agents and employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq.

APPROVED AND EXECUTED by the appropriate officer(s) who are duly authorized to execute this Agreement on behalf of the governing body of each Jurisdiction.

City of Fairview


Mayor

Attest:


City Recorder

City of Gresham

Jessie McRobert
Mayor

[Signature]
City Manager

Multnomah County

[Signature]
County Chair

REVIEWED BY:
Thomas Spensler
County Counsel

City of Portland

[Signature]
Commissioner

APPROVED AS TO FORM:
Benjamin Walters, Deputy
City Attorney

City of Troutdale

[Signature]
Mayor

Attest:
[Signature]
City Recorder

City of Wood Village

[Signature]
Mayor

Attest:
[Signature]
City Recorder

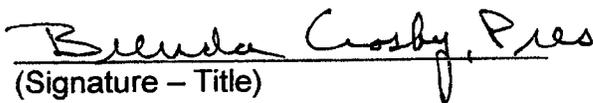


ACCEPTANCE

07/28/2008

Multnomah County Auditor
501 SE Hawthorne, Room 601
Portland, OR 97214

This is to advise Multnomah County, Oregon that Cascade Access, LLC hereby accepts the terms and provisions of the Franchise Agreement, approved by the Multnomah County Board of Commissioners on July 17, 2008 by Resolution No. 08-105 and in consideration of the benefits received thereunder, Cascade Access, LLC agrees to abide by and perform each and all of the terms and provisions thereof.



(Signature – Title)

Brenda Crosby, President
Cascade Access, LLC
287 SW 3rd
PO Box 1285
Estacada, OR 97023

OFFICE OF CABLE COMMUNICATIONS
CITY OF PORTLAND

RECEIVED
JUL 31 2008

COPY

MULTNOMAH COUNTY / CASCADE ACCESS, LLC FRANCHISE

July 17, 2008

Section 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

(A) Multnomah County does hereby grant to Cascade Access, LLC who is qualified to do business in Oregon, and to its successors and assigns, a franchise to construct, operate and maintain a Cable System to provide Cable Services and Institutional Services in the Streets of Corbett as outlined in the map attached as Exhibit A.

(B) Throughout this Franchise, Multnomah County, Oregon, shall be referred to as the "County" and Cascade Access, LLC shall be referred to as the "Grantee".

1.2 Term of Franchise. This Franchise, and all rights, privileges, obligations and restrictions pertaining hereto, shall expire on December 31, 2018, unless terminated sooner as provided in this Franchise.

1.3 Effective Date. The Effective Date of this Franchise shall be on the later of either July 18, 2008, or 7 days after the passage date of this Franchise by the County, unless the Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 22.1, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original of this Franchise, as stamped by the County Clerk.

1.4 Franchise Not Exclusive.

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

(B) Competing Cable Systems.

(1) The parties acknowledge that there is an incumbent cable operator already authorized to provide cable services within the Corbett area. The incumbent cable operator is required to provide capacity on its cable system for PEG Access Channels, to provide PEG Access Capital funding, to provide I-Net capacity and support and has existing assignments for the PEG Access Channels. The parties acknowledge that this Agreement reflects their best, good faith efforts to reflect the PEG Access and I-Net obligations set forth in the incumbent cable operator's franchise with the County. The parties agree that the obligations set forth in Sections 6, 7 and 8 are intended to require Grantee to provide PEG Access Channels, I-Net capacity and PEG Access Capital funding that is substantially equivalent to that required by the incumbent franchised cable operator.

(2) If, after the effective date of this Franchise, there are changes as to franchise requirements for the incumbent franchised cable operator relating to PEG Access

Channels, PEG Access Capital funding and I-Net capacity, the parties agree that the corresponding obligations in this Franchise will be modified to substantially reflect the franchise obligations of the incumbent franchised cable operator. The parties agree that they will attempt in good faith to negotiate these modifications. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation in accordance with Section 21.3 or by arbitration in accordance with Section 21.2.

(C) Additional Provisions.

- (1) Grantee agrees and acknowledges that, solely for the purposes of Section 1.4(B), the provisions of any other franchise issued or administered by the County with respect to the provision of Cable Services and in effect as of the effective date of this Franchise, are reasonably non-discriminatory and competitively neutral.
- (2) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other Person.

1.5 Charter and General Ordinances. This Franchise is subject to the Charter of Multnomah County and general ordinance provisions passed pursuant thereto, affecting matters of general County concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid or the manner of construction.

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

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

Section 2. INTERGOVERNMENTAL AGREEMENT/ CABLE REGULATORY COMMISSION

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

Section 3. DEFINITIONS

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

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

3.2 "Access" means the availability for use of the Cable System by various agencies, institutions, organizations, groups and individuals in the community to acquire, create and distribute Non-Commercial Programming not under the Grantee's editorial control, including, but not limited to:

(A) "Public Access" means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated Programmers or users having editorial control over their Programming;

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

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

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

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

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

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

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

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

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

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

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

3.11 "Cable Regulatory Commission" ("Commission") means the Mt. Hood Cable Regulatory Commission, or its successor agency as designated by ordinance of the County Commission.

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

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

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

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

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

3.17 "County" means Multnomah County, Oregon, an Oregon home rule county, and all of the territory within its corporate boundaries, as such may change from time to time.

3.18 "County Commission" means the Multnomah County Commission.

3.19 "Designated Access Provider" means the entity or entities designated by the County under Section 6.1 to provide Access in the Franchise Area, and whose duties may include the management of certain Access Facilities and Resources.

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

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

3.22 "Facility" means any tangible component of the Cable System.

3.23 "FCC" means the Federal Communications Commission.

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

3.25 "Fiber Distribution Hub" or "FDH" means the cabinet/site that houses the Passive Optical Network (PON) splitter assembly that aggregates the distribution fibers found in the public right of way from that point to the subscribers.

3.26 "Fiber Distribution Infrastructure" means those fiber optic cables and associated access equipment placed within the public right of way that are used to distribute signals the final 6,000 feet to the customers, excluding the optical subscriber drops placed on the subscribers private property.

3.27 "Franchise" means this franchise agreement, as fully executed by the County and the Grantee.

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

3.29 "Gross Revenues" means all amounts, in whatever form and from all sources, earned-either by the Grantee from the operation of Grantee's Cable System within the County, or by any Affiliated Entity only to the extent such amounts are earned from the operation of the Cable System to provide Cable Services within the Franchise Area. "Gross Revenues" shall include, without limitation, amounts for the Basic Service Tier, Cable Programming Service Tiers, Pay Services, audio services, Subscriber installations and transactions, Leased Access, advertising, equipment rentals and all other revenues

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

3.30 "Hazardous Substances" has the meaning given by ORS 465.200(16) (2007).

3.31 "Headend" means Grantee's Facility for reception and dissemination of Signals on the Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors, equipment for the Interconnection of the Cable System with adjacent cable systems or other separate communications network, and all other related equipment and Facilities.

3.32 "Initial Service Area" means the portion of the Franchise Area as outlined in Exhibit A.

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

3.34 "Interconnect" or "Interconnection" means the provision by Grantee of technical, engineering, physical, financial, and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Access Facility, cable system or other separate communications network so that Cable Services and I-Net services of technically adequate quality may be sent to and received from such other systems.

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

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

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

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

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

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

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

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

3.43 "Programming" means the process of causing television programs or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted or capable of being transmitted, on the Cable System.

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

3.45 "Residential Services" means Cable Services delivered to single or multiple Dwelling Units.

3.46 "Residential Subscriber" means any Subscriber receiving Residential Services.

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

3.48 "Service Date" means the date that Grantee first offers, or plans to offer, Cable Services on a commercial basis to one or more Subscribers in the Franchise Area. Grantee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall be incorporated into and be a part of this Franchise.

3.49 "Section" or "Subsection" means a provision of this Franchise, unless specified as part of another document.

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

3.51 "Standard Installation" means an installation of a drop of no more than 335 feet from a Dwelling Unit requesting Cable Service to the nearest point from which the FTTP Network is designed to serve the site.

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

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

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

3.55 "Tier" means any package or cluster of Standard Cable Services offered by Grantee to Subscribers.

3.56 "Upstream" means the direction of Signals transmitted to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

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

Section 4. FRANCHISE AREA

4.1 Service Area. Subject to the provisions of this Franchise, Grantee is authorized to provide Cable Services within the unincorporated portion of Multnomah County outlined in Exhibit A. Grantee shall make Cable Service available to significant numbers of Dwelling Units in the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall make Cable Service available to all Dwelling Units in the Initial Service Area within three (3) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by a Jurisdiction; (C) for periods of delay resulting from Grantee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other

providers; (E) in areas, developments or buildings where Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Grantee; and (F) in developments or buildings where Grantee is unable to provide Cable Service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; and (G) in areas where the Dwelling Unit density does not meet the density requirements set forth in Sub-section 4.2

4.2 **Density Requirement:** Grantee shall make Cable Services available to Dwelling Units in all areas of the Service Area where the average density is equal to or greater than 20 Dwelling Units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network. After the time stated for providing Cable Service as set forth in Subsection 4.5, should an area within the Initial Service Area meet the density requirements through new construction, Grantee shall provide Cable Service to such area within ninety (90) days of receiving a request for service.

4.3 **Availability of Cable Service:** Grantee shall make Cable Service available to all Dwelling Units and may make Cable Service available to businesses within the Service Area in conformance with Section 4.1 and Grantee shall not discriminate between or among any Person or Subscriber in the availability or provision of Cable Service.

4.4 **Standard and Non-Standard Installations:** In Initial and Additional Service Areas, Grantee shall be required to connect, at a standard installation charge, all residential Dwelling Units that qualify as a Standard Installation under this Franchise. Grantee shall have no obligation to provide Cable Services to Dwelling Units which require an installation in excess of a Standard Installation, unless the Subscriber requesting such connection agrees to pay Grantee's actual costs incurred for the portion of the residential installation that exceeds a Standard Installation or actual costs incurred to connect any non-residential Dwelling Unit Subscriber.

4.5 **Service Date.** Grantee shall notify the County, within three (3) months from the Effective Date of this Franchise, of a Service Date as provided in Section 3.48.

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

Section 5. PROGRAMMING AND CHANNEL CAPACITY

5.1 Channel Capacity.

(A) Grantee shall provide a minimum Downstream Channel capacity of 870 Standard Video Channels to all Residential Subscribers.

5.2 Broad Programming Categories.

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

- (1) Arts, culture and performing arts;

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

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

5.4 Parental Control Device. Upon request by any Subscriber, Grantee shall make available a parental control or lockout device to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

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

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

Section 6. PEG ACCESS

6.1 Designated PEG Access Providers.

(A) The County may designate up to three (3) Non-Commercial PEG Access providers, including itself, to control and manage the use of any or all Access Facilities and Resources provided by the Grantee under this Franchise. To the extent of such designation by the County, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities and Resources.

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

6.2 Access Channel Capacity on the Residential Network.

(A) Initial Access Channels. Grantee shall provide eight Downstream Channels for distribution of Access Programming to all Residential Subscribers, with such Channel assignments as are set forth in Section 6.3(A).

(B) Additional Access Channels. Grantee shall Activate up to a total of 18 Channels, inclusive of the Access Channels under Section 6.2(A), upon request by the County for PEG Access use in order to meet a community need identified by a Designated Access Provider. These Channels shall have the

capacity to carry entertainment quality and motion equivalent Channels, but may be reconfigured, at the County's direction, to carry Channels which require less capacity.

6.3 Access Channel Assignments and Programming Information

(A) PEG Channel Assignments. Grantee shall provide the following Channel assignments for PEG Access:

- (1) Channel 11 - public access
- (2) Channel 21 - public access
- (3) Channel 22 - public access
- (4) Channel 23 - public access
- (5) Channel 27 - educational access
- (6) Channel 28 - educational access
- (7) Channel 29 - government access
- (8) Channel 30 - government access

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

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

(D) Access Programming Information in Programming Guides.

- (1) Grantee shall include the PEG Access Channels and Programming information in any program guides provided to its Cable Services Subscribers, including, but not limited to on-screen, print and on-line program guides which include channel and program listings of any local Broadcast Channels. Grantee shall bear all capital, implementation and operating costs to include the PEG Access Channels and Programming information in the programming guides.
- (2) The Designated Access Providers shall provide to the Grantee, or its designee, the Access Channel and Programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.

6.4 Access Channel Interconnect.

(A) Access Channel Origination Point. The County has designated MetroEast Community Media, located at 829 NE Eighth Street, Gresham, Oregon, or its successors or assignees, as the Designated Access Provider, which serves as the PEG Access Channels point of origination. However, Grantee and the County acknowledge that the PEG Access Channels origination point is not physically located within Grantee's Cable Services Franchise Area.

(B) Interconnect Capacity. Grantee shall provide Activated Interconnection of the Cable System to other contiguous franchised cable services operators' systems in order to enable the carriage and routing of Access Channels and Programming. The Access Channel Interconnect shall enable the Designated Access Providers to use their Channel origination points as central collection, switching and dissemination points for PEG Access Programming, including the control of the Interconnection of such Programming with other cable communication systems.

(C) The County acknowledges that the Access Channel Interconnection requires cooperation from other cable services operators as to engineering, design, technical and operational issues. Therefore, the County shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable services operators necessary to establish the Activated Interconnects, and Grantee's Interconnection obligations under Section 6 shall be subject to such cooperation being obtained.

(D) Grantee shall implement and continue in effect all Access Channel Interconnections in a manner that permits the transmission of Access Channel signals on the Cable System which meet technical standards for transmission of local broadcast signals.

(E) Changes in Access Channel Origination Points. If the County designates new Access Channel origination points within the Franchise Area or if Grantee's Franchise Area changes so that the PEG Access Channels point of origination under Section 6.4(A) is within the Franchise Area, Grantee shall provide an Activated Interconnect for the PEG Access Channel signals at the Designated Access Provider's site.

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

6.6 Charges. All of the Channels, Cable System Capacity, capabilities, equipment, labor and other elements needed for the Grantee to provide PEG Access as required under this Section shall be provided without charge to the County or to any Designated Access Provider, except as specifically provided in this Section 6.

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

6.8 Technical Quality.

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

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

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

Section 7. PEG INSTITUTIONAL NETWORK

7.1 Institutional Network ("I-Net")

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

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

(C) The County and Grantee may mutually agree on I-Net capacity, Interconnect, facilities and/or services to be provided by Grantee to meet identified I-Net needs of PEG Institutions. Grantee may deduct the agreed upon Incremental, direct costs of providing such I-Net capacity, facilities and/or services from I-Net funds provided under Section 8.1(A).

7.2 Interconnections. Upon request by the County based on an identified community need, Grantee shall provide an Activated Interconnect, within 120 days of such request, for the carriage and routing of I-Net Signals to and from any I-Net facilities provided by Grantee and I-Net facilities provided by other franchised cable service providers, including cable service providers serving jurisdictions contiguous with the Franchise Area. If the County authorizes such Interconnection, Grantee may credit the Incremental, direct cost of such Interconnection against payments made under Section 8.1(A).

Section 8. PEG ACCESS CAPITAL FUNDING

8.1 3% Gross Revenue Annual Setaside.

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

(B) The County intends to use one percent (1%) of funds paid under Section 8.1 to provide support for Designated Access Provider Capital Costs; one percent (1%) for grants to PEG Institutions for Capital projects related to use of the Cable System; and one percent (1%) to fund PEG Institutions' Capital requirements for use of the I-Net.

8.2 Payments. Following the effective date of this Franchise, Grantee shall make quarterly payments to the County under Section 8.1 for the preceding quarter Year period ending September 30, December 31, March 31, and June 30. Each quarterly payment shall be due and payable no later than forty-five (45) days after the quarter ending date.

8.3 PEG Access Support not Franchise Fees; Applicable Federal Law. Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in Section 8 shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to the County, subject to the requirements of Federal law. Grantee agrees that although the sum of franchise fees and the payments set forth in Section 8 may total more than five percent of Grantee's Gross Revenues in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any franchise fee payments under this Franchise.

8.4 Audit Rights.

(A) The Grantee and its agents and representatives may arrange for and conduct audits, upon no less than thirty (30) days prior written notice and during normal business hours, for payments made under Section 8 to ensure that the PEG Access Capital funding has been utilized for PEG Access and Institutional Network Capital Costs in accordance with this Franchise. Grantee shall provide written notice to the County of the auditors' conclusions. The County shall have thirty (30) days to provide a written response. If the parties are unable to agree upon the auditors' conclusions, either party may submit the issue to arbitration under Section 21.2.

Section 9. SERVICE, CONSTRUCTION, AND INTERCONNECTION

9.1 Fiber Distribution Hub (FDH) Service Radius. For purposes of Section 9, "FDH Service Radius" means an area within 6,000 feet from an Activated FDH, capable of providing Residential Cable Services to Residential Subscribers, providing the associated fiber distribution infrastructure is in place.

9.2 Universal Service. Subject to Section 4, following the Service Date, Grantee shall provide Cable Services under non-discriminatory rates and reasonable terms and conditions to all Subscribers in the Cable Services Franchise Area who reside in Dwelling Units within an activated FDH Service Radius. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within an activated FDH Service Radius within the Cable Services Franchise Area. Grantee shall provide information to the County clearly identifying an FDH Service Radius immediately upon the Activation of the Remote Terminal which serves the area.

9.3 Service Availability. Except as otherwise provided in this Franchise, where Grantee chooses to activate a FDH Service Radius located within the Franchise Area, Grantee shall provide Cable Services at its standard installation rates within seven (7) days of a request by any Person within an activated FDH Service Radius. A request for Cable Services shall be deemed made on the date of

signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

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

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

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

Section 10. TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS

10.1 Technical and Safety Standards.

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

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

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

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

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

10.2 Performance Testing.

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

(1) All tests required by the FCC; and

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

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

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

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

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

Section 11. CUSTOMER SERVICE AND CONSUMER PROTECTION

11.1 County's Cable Television Consumer Protection Policy. Grantee shall comply with the County's Cable Television Consumer Protection Policy.

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

Section 12. COMPENSATION AND AUDITING

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

12.2 Payments and Quarterly Reports.

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

(B) Quarterly Reports. Each payment shall be accompanied by a written report to the County, verified by Grantee, containing an accurate statement in summarized form, as well as in detail, of

Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the County.

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

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

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

12.6 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to Section 8 or Section 12 of this Franchise shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the County may have for further or additional sums payable. All amounts paid under Section 8 or Section 12 of this Franchise shall be subject to audit by the County, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the County notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the County for:

(A) Interest on any underpayment of an amount due under Section 8 or Section 12 of this Franchise that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the County, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the County, then interest shall be compounded daily from the date on which the payment was due until the date the County receives the payment.

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

12.7 Escrow. If the Grantee disputes the County's determination of underpayment under Section 8 or Section 12 of this Franchise, the Grantee shall place the disputed amount in an escrow account at a financial institution with instructions agreed to by the County until final resolution.

12.8 Authority to Audit.

(A) The County and its agents and representatives shall have authority to arrange for and conduct audits under Section 12, within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 12.8, the County may determine the scope of audit in each instance.

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

- (1) The reasonable costs of such audit if the audit discloses that the Grantee has paid 95% or less of the fees owing under Sections 8 and 12 for the period at issue; or
- (2) One half of the reasonable costs of such audit if the audit discloses that the Grantee had paid more than 95% but less than 98% of the fees owing under Sections 8 and 12 for the period at issue.
- (3) The Grantee shall reimburse the County within 30 days of receipt of an invoice from the County showing such costs were actually incurred and were directly related to the audit. The County's costs which may be reimbursed shall not exceed \$7,500.00 per audit.

12.9 Liability for Licenses and Taxes. Except as provided in Section 12.5, payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the County, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. The County's right to impose any such license fee, tax or charge shall be subject to any limitations on the County under applicable law.

Section 13. GENERAL INDEMNIFICATION AND INSURANCE

13.1 Indemnification.

(A) General Indemnification. Grantee agrees and covenants to indemnify, defend and hold the County, its officers, agents and employees, harmless from any direct claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any injury or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages, arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee to keep its system in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the County or its officers, agents or employees. The County shall provide Grantee prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of the County which

approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the County while conducting its defense of the County and the County shall fully cooperate with the Grantee.

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

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

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

13.2 Insurance.

(A) Grantee shall maintain commercial general liability insurance and commercial automobile insurance that protects the Grantee and the County, 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 Grantee's operations under this Franchise or in connection therewith, as set forth in subsection 13.2.(B).

(B) Grantee shall obtain, at Grantee's expense, and keep in effect during the term of this Franchise:

(1) Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Franchise. The following will be carried:

Coverage	Limit
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Coverage	Limit
Fire Damage (Any on Fire)	\$50,000

(2) "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined Single Limit per occurrence shall not be less than Five hundred thousand dollars (\$500,000).

(C) Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated B+ or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

(D) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County 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.

(E) 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 Section 15.2 without thirty (30) days written notice first being given to the County's cable regulatory office. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of Section 15.2 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.

(F) Grantee shall provide the County's cable regulatory office, within fifteen (15) days of the effective date of this Franchise, a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Counsel as to the adequacy of the certificate and of the insurance certified under the requirements of Section 15.2. Failure to maintain adequate insurance as required under Section 15.2 shall be cause for immediate revocation of this Franchise by the County.

(G) In the alternative to providing a certificate of insurance to the County certifying liability insurance coverage as required in Section 13.2 (A), Grantee may provide the County with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the County, its officers, agents and employees, as otherwise required under Section 13.2(A). The adequacy of such self-insurance shall be subject to the County Counsel's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 13.2 (C), any failure by the Grantee to maintain adequate self-insurance shall be cause for the County to declare a forfeiture of this Franchise under and subject to Section 20.1(C) of this Franchise.

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

13.3 Faithful Performance Bond.

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

(B) During the term of the Franchise, Grantee shall file with the County Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the County exercise its rights against the performance bond under this Section 13.3 if a bona fide, good faith dispute exists between the County and the Grantee.

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

13.4 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a permit from the County, Grantee shall post a faithful performance bond, a cash deposit or irrevocable letter of credit, as is required for the County's permit, running to the County, with good and sufficient surety approved by the County, in the sum required by the permit. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the County. Upon such approval, the County agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the Jurisdiction a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval of the County as to its adequacy under the requirements of this Section 13.4.

Section 14. GENERAL STREET USE AND CONSTRUCTION

14.1 Construction.

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

within the Streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the County to Grantee.

(B) Construction Schedule and Maps.

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

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

(D) In the event that emergency repairs are necessary, Grantee shall immediately notify the County of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. Grantee shall comply with all applicable County regulations relating to such excavations or construction, including the payment of permit or license fees.

14.2 Locates. Grantee shall comply with the Oregon Utility Notification (ORS 757.542 through 757.562 and ORS 757.993 (2007), and the rules and regulations promulgated thereunder in OAR Chapter 952.)

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

14.4 Restoration of Streets.

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

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration and maintenance of the Street and its surface within the area affected by the excavation. The County may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The County reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the County Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 14.4 shall be done in strict compliance with all rules, regulations and ordinances of the County.

14.5 Maintenance and Workmanship.

(A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the County, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the Streets by or under the County's authority.

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

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

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

14.7 Reservation of County Street Rights. Nothing in this Franchise shall prevent the County from constructing sewers; grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Cable System shall be removed or replaced in the manner the County

shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the County Engineer's written notice to Grantee, the County may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the County due to Grantee's delay.

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

14.9 Common Users.

(A) For the purposes of this Section:

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

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

governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

(C) If the Grantee and any Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, the Grantee and the Licensee shall enter into binding arbitration to determine such terms, conditions and regulations. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate. The binding arbitration shall be conducted in accordance with the Uniform Arbitration Act ORS 36.600 to 36.740 (2007).

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

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

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

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

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

(H) As needed and as specified by the County in an Annual duct capacity plan provided to Grantee, County will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under Section 14.9 and subject to a separate written agreement between the County and Grantee specifying the terms of such access and usage by the County.

14.10 Abandonment of Facilities.

(A) If Grantee intends to permanently abandon a Facility within all or part of a particular portion of the Streets by physically disconnecting it from its operating System, Grantee shall submit to the County Engineer a completed application describing the structures or other Facilities and the date on

which Grantee intends to permanently abandon such Facilities. Grantee may elect to remove the abandoned Facilities or request that the County allow them to remain in place. Grantee's sale of a portion of its System shall not, by itself, be considered abandonment under this Section 14.10.

(B) **Removal or Modification.** Upon receiving notice from Grantee of the intent to abandon a Facility by permanently disconnecting it from its operating system, the County may consent to having the ownership of the abandoned Facilities in the Streets transfer to the County and Grantee shall have no further obligation therefore. Notwithstanding Grantee's request that any abandoned Facility remain in place, the County Engineer may require Grantee to remove the Facility from the Street or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The County Engineer may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the County Engineer. The County Engineer shall have unlimited discretion in determining a reasonable schedule for removal or modification of the abandoned Facility, based upon the Engineer's consideration of the total circumstances of the schedule. Until such time as Grantee removes or modifies the Facility as directed by the County Engineer, or until the rights to and responsibility for the Facility are accepted by the County or by another Person having authority to construct and maintain Facilities with the Streets, Grantee shall continue to be responsible for all necessary repairs and relocations of the abandoned Facility, as well as restoration of the Street, in the same manner and degree as if the abandoned Facility were in active use, and Grantee shall retain all liability for the abandoned Facility.

14.11 Hazardous Substances.

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

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

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

14.12 **Undergrounding of Cable.** Grantee is strongly encouraged to locate and construct its present and future cables underground. Grantee shall install its cables or other Facilities underground wherever all existing utilities already are underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable

shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the County or applicable State law, or in the event that an institutional utility or a public utility decides to underground its facilities on a voluntary basis, unless the County grants an exception.

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

14.14 Construction and Use of Poles.

(A) In the event Grantee cannot obtain the necessary poles and allied facilities agreements, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Cable System. All poles of the Grantee shall be erected between the curb and the sidewalk unless otherwise designated by the proper County authorities, and each pole shall be set whenever practicable at an extension of a lot line. A County shall have the right to require the Grantee to change the location of any pole, conduit, structure or other Facility within the Streets when, in the opinion of the County, the public convenience requires such change, and the expense thereof shall be paid by the Grantee.

(B) The terms of Section 14.14(A) shall not exempt the Grantee from compliance with all Charter and ordinance provisions relating to such excavations or construction or from any provision requiring payment of permit or license fees pertaining thereto.

14.15 Tree Trimming.

(A) When Permits Needed. Upon obtaining proper permits from a County, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree or vegetation in or overhanging the Streets which interferes with Grantee's Cable System. Tree and vegetation pruning will only be done in accordance with the County's ordinances, rules and regulations and, if the tree or vegetation is located on private property, with the permission of the property owner.

(B) Blanket Permits. The County may, at its own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the County. The County shall have the discretion to cancel the permit if, at any time, the Grantee or its agents fails to use proper arboricultural practices.

Section 15. TRANSFER OF GRANTEE'S CABLE SYSTEM

15.1 Transfer Defined. For purposes of Section 15, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.

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

15.3 Review.

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

(B) No Transfer for which the County's consent by ordinance is required may occur until the successor, assignee, lessee or transferee has complied with the requirements of Section 13 of this Franchise, including, but not limited to, providing certificates of insurance, unless the County Commission waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the County, Grantee shall file with the County Auditor an executed counterpart or certified copy thereof.

15.4 Leases. Grantee shall not lease any portion of its franchised Cable System without the County's prior consent as expressed by ordinance. However, and notwithstanding Section 15.2, Grantee may lease any portion of its Grantee System in the ordinary course of its business without otherwise obtaining the County's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Cable System. A lessee of any portion of Grantee's Cable System shall not obtain any rights under this Franchise.

15.5 Sales.

(A) Notwithstanding Section 15.2, Grantee may sell portions of its Cable System in the ordinary course of its business, without otherwise obtaining the County's consent by ordinance, so long as Grantee complies with the following conditions:

- (1) The sale is to the holder of a current existing, cable system franchise, license, permit, or other similar right granted by the County;
- (2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the County, describing the portions of the Cable System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the mapping requirements of Section 14.1(B)(2) and providing an executed counterpart or certified copy of the sales documents;
- (3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Cable System; and,
- (4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the County that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid cable system franchise, license, permit or other similar right granted by the County. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

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

(C) Bankruptcy or Dissolution. Grantee shall immediately report to the County, as soon as it becomes known, the initiation of bankruptcy proceedings, or corporate or partnership dissolution.

(D) Consent. No consent by the County, which is required under this Section, shall be unreasonably denied or delayed.

Section 16. COUNTY REGULATORY AUTHORITY

16.1 County Regulatory Rights.

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

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

16.2 County Regulatory Actions. Subject to the conditions set forth in Section 1.6, Grantee shall comply with any and all lawful actions of the County affecting Grantee's operations under this

Franchise, including, without limitation, all applicable ordinances, orders, contracts, and regulatory actions taken pursuant thereto, in all respects and without exception, so long as such actions do not materially affect the rights of Grantee hereunder. Subject to the conditions set forth in Section 1.6, in the event of any direct conflict between County orders and regulatory actions, and the terms of this Franchise, this Franchise shall prevail.

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

16.4 Rate Discrimination. All Grantee rates and charges shall be published and non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability, income of the residents, or geographic location within the Grantee's Franchise Area. Nothing in Section 16.4 shall be construed to prohibit:

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

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

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

16.5 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the County a complete schedule of applicable rates and charges for Cable Services provided under this Franchise, in a form satisfactory to the County. Nothing in this Section 16.5(A) shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than six consecutive months to purchase Cable Services at such rate or charge.

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

16.6 Changes in Rates and Charges.

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

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

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

16.8 Downgrade and Disconnect Charges.

(A) Downgrade Charges.

- (1) Unless otherwise provided by law, Grantee shall not impose any Downgrade Charges, except as otherwise provided in this Franchise. As used in this Section, "Downgrade Charge" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of Cable Services to less expensive Cable Services or Tiers.
- (2) Unless otherwise provided by law, Grantee may impose Downgrade Charges only if:
 - (a) The Subscriber has been notified, at the time of initiating Cable Services, and periodically thereafter, of Grantee's Downgrade Charges;
 - (b) The Downgrade Charge does not exceed the Grantee's actual Incremental, direct costs of performing the downgrade; and
 - (c) The downgrade is from a level of service which the Subscriber has not maintained continuously for six (6) months immediately preceding the date of the downgrade request.

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

Section 17. RECORDS AND REPORTS

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

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

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

17.2 Annual Reports. Grantee shall Annually present a written report to the County(the "Annual Report") setting out such information as the County deems necessary to determine compliance by Grantee with its obligations under this Franchise. Grantee shall submit the Annual Report no later than May 1 of each Year, following the end of the Grantee's calendar fiscal year. Except as otherwise provided by the County, the Annual Report shall include, at a minimum, information as may be required concerning the Grantee's operations within the Franchise Area for the immediately previous Year in a form prescribed by the County. Specifically, the Annual Report will include the following information:

(A) Cable System structure and operating information:

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

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

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

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

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

17.6 Public Records.

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

(B) Grantee may identify information, such as trade secrets, submitted to the County as confidential. Grantee shall prominently mark each page for which it claims confidentiality as "Confidential" prior to submitting such information to the County. The County shall treat any information so marked as confidential, until the County receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the County shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the County, before the County may disclose any of the requested confidential information. If the County determines that it will be necessary to reveal the information, the County shall promptly notify the Grantee, and do so at least five (5) working days prior to the information being released.

Section 18. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISES

18.1 Equal Employment Opportunity.

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

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

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

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

Section 19. RIGHTS OF INDIVIDUALS

19.1 Discriminatory Practices. Grantee shall not deny Cable Services, deny access, or otherwise discriminate on the availability, rates, terms or conditions of Cable Services provided to Subscribers, Programmers or any other Persons on the basis of race, color, religion, ancestry, age, national origin,

gender, sexual orientation, familial status, marital status, status with regard to public assistance or physical or mental disability. Grantee shall comply at all times with all applicable federal, state or local laws, rules and regulations relating to non-discrimination.

19.2 Unauthorized Monitoring or Cable Tapping.

(A) Neither the Grantee, nor any of its agents, employees, officials or permittees, or any other Person, agency or entity, shall Tap any cable, line, Signal input device or Subscriber outlet or receiver for any purpose, except as provided in Subsection 19.2(B), and as is necessary for billing purposes.

(B) Grantee may Tap a cable, line, Signal input device or Subscriber outlet or receiver to 1) determine the number of viewers watching a program where the identities of the viewers are not determined; 2) perform Cable System maintenance and verify technical performance; and 3) identify theft of services, without the Subscriber's written consent.

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

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

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

19.5 Sale of Subscriber Lists and Personalized Data.

(A) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Data pertains, except as otherwise permitted by federal law. For purposes of Section 19, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

(B) Grantee shall be subject to the provisions of applicable law regarding limitations on Grantee's collection and use of personalized data, and other issues involving the protection of Subscriber privacy.

Section 20. FRANCHISE VIOLATIONS AND REMEDIES, EXPIRATION AND RENEWAL

20.1 Remedies for Franchise Violations.

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

- (1) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation;
- (2) To the extent authorized by law, require Grantee to reduce its rates and charges by such amount or amounts as is reasonable in light of the violation;
- (3) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. For purposes of this Subsection, "Subscriber Class" means any group of actual or potential Subscribers identified by the Grantee on the basis of specified characteristics for the purpose of providing, marketing or establishing any combination or package of Cable Services, rates or charges, or for the purpose of providing or directing customer services or marketing in any form;
- (4) To the extent authorized by law, require Grantee to correct or cure the violation prior to any rate increase becoming effective, or otherwise delay consideration of any rate request until the violation is corrected or cured;
- (5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
- (6) Revoke this Franchise.

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

(C) The County also has the right to shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 20.1(A)(4) and (5) upon the occurrence of any of the following acts or events:

- (1) Grantee fails to meet the Service Date requirements under Section 4.2 of this Franchise;
- (2) Grantee fails to comply with the requirements of Section 13 of this Franchise, including but not limited to, providing insurance or performance bonds;
- (3) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the County; or
- (4) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Cable System.

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

- (1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by the County; and
- (2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the County, duly approved by the County 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.

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

20.2 Notice and Opportunity to Cure.

(A) The County shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 20.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and the Grantee initiates good faith efforts satisfactory to the County within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the County shall not exercise its rights under Section 20.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and continue efforts satisfactory to the County to remedy the stated reason, then the County may exercise any or all of the remedies available under Section 20.1 or such other rights as the County may possess.

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

20.4 Expiration.

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

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

(B) Until such time as the County exercises its rights under Section 20.4, the Grantee's rights and responsibilities within the County shall be controlled by the terms of this Franchise.

20.5 Removal of Plant and Equipment. If the County has by ordinance declared a forfeiture of this Franchise as provided in Section 20.1, or if this Franchise has expired without being renewed or extended, or in the event of the County's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, the Grantee shall remove its Facilities from the Streets and restore the Streets to such condition as the County may require. In the event of a failure by the Grantee to properly perform such work, then the County may perform the work and collect the cost thereof from the Grantee. The cost thereof shall be a lien upon the system of the Grantee and a set-off against any sums owed Grantee by County.

Section 21. MISCELLANEOUS PROVISIONS

21.1 Compliance with Laws.

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

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

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

21.2 Arbitration.

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

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

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

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

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

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

(F) The arbitrators shall have such powers as are described in the Uniform Arbitration Act ORS 36.600 to 36.740 (2007.)

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

21.3 Mediation. The County and Grantee agree that should any dispute arise between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties, and

unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the County and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the County and Grantee are unable to successfully conclude the mediation within 45 days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 21.2, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

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

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

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

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

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

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

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

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

If to the County: Multnomah County
c/o The Mt Hood Cable Regulatory Commission
1120 SW Fifth Avenue, Room 1305
Portland, Oregon 97204
FAX No. (503) 823-5370

With a copy to: County Attorney's Office
501 SE Hawthorne Blvd. Suite 500
Portland, OR 97214
FAX No.(503) 988-3377

If to the Grantee: Cascade Access, LLC
P.O. Box 189
287 SW 3rd Avenue
Estacada, OR 97023
FAX No. (503)-630-8934

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

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

21.13 Force Majeure.

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

(B) If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the County prompt notice of such Force Majeure,

describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Franchise.

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

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

Section 22. WRITTEN ACCEPTANCE.

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

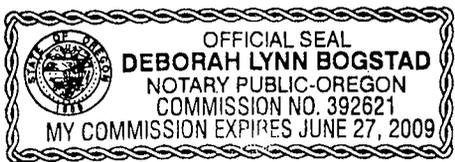
22.2 Failure to File Acceptance. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Franchise, and this Ordinance shall thereupon be null and void.

MULTNOMAH COUNTY:

By: Ted Wheeler
Ted Wheeler, Chair
Multnomah County Board of Commissioners

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Agreement was acknowledged before me this 30th day of July 2008, by Ted Wheeler, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.

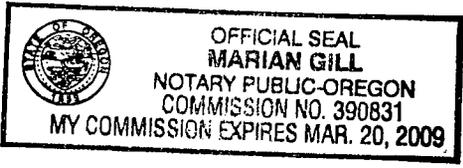


Deborah Lynn Bogstad
Deborah Lynn Bogstad, Notary Public for Oregon;
My Commission expires: 6/27/09

GRANTEE:

CASCADE ACCESS, LLC

By: Brenda Crosby
Brenda Crosby
(print name)

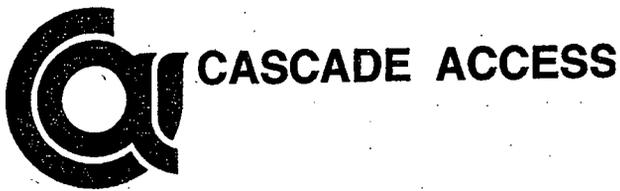


Title: President

STATE OF Oregon)
) ss
COUNTY OF Clackamas)

This Agreement was acknowledged before me this 15th day of September, 2008, by Brenda Crosby, as a duly authorized officer of Cascade Access, LLC, and Trustee Member.

Marian Gill
Notary Public for Clackamas Co.
My Commission expires: 3/20/2009
Notary Public - Oregon



ACCEPTANCE

07/28/2008

Multnomah County Auditor
501 SE Hawthorne, Room 601
Portland, OR 97214

This is to advise Multnomah County, Oregon that Cascade Access, LLC hereby accepts the terms and provisions of the Franchise Agreement, approved by the Multnomah County Board of Commissioners on July 17, 2008 by Resolution No. 08-105 and in consideration of the benefits received thereunder, Cascade Access, LLC agrees to abide by and perform each and all of the terms and provisions thereof.

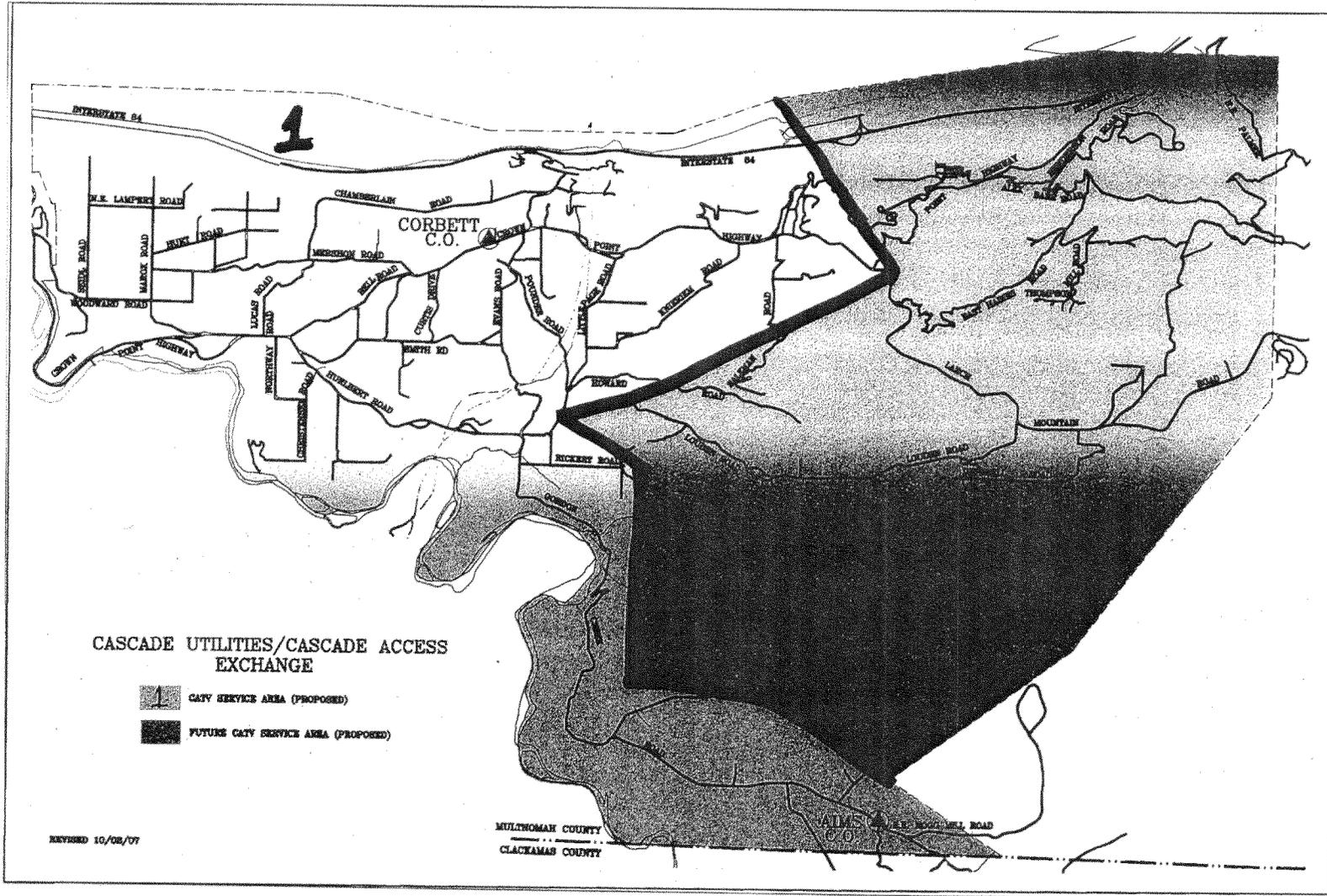
Brenda Crosby, Pres

(Signature - Title)
Brenda Crosby, President
Cascade Access, LLC
287 SW 3rd
PO Box 1285
Estacada, OR 97023

OFFICE OF CABLE COMMUNICATIONS
CITY OF PORTLAND

RECEIVED
JUL 31 2008

COPY



**MT. HOOD CABLE REGULATORY COMMISSION
INTERGOVERNMENTAL AGREEMENT
AS AMENDED MARCH 1998**

THIS AGREEMENT is between each of the cities of Fairview, Wood Village, Troutdale, Gresham and Portland, all municipal corporations duly incorporated under the laws of the State of Oregon, and Multnomah County, a home rule county formed under the laws of the State of Oregon, hereinafter referred to as the "Jurisdictions." 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 Jurisdictions.

Section 1. General Purposes. The Jurisdictions have each separately entered into various franchise agreements providing for the construction and operation of cable communications systems within their boundaries. The City of Portland created the Portland Cable Regulatory Commission, and Multnomah County, Gresham, Troutdale, Fairview and Wood Village created the Multnomah Cable Regulatory Commission, each with the general purpose to regulate and administer cable franchise agreements for the Jurisdictions. The Jurisdictions wish to form a unified cable regulatory commission. The formation of a unified regulatory commission serves the public interest in that the boundaries of the Jurisdictions do not necessarily coincide with the service areas of the Grantees, or with the needs of the citizens within each Jurisdiction or franchise, regarding cable communications. In addition, a unified commission can provide enhanced public benefits in franchising and regulation, and economies of scale in its operation.

To further this public interest and these purposes, the Jurisdictions desire to create a unified cable regulatory commission to jointly regulate and administer franchise agreements within their boundaries. The commission will further serve as an advisory body to the Jurisdictions on matters relating to cable communications and function as the Jurisdictions' representative for regional, state or national cable communications policy matters.

Section 2. Definitions.

A. "Cable Communications System" or "System" - any system of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, receivers, home terminals, converters, 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. "Commission" means the Mt. Hood Cable Regulatory Commission as formed under this Intergovernmental Agreement.

C. "Grantee" - any person who is authorized by a franchise agreement or seeks authority to construct, operate and maintain a cable communications system operated within the territories of

the Jurisdictions.

D. "Jurisdiction" - any municipality or county which enters into this Agreement.

E. "Multnomah Community Television" means the designated provider of PEG access for the cities of Fairview, Gresham, Troutdale and Wood Village, and Multnomah County.

F. "PEG" means public, educational and governmental cable access within the meaning of franchise agreements administered by the Commission, and applicable law.

G. "Person" - 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. A unified regulatory commission, the Commission is created to carry out the purposes set forth in this Agreement and to administer the cable communications franchises granted by the Jurisdictions. The Commission is vested with all the powers, rights and duties necessary to carry out these purposes that are vested by law in each Jurisdiction, its officers and agencies, subject only to the limitations contained in this Agreement and in the cable communications franchise agreements. "Law" includes the federal laws and Constitution, the Oregon constitution and laws as well as the charters, ordinances and other regulations of each Jurisdiction.

A. **Regulatory Authority.** The Commission has the authority to act on behalf of the Jurisdictions jointly and separately, and in its own right, to oversee and regulate any cable communications system operated pursuant to the cable communications franchise agreements entered into by the Jurisdictions. The Commission has full authority to take any action necessary to enforce or administer franchise agreements for operation of cable communications systems, except where the power to take a specific action is either limited or reserved to the Jurisdictions by the provisions of Section 4 of this Agreement.

B. **Contracting Authority.** The Commission may make such contracts, grants, and take such other action as it deems necessary and appropriate to accomplish the general purposes of this Agreement. All contracts made shall conform to the requirements of Oregon law.

Section 4. Powers Retained by Jurisdictions.

A. **Discretionary Review.** Commission action to; (1) find a Grantee in violation of its franchise agreement, or; (2) impose any penalty or financial remedy, or; (3) regulate, establish or approve any Grantee rate or charge, or; (4) determining PEG capital grant purposes and evaluation criteria as set forth in Section 9.E.2 of this Agreement, shall become effective 30 days after the Commission's final decision. Any such Commission final decision shall not be effective unless a copy of the final decision is filed with the Recorder of each affected Jurisdiction within 10 days of such action. Such final decisions are subject to review by the governing body of each affected

Jurisdiction. Within a 30-day period, any affected Jurisdiction may notify the Commission of its intent to exercise review authority. The Commission shall notify all affected Jurisdictions within 10 days of receiving the review notice. If a majority of the affected Jurisdictions acts within 60 days to overturn the Commission's final decision, such decision shall not become effective, and the matter shall be returned to the Commission for further proceedings as directed by the affected Jurisdictions.

1. Affected Jurisdiction means any Jurisdiction which is a party to the franchise agreement with the Grantee to which the Commission's final decision applies.

2. Recorder means a Jurisdiction's Clerk, Recorder or Auditor.

B. Full Authority. As set forth herein, the Jurisdictions reserve the authority to act on their own behalf. Each Jurisdiction agrees to make a good faith effort to weigh the impact of such actions on the overall operation of a cable system and the continuity of the Commission. Each Jurisdiction agrees to take no action in these areas until the Commission has had a prior opportunity to consider the matter.

Authority retained by the Jurisdictions includes:

1. Any decision to grant, revoke, terminate, extend, amend, renew or refuse to renew a franchise agreement.

2. Any decision concerning a change of ownership or control of a cable communications system or a Grantee.

3. Any decision to purchase or condemn a Grantee's interest, in part or in whole, whether or not pursuant to a termination, revocation or expiration of a franchise agreement.

4. Any decision regarding cable regulation which requires adoption of any ordinance or resolution by the Jurisdictions.

5. Any decision which requires the amendment of this Agreement.

6. Any authority which is reserved to or retained by the Jurisdictions by franchise agreement and which may not otherwise be delegated to the Commission.

Section 5. Commission Members.

A. The Composition. The Commission shall be composed of Commissioners appointed by the Jurisdictions. Each Jurisdiction, except Portland, shall select and appoint one representative to serve as its Commissioner. Portland shall select and appoint three representatives to serve as its Commissioners.

B. **Quorum and Voting.** The majority of the members of the Commission shall constitute a quorum. No Commission action shall be in effect except on a majority vote by those Commissioners present.

C. **Term of Office and Succession.** Commissioners shall be appointed to serve until their successors are appointed and assume their responsibilities, but shall serve under procedures authorized by the governing body of the Jurisdiction appointing them. However, a Jurisdiction's appointee shall not have any ownership interest in a Grantee. A vacancy on the Commission shall be filled by the governing body of the Jurisdiction whose position on the Commission is vacant.

Section 6. Meetings, Rules of Procedure and Officers.

A. **Meetings to be Public.** Meetings of the Commission shall be conducted pursuant to the Oregon Public Meetings law.

B. **Rules of Procedure.** At the first organizational meeting, or as soon thereafter as practicable, the Commission shall adopt rules governing its procedures including, but not limited to:

1. Times and places of regular meetings;
2. The method and manner of calling special meetings;
3. The method, term and manner of election of officers;
4. The responsibilities and duties of officers; and
5. The procedures for execution of writings and legal documents.

C. **Officers.** At the first organizational meeting, the Commission shall elect from among its members an interim chairperson and an interim vice-chairperson. The chairperson, and in his or her absence the vice-chairperson, shall preside at all meetings, call special meetings, and determine the order of business, until such time as rules requiring otherwise are adopted.

Section 7. Administration and Staffing Services.

The Commission shall contract with the City of Portland (the City) for administrative services as described in the attached Administrative Services Agreement (Exhibit 1). The Commission is authorized to amend, extend, or terminate the Administrative Services Agreement.

Section 8. Transfer of Staff and Assets.

A. **Transferred Employees.**

1. Upon termination of the administrative services agreement between the Commission and Multnomah County (the County), the County shall transfer Julie S. Omelchuck to the City's Office of Cable Communications and Franchise Management (Cable Office), providing that the County is no longer performing any cable regulatory services. Pursuant to ORS 236.630, Julie S. Omelchuck shall be placed in a position found by the City to be comparable to the position she enjoyed under the County's employment. The City shall consider Julie S. Omelchuck's education and physical qualifications, experience, and the salary, duties and responsibilities of her prior employment. The County shall furnish all of Julie S. Omelchuck's employment records to the City at the time of transfer. No affected employee shall be deprived of their employment by the County solely because of the transfer of administrative cable regulatory services to the City. The County shall find positions of employment within the County for all other affected employees.

2. The County shall pay each transferred employee all holiday and compensatory time, and any vacation leave time in excess of eighty hours, accumulated by such employee up to the date of the transfer. In addition, funds shall be transferred to the City from within the existing County cable office budget to cover accumulated sick leave, up to the date of transfer, for each transferred employee. The final amount of the payment for accumulated sick leave shall be determined by mutual agreement between the City and the Commission. The County shall reimburse the City for insurance premium costs, if any, resulting from health insurance coverage of preexisting conditions for any transferred employees. If at any time in the future Julie S. Omelchuck transfers back to the County by operation of the terms of Section 8A, the obligations for holiday, compensatory time and vacation leave time under this subsection shall apply equally to the City.

3. Any employees transferred by the County to the Cable Office shall be returned to the County if the transferred employee remains in a comparable employment position within the Cable Office and any one of the following events occurs: 1. The administrative services agreement between the City and the Commission is terminated; 2. The City withdraws from this Agreement; 3. The County withdraws from this Agreement; or 4. The Commission is dissolved under the terms of this Agreement.

4. This consolidation has presented unique circumstances resulting in the employee transfer provisions set forth in this Section. Due to these unique circumstances, the agreements contained in this Section shall not serve as precedent for any future employee transfer discussions between the City and the County.

B. Equipment assets, as listed in Exhibit 2, and general office supplies of the Multnomah Cable Regulatory Commission shall physically transfer to the City and shall become assets of the Commission.

C. The Jurisdictions shall share in the start up costs of the Commission proportionate to the FY 1993-94 budget contribution percentage of the respective Jurisdictions.

Section 9. Receiving and Distributing Funds.

A. The Commission shall comply with applicable state and local laws as to budget preparation and for audit of its books and records. The Jurisdictions may inspect all Commission books and records.

B. The annual budget adopted by the Commission shall be transmitted to the Jurisdictions by April 1. Each Jurisdiction shall review the Commission adopted budget prior to June 1 of each year. Upon approval by all Jurisdictions, the Commission-adopted budget shall become effective. If one or more Jurisdictions does not approve, the budget shall be returned to the Commission for modification and resubmitted to the Jurisdictions for approval. If all Jurisdictions do not approve a Commission budget by July 1, the previous fiscal year budget, less 10 percent, shall continue in effect until all Jurisdictions approve a Commission budget.

The Commission shall have the authority, subject to its approved annual budget, to expend funds for any lawful purpose up to the total amount of the approved budget. The Commission must seek approval by the Jurisdictions of budget amendments over the total amount of the approved budget. All Jurisdictions must approve such budget amendments for them to become effective. No Jurisdiction may amend, reduce or increase the approved Commission budget.

C. The cost allocation of each Jurisdiction in support of the Commission's approved budget shall be determined by the Commission during the annual budget process. The annual approved budget shall establish the specific cost allocation of each Jurisdiction and a schedule for all payments.

D. 1. The Commission is authorized to receive and collect cable franchise fees for all the Jurisdictions except Portland. The Commission shall distribute such franchise fees according to the terms of the franchise agreements with the Grantees, and the Commission budgets approved by the Jurisdictions. However, the Commission shall allocate, on an annual basis, sixty percent (60%) of cable franchise fees received from the cities of Fairview, Gresham, Troutdale, and Wood Village, and Multnomah County, to Multnomah Community Television for the provision of PEG access services within those Jurisdictions as the designated PEG provider. Fees collected in excess of budgeted amounts shall be returned to the Jurisdictions from which such fees are attributable.

2. The Commission shall not collect the City of Portland cable franchise fees. The City of Portland agrees to transfer quarterly its share of the cost allocation in accordance with the approved Commission budget.

3. All other funds arising out of cable franchise agreements shall be collected by the Commission. The Commission shall allocate such funds in accordance with the franchise agreements and the Commission budgets approved by the Jurisdictions.

E. 1. The Commission shall serve as the Grantmaking Board for decisions on

distributing PEG capital funds as grants, as provided in the cable franchise agreements administered by the Commission under this Agreement. The Commission shall establish procedures and timelines for decisions on distributing such grant funds.

2. The Commission shall establish the purposes for PEG capital grants, and evaluation criteria for grant applications, compatible with the terms and conditions of the cable franchise agreements. The Commission shall review such purposes and evaluation criteria at least biennially. Commission determinations of such purposes and evaluation criteria under this Section 9.E.2 shall be subject to review by the Jurisdictions under Section 4 of this Agreement.

3. The Commission shall distribute grants of PEG capital funds based upon such purposes and evaluation criteria as have been developed under Section 9.E.2.

4. The total amount of PEG capital funds, including the total amount of grant funds to be distributed by the Commission under this Section 9.E., shall be included in the Commission's annual budget as transmitted to the Jurisdictions under Section 9.B.

Section 10. Effective Date. This Agreement shall become effective upon its adoption by all Jurisdictions. Any Jurisdiction entering into this shall adopt an authorizing ordinance and shall forward a certified copy to the City of Portland. Within 30 days of the effective date of this Agreement, the City of Portland shall forward copies of the authorizing ordinances to the Secretary of State.

Section 11. Duration and Termination.

A. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, subject to subsection 11.B. The Commission shall forward this Agreement to the Jurisdictions every three years for their review.

B. Termination. In order for any Jurisdiction to withdraw from this Agreement and to prevent obligations for its financial contribution to the Commission for the ensuing year, a Jurisdiction may only withdraw from the Commission by filing a written notice of withdrawal with the Commission by November 1 of any year, effective at the end of that fiscal year. Membership shall continue until the effective date of the withdrawal. However, the withdrawing Jurisdiction shall not take action on the Commission's annual budget. Prior to the effective date, the member Jurisdiction may rescind its withdrawal notice at any time.

Section 12. Assets. If a Jurisdiction withdraws before dissolution of the Commission, the Jurisdiction shall have no claim against the assets of the Commission. In the event of dissolution, all remaining assets of the Commission, after payment of obligations, shall be distributed among the then existing Jurisdictions in proportion to the most recent budget cost allocation percentage of the respective Jurisdictions. Jurisdictions may agree to buy out each others portion of assets.

Section 13. Dissolution. The Jurisdictions may dissolve the Commission and terminate this Agreement at any time by mutual agreement of all Jurisdictions. The Commission shall continue to exist after the dissolution for such period, no longer than three months, as is necessary to wind up its affairs but for no other purposes.

Section 14. General Terms.

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

B. Interpretation. The terms and provisions of this Agreement shall be liberally construed in accordance with its general purposes.

C. Increasing Member Units of Government. The Commission may develop a method for allowing other units of local government to enter into this Agreement, subject to the full authority provision of subsection 4.B. A fee or cost for such entrance may be imposed.

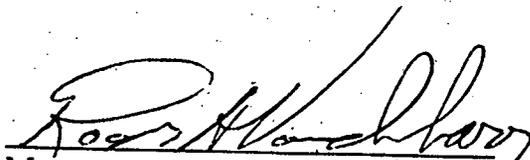
D. Amendments. The terms of this Agreement shall not be amended without the written authorization of the governing bodies of all Jurisdictions.

E. 1. General Indemnification. Each Jurisdiction shall be responsible for the negligent acts or omissions of the Jurisdiction, or its officers, agents or employees, in carrying out the terms of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq., and the Oregon Constitution, Article XI, Section 9.

2. By entering into this Agreement, the Jurisdictions are creating a public body under ORS Chapter 190 which is separately responsible for providing coverage for its officers, agents and employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260, et seq.

APPROVED AND EXECUTED by the appropriate officer(s) who are duly authorized to execute this Agreement on behalf of the governing body of each Jurisdiction.

City of Fairview


Mayor

Attest:


City Recorder

City of Gresham

Jessie McRobert
Mayor

[Signature]
City Manager

Multnomah County

[Signature]
County Chair

REVIEWED BY:
[Signature]
County Counsel

City of Portland

[Signature]
Commissioner

APPROVED AS TO FORM:
[Signature]
City Attorney

City of Troutdale

[Signature]
Mayor

Attest:
[Signature]
City Recorder

City of Wood Village

[Signature]
Mayor

Attest:
[Signature]
City Recorder

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/22/2008

PRODUCER (503)241-9221 FAX: (503)542-0621
 Durham and Bates Agencies Inc
 720 SW Washington
 Suite 250
 Portland OR 97205-3554

INSURED
 Cascade Access, LLC
 Cascade Utilities, Inc.
 PO Box 189
 Estacada OR 97023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: OneBeacon America Ins. Co	
INSURER B: Navigators Insurance	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR/INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$1MM Umbrella	7110099180001	7/1/2008	7/1/2009	EACH OCCURRENCE \$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
					MED EXP (Any one person) \$ 10,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	7110099180001	7/1/2008	7/1/2009	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	SF08EXC161165NV	7/1/2008	7/1/2009	EACH OCCURRENCE \$ 8,000,000
					AGGREGATE \$ 8,000,000
					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	7110099180001 WASHINGTON STOP GAP EMPLOYERS LIABILITY	7/1/2008	7/1/2009	<input type="checkbox"/> WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER
					E.L. EACH ACCIDENT \$ 500,000
					E.L. DISEASE - EA EMPLOYEE \$ 500,000
A	OTHER GARAGEKEEPERS	7110099180001	7/1/2008	7/1/2009	COMPREHENSIVE & COLLISION LIMIT \$250,000 DEDUCTIBLE \$ 500

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 It is hereby understood and agreed that Multnomah County, its officers, agents and employees are included as Additional Insured with respect to all operations of the named insured, subject to policy terms, conditions and exclusions. Fire Damage Liability is included in the limits stated above, meeting the \$50,000 contract requirement. Form VCG205 0205 attached. *Except 10 days notice of cancellation for non-payment of premium.

CERTIFICATE HOLDER

cjustice@CI.Portland.OR.US

Multnomah County
 Auditors Office
 501 SE Hawthorne, Room 601
 Portland, OR 97214

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 Joanna Brown/JCB

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

@VANTAGE FOR GENERAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following schedule lists the coverage extensions provided by this endorsement. Refer to the individual provisions to determine the extent of your coverage.

SCHEDULE OF COVERAGE EXTENSIONS	
1. Additional Insured - Broad Form Vendors	8. Broadened Property Damage Rented Premises
2. Additional Insured - by Contract, Agreement or Permit relating to:	9. Coverage Territory - Worldwide
o Work performed by you	10. Duties in Event of Occurrence, Claim or Suit
o Premises you own, rent, lease or occupy	11. Expected or Intended Injury (PD)
o Equipment you lease	12. Incidental Medical Malpractice
3. Aggregate Limit Per Location	13. Medical Payments
4. Blanket Waiver of Subrogation	14. Mobile Equipment Redefined
5. Bodily Injury Redefined- Mental Anguish	15. Newly Acquired or Formed Organizations
6. Broadened Named Insured	16. Non-Owned Aircraft
7. Broadened Property Damage	17. Non-Owned Watercraft
o Borrowed Equipment	18. Personal and Advertising Injury
o Customers' Goods	19. Product Recall Expense
o Use of Elevators	20. Supplementary Payments Increased Limits

1. ADDITIONAL INSURED - BROAD FORM VENDORS

Section II - Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) with whom you agreed in a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

a. This provision 1. does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained in Subparagraphs 4. or 6.; or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- b. The insurance afforded by this provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow the Other Insurance – Excess Insurance provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

13. MEDICAL PAYMENTS - INCREASED LIMITS AND TIME PERIOD

- a. In the Insuring Agreement under Coverage C Medical Payments, the requirement that expenses are incurred and reported to us within one year of the date of the accident is changed to three years.
- b. The Medical Expense Limit is \$10,000 per person or the amount shown in the Declarations as the Medical Expense Limit, whichever is greater.
- c. This provision 13. does not apply if Coverage C - Medical Payments is otherwise excluded either by the provisions of the Coverage Form or by endorsement.

14. MOBILE EQUIPMENT – SELF-PROPELLED SNOW REMOVAL, ROAD MAINTENANCE AND STREET CLEANING EQUIPMENT

The following is added to the "mobile equipment" definition:

Vehicles maintained primarily for purposes other than the transportation of persons or cargo that are self-propelled vehicles of less than 1,000 pounds gross vehicle weight with the following types of permanently attached equipment will be considered "mobile equipment":

- a. Snow removal;
- b. Road maintenance, but not construction or resurfacing; or
- c. Street cleaning.

15. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Under Section II - Who Is An Insured, the time period limitation for newly acquired or formed organizations is replaced by:

Coverage under this provision is afforded only until the end of the current policy period.

16. NON-OWNED AIRCRAFT

- a. The Aircraft, Auto Or Watercraft exclusion under Coverage A Bodily Injury And Property Damage Liability does not apply to an aircraft that is:
 - 1. Hired, chartered or loaned with a paid crew; and
 - 2. Not owned by any insured.
- b. The insurance afforded by this provision 16. is excess over any other valid and collectible insurance (including any deductible or Self Insured Retention) available to the insured, whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow the Other Insurance - Excess Insurance provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

17. NON-OWNED WATERCRAFT

- a. Section II - Who Is An Insured is amended to include as an insured for any watercraft that is covered by this policy, any person who, with your expressed or implied consent, either uses or is responsible for the use of a watercraft. However, no person or organization is an insured with respect to:
 - 1. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
 - 2. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
- b. In the exception to the Aircraft, Auto Or Watercraft exclusion under Coverage A Bodily Injury And Property Damage Liability, the limitation on the length of a watercraft is increased to 51 feet.
- c. The insurance afforded by this provision 17. is excess over any other valid and collectible insurance (including any deductible or Self Insured Retention) available to the insured, whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow the Other Insurance – Excess Insurance provisions in the COMMERCIAL GENERAL LIABILITY CONDITIONS.

18. PERSONAL AND ADVERTISING INJURY

The following is added to the definition of "personal and advertising injury":

Discrimination because of race, color, creed, national origin, age, sex or physical disability, where insurance therefore is not prohibited by law, but only if such discrimination is:

- a. not done intentionally by or at the direction of:
 - (1) the insured; or
 - (2) any executive officer, director, stockholder, partner or member of the insured staff; and
- b. not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

The insurance afforded under this provision does not apply to fines or penalties, or that portion of any award or judgment caused by trebling or multiplication of actual damages under state or federal law.

This provision does not apply if Coverage B – Personal and Advertising Injury Liability is otherwise excluded either by the provisions of this Coverage Form or by any endorsement.

19. PRODUCT RECALL EXPENSE

- a. With respect to this Provision 19., the Recall Of Products, Work Or Impaired Property exclusion under Coverage A Bodily Injury And Property Damage Liability is deleted.
- b. The following is added to Section III - Limits Of Insurance section:
 - 1. The Limits of Insurance shown in the Product Recall Schedule and rules below fix the most we will pay regardless of the number of
 - (a) Insureds;
 - (b) "Covered recalls" initiated; or
 - (c) Number of "your products" recalled.
 - 2. The Product Recall Aggregate Limit is the most we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.
 - 3. Subject to 2. above, the Each Product Recall Limit is the most we will reimburse you for the sum of all "product recall expenses" arising out of any one "covered recall" for the same defect or deficiency.

Products Recall Schedule	
	Limits of Insurance
Product Recall Aggregate Limit	\$50,000
Each Product Recall Limit	\$25,000

The Limits of Insurance for this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- c. The following is added to the Duties In The Event Of Occurrence, Offense, Claim Or Suit provision under Section IV - Conditions:

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

 - 1. Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
 - 2. Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance;
 - 3. As often as may be reasonably required, permit us to inspect "your product" that demonstrates the need for the "covered recall" and permit us to examine your books and records. Also permit us to take damaged and undamaged samples of "your products" for inspection, testing and analysis; and permit us to make copies from your books and records;
 - 4. Send us a signed, sworn, proof of loss containing the information we requested to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms; and
 - 5. Permit us to examine any insured under oath, while not in the presence of any other insured and at such times as may reasonably be required, about any matter relating to this insurance or your claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

d. The following definitions are added to the Definitions Section:

1. "Covered recall" means a recall made necessary because the insured or a government body has determined that a known or suspected defect, deficiency, inadequacy or dangerous condition in "your product" has resulted in or will result in "bodily injury" or "property damage".
2. "Product Recall Expense" means:

(a) The following necessary and reasonable expenses you incur exclusively for the purpose of recalling "your product":

- (1) For communications, including radio or television announcements or printed advertisements including stationery, envelopes and postage;
- (2) For shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
- (3) For remuneration paid to your regular "employees" for necessary overtime;
- (4) For hiring additional persons, other than your regular "employees";
- (5) Incurred by "employees", including transportation and accommodations;
- (6) To rent additional warehouse or storage space; or
- (7) For disposal of "your products", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal, but

"product recall expenses" does not include costs of regaining your market share, goodwill, revenue or profit.

(b) "Product Recall Expense" does not include any expenses resulting from:

- (1) Failure of any product to accomplish its intended purpose;
- (2) Breach of warranties of fitness, quality, durability or performance;
- (3) Loss of customer approval, or any cost incurred to regain customer approval;
- (4) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;
- (5) Caprice or whim of the insured;
- (6) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance; and
- (7) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found

20. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS

In the SUPPLEMENTARY PAYMENTS - Coverages A and B provision:

- a. The limit for the cost of bail bonds is amended to \$2,500; and
- b. The limit for reasonable expenses incurred by the "insured" is amended to \$500 a day.



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
 Agenda Item #: R-3
 Est. Start Time: 10:10 AM
 Date Submitted: 06/26/08

Agenda Title: First Reading of an ORDINANCE Amending Multnomah County Code Chapter 7.450 et seq. Relating to Art Acquisition and Approving Regional Arts and Culture Council Contract Renewal [The Board will be asked to reschedule this item to July 24, 2008]

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** 10 minutes
Department: Non-Departmental **Division:** Commissioner Maria Rojo de Steffey
Contact(s): Matthew Lashua
Phone: 503 988-6796 **Ext.** 86796 **I/O Address:** 503/600
Presenter(s): Commissioner Maria Rojo de Steffey

General Information

1. What action are you requesting from the Board?

Approval of First Reading of an Ordinance Amending Multnomah County Code Chapter 7.450 et seq. Relating to Art Acquisition and Approving Regional Arts and Culture Council Contract Renewal.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Public Art Program was established in 1980. Ordinances provided for the Metropolitan Arts Commission (MAC) management and collection of funds for the Percent for Public Art Programs for Multnomah County, the City of Portland, and Metro. MAC was responsible for selection, acquisition, siting, maintenance, administration, deaccessioning, community education, and registration of Public Art of the City/County Public Art Collection.

MAC restructured into a nonprofit organization, the Regional Arts and Culture Council, in order to

implement the Arts Plan 2000+ and Metro Regional Arts Funding Task Force recommendations to provide cost effective, efficient and flexible services.

The purpose of Multnomah County investment in the arts is to promote access, inclusion and excellence in the arts, to leverage other resources, and to enhance the arts contribution to human services, economic vitality, educational opportunities, neighborhood and community revitalization, economic vitality and overall quality of life.

To reflect the ongoing support for arts in Multnomah County, The Board of County Commissioners updates the following ordinance, raising the percentage for art to 2% and reflecting what type of construction projects trigger the Percent for Public Arts Program.

3. Explain the fiscal impact (current year and ongoing).

Construction of a new building where the construction cost exceeds \$1,000,000 will trigger the Percent for Public Arts Program. Two percent of the construction cost of each construction project shall be set aside for the acquisition of art.

4. Explain any legal and/or policy issues involved.

5. Explain any citizen and/or other government participation that has or will take place.

Required Signature

**Elected Official or
Department/
Agency Director:**

Maria Rojo de Steffen

Date: 06/26/08

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Amending MCC §§7.450 et seq. Relating to Art Acquisition

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. The Public Art Program was established in 1980. Ordinances provided for the Metropolitan Arts Commission (MAC) management and collection of funds for the Percent for Public Art Programs for Multnomah County, the City of Portland, and Metro. MAC was responsible for selection, acquisition, siting, maintenance, administration, deaccessioning, community education, and registration of Public Art of the City/County Public Art Collection.
- b. MAC restructured into a nonprofit organization, the Regional Arts and Culture Council, in order to implement the Arts Plan 2000+ and Metro Regional Arts Funding Task Force recommendations to provide cost effective, efficient and flexible services.
- c. The purpose of Multnomah County investment in the arts is to promote access, inclusion and excellence in the arts, to leverage other resources, and to enhance the arts contribution to human services, economic vitality, educational opportunities, neighborhood and community revitalization, economic vitality and overall quality of life.
- d. To reflect the ongoing support for arts in Multnomah County, it is necessary to update the code sections relating to art acquisition to raise the percentage for art to 2% and reflect what type of construction projects trigger the Percent for Public Arts Program.

Multnomah County Ordains as follows:

Section 1. MCC §7.450 is amended as follows:

ART ACQUISITION

§ 7.450 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context requires a different meaning.

CONSTRUCTION PROJECT or ALTERATION. Construction of a new building where the construction cost exceeds \$1,000,000. Construction Project does not include the rehabilitation, renovation or improvement of existing County buildings or to premises leased by the County, rehabilitation, renovation, remodeling or improvement.

CONSTRUCTION COST. The actual construction cost of a new building. Construction Cost does not include excluding planning, architectural, engineering, consultant and administrative costs, costs for fees, and permits, testing, inspections, and indirect cost, such as interest paid during construction, advertising and legal fees and all other indirect costs. Construction Cost does not include the cost of furnishings for the new building.

~~**COUNTY BUILDING.** All county buildings except service facilities not normally visited by the public, such as maintenance sheds, bridges and similar structures, and does not include roads.~~

~~MAJOR COUNTY CONSTRUCTION PROJECT. A construction project which involves the construction or alteration of a county building with an estimated construction cost of \$50,000 or more.~~

Section 2. MCC §7.451 is amended as follows:

§ 7.451 POLICY.

It is the policy of the county that each ~~major county construction project which involves the construction or alteration of county buildings~~ shall have an appropriate display of art integrated into the project in order to provide a more beneficial atmosphere and energizing environment.

Section 3. MCC §7.452 is amended as follows:

§ 7.452 FUNDING.

(A) ~~One and thirty-three one hundredths~~ Two percent of the construction costs of each construction project, capital improvement costs, budgets, development funds and purchase prices listed in § 7.453 of this subchapter shall be set aside for the acquisition of art. The acquired art may be an integral part of the newly acquired building or property attached thereto or be capable of display in other public buildings or on other public property. Siting variances may be granted by the Board.

(B) ~~Thirty-three one hundredths percent of the~~ The 1.332% set aside in division (A) of this section shall be allocated as follows: 1.26% for art; .54% to dedicated solely for use by the regional arts and culture council Regional Arts and Culture Council for management and administration of the art; and .20% for use by the Regional Arts and Culture Council for the purpose of payment of administration, public education, or maintenance costs of the commission's percent for art program.

Section 4. MCC §7.453 is deleted as follows:

~~**§ 7.453 FUNDING SOURCES.**~~

~~The following shall be subject to the art acquisition policy referred to in § 7.452 of this subchapter:~~

~~(A) Construction cost of a major county construction project involving the construction or alteration of a county building;~~

~~(B) The capital improvement budget in the division of facilities management;~~

~~(C) The purchase price of any building, including the appurtenant land, acquired by the county for use in whole or part by the county.~~

Section 5. MCC §7.454 is amended as follows:

§ 7.454 ADMINISTRATION.

The Regional Arts and Culture Council ~~regional arts and culture council~~ shall in its discretion administer the provisions of this subchapter relating to art acquisition and display.

Section 6. MCC §7.455 is amended as follows:

§ 7.455 ADOPTION OF GUIDELINES.

The ~~Regional Arts and Culture Council~~ regional arts and culture council shall have the authority:

- (A) To determine the cases in which it would be inappropriate to display art in a county building;
- (B) To identify suitable art objects for county buildings;
- (C) To encourage the preservation of ethnic cultural arts and crafts, including Pacific Northwest Indian arts;
- (D) To facilitate the preservation of art objects and artifacts that may be displaced by a construction project;
- (E) To prescribe a method or methods of competitive selection of art objects for display;
- (F) To prescribe procedures for the selection, acquisition and display of art in county buildings; and
- (G) To set forth any other matter appropriate to the administration of this subchapter.

Section 7. MCC §7.456 is amended as follows:

§ 7.456 REGIONAL ARTS AND CULTURE COUNCIL'S DECISION FINAL.

The ~~council's~~ decision of the Regional Arts and Culture Council as to the selection, acquisition, allocation and display of art objects shall be final.

FIRST READING: July 17, 2008

SECOND READING AND ADOPTION: July 24, 2008

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Maria Rojo de Steffey, Commissioner District 1



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: R-4
Est. Start Time: 10:10 AM
Date Submitted: 07/09/08

Agenda Title: **RESOLUTION Approving a Lease of Real Property from Troutdale Partners, LLC, for Property Located at SE Dora Street and Historic Columbia River Highway, Troutdale, Oregon as the Site of the New East County Library Branch and Authorizing County Chair to Execute Appropriate Documents to Complete the Transaction**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: 17 July 2008 **Amount of Time Needed:** 15 minutes
Department: Nondepartmental **Division:** Commission Roberts
Contact(s): Tom Mack, Commissioner Lonnie Roberts' Office
Phone: (503) 988-5213 **Ext.** 26234 **I/O Address:** 503/6
Presenter(s): Molly Raphael, Mike Sublett, and Tom Mack

General Information

1. What action are you requesting from the Board?

Approve a lease of real property from Troutdale Partners, LLC, for property located at SE Dora Street and Historic Columbia River Highway, Troutdale, Oregon as the site of the new East County Library Branch and authorize County Chair to execute appropriate documents to complete the transaction.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Planning for new libraries in North Portland and Troutdale began in 1999, although new branches were not specified in the 1997 or 2002 levy language. The County's previous siting process in both areas ended in 2003, due to County budget cuts. Measure No. 26-81, passed by voters in 2006, specifically calls for new libraries in North Portland and Troutdale. The Library's budget includes funding for siting a leased space for a library, constructing tenant improvements, purchasing computers and peripherals, and building the opening day collection. Funding for operations

beginning mid-year 2009 is included in the 2006 levy rate.

At the end of the public siting process, three were identified: two in the downtown area (the Discovery Block on the Historic Columbia River Hwy. and Dora St; and the Gateway Corner on 257th and Columbia River Hwy), and the former Lamb's Thriftway Store in the Troutdale Marketplace (on the corner of Stark and Troutdale Rd.). At the December 13, 2007 BCC meeting, the Board directed the Department of Libraries and Facilities & Property Management Division staff to proceed with lease negotiations with representatives for the Discovery Block and the Gateway Corner.

The Library retained Hennebery Eddy Architects to assist in drafting specifications for a Lease Terms Solicitation that was sent to each developer on February 26, 2008. Library and Facilities & Property Management staff met at least twice with each developer to respond to questions and ask for clarifications. We also met with Hennebery Eddy for assistance in evaluating the proposals.

Although each proposal has merit, after careful evaluation, we recommend the Discovery Block site.

3. Explain the fiscal impact (current year and ongoing).

\$1.279 million is budgeted during the current fiscal year for tenant improvements and facilities costs and \$500,000 for the opening day collection. Funding for operating the new library beginning mid-year 2009 is included in the 2006 levy rate.

4. Explain any legal and/or policy issues involved.

Measure No. 26-81 "Renew Five-Year Local Option Levy to Continue Library Services," passed by voters in the November 2006 General Election. The levy language reads, "Continue programs for school age children, story hours for babies and toddlers, summer reading, literacy services for children in child care, programs for teens; Help teachers and students use library resources; provide homework helpers to assist children with school work; Maintain free access to information; Update books and materials; Continue books delivery to homebound seniors and nursing home residents; **Open planned libraries in underserved neighborhoods of East County and North Portland;** Keep libraries open; Maintain current hours and services at Central and neighborhood libraries."

5. Explain any citizen and/or other government participation that has or will take place.

After the passage of Measure 26-81 in November 2006, Commissioner Lonnie Roberts with Library staff and community leaders to outline a process for siting a new library in Troutdale. Community leaders recommended a group of neighborhood residents to serve as the Troutdale Siting Committee, and the Committee was appointed by Commissioner Roberts. The Committee met four times: January 29, May 21, July 30, and September 17. Committee members suggested potential sites, and additional sites were identified through as a result of an Request for Information issued February 22, 2007. Altogether, over ten sites were identified and investigated, and all but three eliminated because they either did not meet the Library's requirements or there was no owner/developer interest in developing the property. A community-wide public meeting to get input on the three potential sites was held on October 29, with more than 70 people attending. In addition, members of the public were invited to send comments to Commissioner Roberts' Office and/or Multnomah County Library.

Required Signature

Elected Official or
Department/
Agency Director:



Date: June 9, 2008

Lonnie Roberts
Multnomah County Commissioner
District 4



501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214
(503) 988-5213 phone
(503) 988-5262 fax
Email: lonnie.j.roberts@co.multnomah.or.us
www.co.multnomah.or.us/cc/ds4/

Roberts' Recommends Discovery Block for New Library

Contacts: Tom Mack, Commissioner Roberts' Office 503-988-5213
June Mikkelsen, Library 503-988-3644

Commissioner Lonnie Roberts is pleased to announce that he will be recommending the Discovery Block site, a keystone development in the center of historic downtown Troutdale, as the location for the new Troutdale Library. At approximately 5700 sq. ft., the library will be the anchor tenant of a mixed use facility that may be built in phases, the first of which will include the library.

The latest planning effort for the new Troutdale library began in early 2007 with a series of meetings with Troutdale community leaders. This led to the formation of the Troutdale Siting Committee, a group of area residents recommended by community leaders. The committee met with County staff throughout 2007 to develop and to evaluate potential sites. On October 29, 2007, a community-wide public meeting was held to get community input on three potential sites for the new library. In December 2007 the Board directed exclusive negotiations with the Discovery Block and the Gateway Corner. Developers of both sites were responsive to the County's Lease Terms Solicitation and their competitive efforts are appreciated. As a result of extensive negotiations, District 4, the Library, and Facilities and Property Management agree that the Discovery Block is ideal as the site for the new branch. An accessible downtown location, a solid civic presence, adaptive logistics and design, and a competitive financial structure all contribute to this recommendation.

Commissioner Roberts' office will be submitting Agenda materials, including a letter of intent, for consideration by the Board of County Commissioners at their July 17 Board meeting.

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Resolution Approving a Lease of Real Property from Troutdale Partners, LLC, for Property Located at SE Dora Street and Historic Columbia River Highway, Troutdale, Oregon as the Site of the New East County Library Branch and Authorizing County Chair to Execute Appropriate Documents to Complete the Transaction

The Multnomah County Board of Commissioners Finds:

- a. Measure No. 26-81, "Renew Five-Year Local Option Levy to Continue Library Services", approved in November 2006, included a specific requirement for new library branches in North Portland and East County. Funding for operations beginning mid-year 2009, is included in the 2006 levy rate. There are separate program offers for siting leased library premises, constructing tenant improvements, purchasing computers and peripherals, and building the opening day collection.
- b. Planning for a new East County library branch in Troutdale began in early 2007. An extensive public outreach process was begun through a collaboration of the Office of Lonnie Roberts, Multnomah County Commissioner for District 4 ("Commissioner Roberts"); the Multnomah County Library ("the Library"); and, Facilities and Property Management Division ("Facilities"). Commissioner Roberts appointed a group of neighborhood residents to serve as the Troutdale Siting Committee, which convened a process of site review. In addition, Facilities conducted an extensive investigation and solicitation for potential sites throughout the commercial real estate community.
- c. Based on the work of the Troutdale Siting Committee; public comment from an October 29, 2007 community meeting; and, preliminary site negotiations by the Library and Facilities, the Multnomah County Board of Commissioners, at its December 13, 2007 Board Meeting, directed the Library and Facilities to enter into exclusive negotiations with two potential Troutdale branch sites: the Gateway Corner, (NW 257th and Historic Columbia River Highway) and the Discovery Block, (SE Dora Street and Historic Columbia River Highway).
- d. Facilities issued a Lease Terms Solicitation in February 2008 to commence formal negotiations with the two sites. Ownership of both sites were cooperative and responsive during the process. Commissioner Roberts, the Library, and Facilities determined that the Discovery Block was the recommended site for the Troutdale branch. The attached letter of intent has been negotiated with

Troutdale Partners, LLC, owners of the Discovery Block, and outlines major transaction points for a lease of the property.

- e. It is in the best interests of the County to lease the Discovery Block property on the terms and conditions set forth in the attached letter of intent.

The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to execute a lease document based on the letter of intent attached to this Resolution.
2. The Library and Facilities are directed to prepare and to submit to the Board as soon as practicable, the capital planning requirements for the Troutdale branch library at the Discovery Block approved in this Resolution under Multnomah County Administrative Procedure FAC-1.

ADOPTED this 17th day of July 2008.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Molly Raphael, Director of Libraries

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
This form is a public record

MEETING DATE: 7-17-08

SUBJECT: Library

AGENDA NUMBER OR TOPIC: Library R-4

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Paul Thallofer

ADDRESS: P.O. Box 177

CITY/STATE/ZIP: Trousdale OR 97060

PHONE: DAYS: 503-674-7234 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: No

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 08-106

Resolution Approving a Lease of Real Property from Troutdale Partners, LLC, for Property Located at SE Dora Street and Historic Columbia River Highway, Troutdale, Oregon as the Site of the New East County Library Branch and Authorizing County Chair to Execute Appropriate Documents to Complete the Transaction

The Multnomah County Board of Commissioners Finds:

- a. **Measure No. 26-81, "Renew Five-Year Local Option Levy to Continue Library Services", approved in November 2006, included a specific requirement for new library branches in North Portland and East County. Funding for operations beginning mid-year 2009, is included in the 2006 levy rate. There are separate program offers for siting leased library premises, constructing tenant improvements, purchasing computers and peripherals, and building the opening day collection.**
- b. **Planning for a new East County library branch in Troutdale began in early 2007. An extensive public outreach process was begun through a collaboration of the Office of Lonnie Roberts, Multnomah County Commissioner for District 4 ("Commissioner Roberts"); the Multnomah County Library ("the Library"); and, Facilities and Property Management Division ("Facilities"). Commissioner Roberts appointed a group of neighborhood residents to serve as the Troutdale Siting Committee, which convened a process of site review. In addition, Facilities conducted an extensive investigation and solicitation for potential sites throughout the commercial real estate community.**
- c. **Based on the work of the Troutdale Siting Committee; public comment from an October 29, 2007 community meeting; and, preliminary site negotiations by the Library and Facilities, the Multnomah County Board of Commissioners, at its December 13, 2007 Board Meeting, directed the Library and Facilities to enter into exclusive negotiations with two potential Troutdale branch sites: the Gateway Corner, (NW 257th and Historic Columbia River Highway) and the Discovery Block, (SE Dora Street and Historic Columbia River Highway).**
- d. **Facilities issued a Lease Terms Solicitation in February 2008 to commence formal negotiations with the two sites. Ownership of both sites were cooperative and responsive during the process. Commissioner Roberts, the Library, and Facilities determined that the Discovery Block was the recommended site for the Troutdale branch. The attached letter of intent has been negotiated with**

Troutdale Partners, LLC, owners of the Discovery Block, and outlines major transaction points for a lease of the property.

- e. It is in the best interests of the County to lease the Discovery Block property on the terms and conditions set forth in the attached letter of intent.

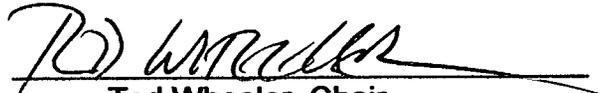
The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to execute a lease document based on the letter of intent attached to this Resolution.
2. The Library and Facilities are directed to prepare and to submit to the Board as soon as practicable, the capital planning requirements for the Troutdale branch library at the Discovery Block approved in this Resolution under Multnomah County Administrative Procedure FAC-1.

ADOPTED this 17th day of July 2008.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

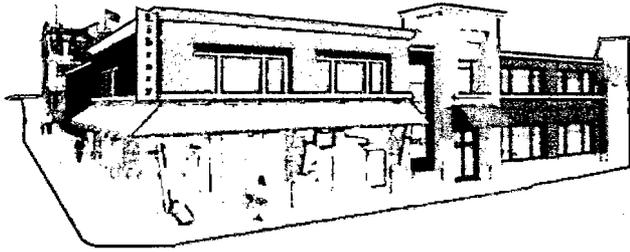
REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
John S. Thomas, Deputy County Attorney

SUBMITTED BY:

Molly Raphael, Director of Libraries



DISCOVERY BLOCK
321 E Columbia River Hwy
Troutdale, OR 97060

Letter of Intent to Lease

Date: June 27, 2008

Landlord: Troutdale Partners, LLC

Tenant: Multnomah County, a political subdivision of the State of Oregon.

Building: Commercial building of approximately 31,800 rentable square feet at Block 2, Troutdale, Oregon, at the southeast corner of Dora Street and Historic Columbia River Highway. Landlord may elect to construct the building in phases, starting with the easterly portion of approximately 18,600 rentable square feet.

Premises: Approximately 5,738 rentable square feet on the 1st floor, of the East portion of the Building. The exact configuration of the premises will be as agreed upon, within the area marked on the attached exhibit.

Book Drop: Landlord and Tenant will work cooperatively to design a modification of the easterly exterior wall and sidewalk to incorporate a book drop. The cost of the construction will be paid by Landlord, except for the book drop mechanism and its installation will be a Tenant improvement. Any covered area will be included in the Premises to the drip line.

Term: Twelve Years (12) years plus two Four Year (4) Options

Commencement: Forty (45) days after substantial completion of the base building improvements.

Base Rent: Base Rent will be on the following schedule:
Years 1-5: \$28.00 psf
Years 6-10: \$30.80 psf
Years 11-12: \$33.88 psf
OPTION 1
Years 1-3: \$33.88 psf
Year 4: \$37.27 psf

OPTION 2

Years 1-4: \$37.27 psf

Operating Expenses:

The lease will be triple net, in which Tenant will pay for operating expenses including taxes, insurance, management maintenance, utilities and janitorial. Tenant is exempt from property taxes, though may be due other assessments which will be paid by Tenant.

Shell Scope and Construction:

Landlord will spend \$40.00 per rentable square foot on shell improvements above and beyond a cold shell. The scope, plans and specifications for such shall be as directed by Tenant provided that all such funds are spent toward real estate vs fixtures or equipment and shall become a part of the realty.

If there is a determination that prevailing wage rates apply to the Building, the Landlord will be responsible for all obligations associated with such. Landlord represents the Building will be designed to, and will strive to attain from Green Building Council, LEED Certification in the Core & Shell category.

Tenant Improvements:

Tenant will be responsible for its Tenant Improvements. The lease agreement will set forth the roles, responsibilities and approvals of each party in the designing, permitting and constructing of the improvements.

Signage:

Tenant may install, at its cost, signage according to City codes and as reviewed and approved in advance by Landlord. The pre-approved signage will be an exhibit to the lease agreement.

Lease Agreement:

Landlord and Tenant shall strive to execute a mutually acceptable lease agreement by August 1, 2008.

Landlord Contingencies:

Landlord shall have the following contingencies:

- (i) obtaining a commitment for acceptable financing;
- (ii) closing on acquisition of the land; and
- (iii) procuring all necessary entitlements.

All contingencies shall be met by the later of October 1, 2008 or ninety (90) days after execution of the lease, or the lease may be nullified by either party.

Contacts:

The single point of contact for Landlord shall be Mike Wells, and for Tenant shall be Mike Sublett.

Non-binding:

This letter of intent is incomplete by its nature. It is non-binding. Landlord and Tenant will be bound only by a fully executed lease agreement.

AGREED AND ACCEPTED

Multnomah County Library

Troutdale Partners, LLC

By: _____
Mike Sublett¹
Multnomah County Facilities

By: Mike Wells
Mike Wells
Member

Date: _____

Date: 6/20/08

¹Any proposed Lease will be subject to review of the County Attorney and any proposal made, or counteroffer accepted by me or other authorized County representative for the above referenced property is not binding on the County until and unless the Board or County Chair approves the proposed lease and it is fully executed by both parties



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: R-5
Est. Start Time: 10:25 AM
Date Submitted: 06/23/08

Agenda Title: **Second Reading and Adoption of a Proposed ORDINANCE Amending Multnomah County Code Chapters 15, Sheriff, and 21, Health, Relating to Specified Animals and Adding an Appeals Process for Health Licenses and Permits**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** 1 minute
Department: Health **Division:** Community Health Services
Contact(s): Chris Wirth, Lila Wickham
Phone: 503-988-3464 **Ext.** 222 **I/O Address:** 312/Vector
Presenter(s): Chris Wirth, Ruth Jones

General Information

1. What action are you requesting from the Board?

Approve second reading and adoption of ordinance amending Health Code Enforcement Laws (MCC §§ 15 and 21) relating to specified animals and adding an appeals process for health licenses and permits.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Code Enforcement program enforces and permits specified animals such as chickens, bees, and livestock in the City of Portland for enhanced livability. In February 2008, the City of Portland designated the Code Enforcement program through code revision to provide a hearing and appeals process for specified animals. The Environmental Health section enforces and administers health licenses such as restaurants, swimming pools, and child care.

This ordinance clarifies the hearing and appeals process for denial of licenses and permits for specified animals and other health licenses and permits in Multnomah County.

This change affects Program Offer #40007 and #40008 and would enhance the current program services and protect community health and livability.

3. Explain the fiscal impact (current year and ongoing).

There is no fiscal impact for current or future year(s). The enforcement and appeals process is already a function of the Multnomah County Code Enforcement and Health Inspections programs and would be absorbed by the Code Enforcement Officer, Inspectors, Hearings Officer, Administrative and Support staff.

4. Explain any legal and/or policy issues involved.

Multnomah County Code Enforcement has the authority to enforce and abate nuisances through MCC §§ 15 and 21. The Multnomah County Environmental Health Inspections program is delegated to inspect and enforce licensing/permits for pools, restaurants, child care, etc through Oregon Revised Statute 624 and Oregon Administrative Rule Chapter 333.

This ordinance clarifies the hearing and appeals process for denial of licenses and permits for specified animals and other health licenses and permits in Multnomah County.

5. Explain any citizen and/or other government participation that has or will take place.

In February 2008, the City of Portland designated the Code Enforcement program through code revision to provide a hearing and appeals process for specified animals. This proposed ordinance will be presented as part of an update to the Multnomah County Board-appointed citizen advisory group on July 15th to clarify necessary health license and permit changes.

Required Signature

**Elected Official or
Department/
Agency Director:**

Lillian Shurley

Date: 06-23-08

kj

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Amending MCC Chapters 15, Sheriff, and 21, Health, Relating to Specified Animals and Adding an Appeals Process for Health Licenses and Permits

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County Vector Control enforces Portland City Code (PCC) Title 13 with respect to specified animals through an intergovernmental agreement with the City.
- b. County Vector Control has recently been advised that the Portland City Council passed Ordinance No. 181539 on January 16, 2008. That ordinance revised the City's specified animal regulations, deleted its enforcement and appeals procedures (PCC 13.05.045 and 13.05.050), and replaced PCC 13.05.045 with the following: "All enforcement of this Chapter by the Director shall follow the procedures set forth in Multnomah County Code Chapters 15.225-15.236."
- c. As the County's Nuisance Control Law (MCC §§ 15.225-15.236) and MCC Chapter 21, Health, do not contain references to specified animals or an appeals process for certain health licenses and permits, it is necessary to amend our code accordingly.

Multnomah County Ordains as follows:

Section 1. MCC Chapter 21 is amended to add sections 21.950 and 21.990 as follows:

§ 21.950 Specified Animals.

(A) For purposes of this chapter, the following definitions apply unless the context requires a different meaning:

Livestock. Animals, including but not limited to, fowl, horses, mules, burros, asses, cattle, sheep, goats, llamas, emu, ostriches, rabbits, swine, or other farm animals excluding dogs and cats.

Specified Animals: Bees or livestock.

Specified Animal Facility. A permitted site for the keeping of one or more specified animals, including but not limited to a stable, structure or other form of enclosure.

(B) For services of the department in connection with licensing or permitting specified animals or a specified animal facility, the department will collect fees to recover the cost of providing such services as provided in MCC § 21.002.

§ 21.990 Appeals and Hearings.

(A) A person receiving a notice of denial, refusal to renew, suspension, or revocation of a license or permit for specified animals, specified animal facility and other health licenses (for swimming pools, food services and tourist facilities) as provided in this chapter, may request a hearing in accordance with the applicable portions of MCC § 15.231.

Section 2. MCC § 15.231 is amended as follows:

§ 15.231 Appeals and Hearings.

(A) Any person receiving a notice under § 15.230(D), (E) or (F) may request a hearing by writing the Health Officer or Sheriff within seven days of the date of the notice.

(B) A person receiving a notice of denial, refusal to renew, suspension, or revocation of license or permit for specified animals, specified animal facility and other health licenses, as provided in MCC § 21.990, may request a hearing by writing the Health Officer within seven days of the date of the notice.

(~~B~~C) The Health Officer or Sheriff shall, upon receipt of request for a hearing, promptly notify the hearings officer who shall set a time and place for the hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place for the hearing. Notice may be by any means of giving actual notice. Notice may also be given to such persons as the hearings officer may determine to be interested persons.

(~~E~~D) The person requesting the hearing and the Health Officer or Sheriff may make argument, submit testimony, cross examine witnesses and submit rebuttal evidence on the pertinent issues. Any party may be represented by counsel.

(~~D~~E) All hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two years.

(~~E~~F) Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

(~~F~~G) After the hearing, the hearings officer shall issue and mail a copy of the order determining the question within 15 days from the date of the hearing, or any continuance thereof not to exceed 15 days, to the person requesting hearing and the Health Officer or Sheriff.

(~~G~~H) If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the owner.

(~~H~~I) If the hearings officer determines that anything removed under § 15.230(F) no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.

(I) If the hearings officer determines there was a wrongful abatement under § 15.230(F), the hearings officer may order the Health Officer or Sheriff to make reasonable restitution.

(JK) Hearings involving the Health Officer shall be conducted in accordance with applicable portions of ORS 183.413 to ORS 183.470.

FIRST READING:

July 10, 2008

SECOND READING AND ADOPTION:

July 17, 2008

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By
Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Lillian Shirley, Director, Department of Health

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1116

Amending MCC Chapters 15, Sheriff, and 21, Health, Relating to Specified Animals and Adding an Appeals Process for Health Licenses and Permits

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County Vector Control enforces Portland City Code (PCC) Title 13 with respect to specified animals through an intergovernmental agreement with the City.
- b. County Vector Control has recently been advised that the Portland City Council passed Ordinance No. 181539 on January 16, 2008. That ordinance revised the City's specified animal regulations, deleted its enforcement and appeals procedures (PCC 13.05.045 and 13.05.050), and replaced PCC 13.05.045 with the following: "All enforcement of this Chapter by the Director shall follow the procedures set forth in Multnomah County Code Chapters 15.225-15.236."
- c. As the County's Nuisance Control Law (MCC §§ 15.225-15.236) and MCC Chapter 21, Health, do not contain references to specified animals or an appeals process for certain health licenses and permits, it is necessary to amend our code accordingly.

Multnomah County Ordains as follows:

Section 1. MCC Chapter 21 is amended to add sections 21.950 and 21.990 as follows:

§ 21.950 Specified Animals.

(A) For purposes of this chapter, the following definitions apply unless the context requires a different meaning:

Livestock. Animals, including but not limited to, fowl, horses, mules, burros, asses, cattle, sheep, goats, llamas, emu, ostriches, rabbits, swine, or other farm animals excluding dogs and cats.

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(CD) The person requesting the hearing and the Health Officer or Sheriff may make argument, submit testimony, cross examine witnesses and submit rebuttal evidence on the pertinent issues. Any party may be represented by counsel.

(DE) All hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two years.

(EF) Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

(FG) After the hearing, the hearings officer shall issue and mail a copy of the order determining the question within 15 days from the date of the hearing, or any continuance thereof not to exceed 15 days, to the person requesting hearing and the Health Officer or Sheriff.

(GH) If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the owner.

(HI) If the hearings officer determines that anything removed under § 15.230(F) no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.

(I) If the hearings officer determines there was a wrongful abatement under § 15.230(F), the hearings officer may order the Health Officer or Sheriff to make reasonable restitution.

(JK) Hearings involving the Health Officer shall be conducted in accordance with applicable portions of ORS 183.413 to ORS 183.470.

FIRST READING:

July 10, 2008

SECOND READING AND ADOPTION:

July 17, 2008

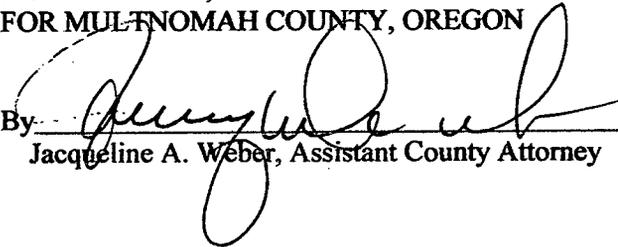


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: 
Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Lillian Shirley, Director, Department of Health



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 07/17/08
Agenda Item #: R-6
Est. Start Time: 10:26 AM
Date Submitted: 07/07/08

Agenda Title: **ORDER of Final Determination Denying the Ballot Measure 49 Claim Filed by Ray and Virginia Hausler for Property Located at 5514 SW Hewett Boulevard, Multnomah County, Oregon**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: July 17, 2008 **Amount of Time Needed:** 10 minutes
Department: DCS **Division:** Land Use & Transportation
Contact(s): Derrick Tokos, Jed Tomkins
Phone: 503-988-3043 **Ext.** 22682 **I/O Address:** 455/1/116
Presenter(s): Derrick Tokos

General Information

1. What action are you requesting from the Board?

Staff requests the Board issue a final order consistent with its May 22, 2008 tentative determination that the claimant is not entitled to relief under Measure 49 because they failed to provide an appraisal demonstrating that challenged regulations have reduced the fair market value of the property.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Claimants that filed claims prior to adjournment of the 2007 legislative session (June 28, 2007) for land that is inside an Urban Growth Boundary are entitled to seek relief under Measure 49. Relief is limited to no more than 10 home sites. To qualify, claimants must establish that they own the property, they were permitted to establish the number of dwellings sought when they acquired the land, and that one or more land use regulations now prohibit them from establishing the dwellings. Claimants must also demonstrate that the land use regulations at issue were adopted after the property was brought into the Urban Growth Boundary, that the regulations are not exempt under the law (e.g. health and safety requirements) and that the regulations have caused a reduction in the

fair market value of the property equal to or greater than the fair market value of the dwellings being sought. Fair market value analysis must be substantiated with an appraisal, at the claimant's expense, using the methodology provided in the Measure.

Counties were required to notify claimants that they were entitled to seek relief and to identify the information they must submit within 90 days of the effective date of the Measure (December 6, 2007). Multnomah County provided the required notice on December 10, 2007. From that date claimants had 120 days to respond that they intend to continue and to provide the required information. The claimants, through their attorney William Cox, submitted their response and some of the required information on January 25, 2008. An appraisal was not provided.

Once a claimant provides notice that they intend to proceed, counties must evaluate the submitted information and make a tentative determination on whether or not the claimant qualifies for relief. On May 22, 2008, the Board tentatively determined that the claimants are not entitled to relief because they failed to provide an appraisal demonstrating that the challenged regulations have reduced the fair market value of the property. Notice of the tentative determination was provided to the claimant, Department of Land Conservation and Development (DLCD), the City of Portland, and Metro and they were given 15 days to submit evidence or argument as provided in the law. Now that the comment period is closed, the Board must hold a second public meeting to make a final determination. The decision must occur no later than July 21, 2008.

3. Explain the fiscal impact (current year and ongoing).

There are no fiscal impacts associated with this claim.

4. Explain any legal and/or policy issues involved.

Policy and legal issues are outlined in the staff report prepared for the May 22nd meeting on the tentative determination (attached). Measure 49 explicitly outlines the process for evaluating claims, information claimants must provide to demonstrate they are entitled to relief, and circumstances by which counties must approve or deny claims. Counties are afforded very little discretion.

5. Explain any citizen and/or other government participation that has or will take place.

The claimant's attorney submitted a letter on June 10th in response to the tentative determination. In it he advises that they do not believe the appraisal requirement is constitutional. Staff responded on July 2nd that the County is required to implement the measure and must rely upon an appraisal to substantiate a claim that land use regulations have reduced the fair market value of property. Copies of both letters are attached. No other comments were received. The claimants have been advised of this meeting date and staff's recommendation that the Board deny their claim.

Required Signature

**Elected Official
or Department/
Agency Director:**



Date: 07/07/08

William C. Cox attorney at law

Land Use, Real Estate and Development Consultation

*Gary P. Shepherd
Of Counsel
(503) 233-1985*

June 10, 2008

Multnomah County Commission
Derrick I. Tokas LUTP
1600 SE 190th Avenue
Portland, Oregon 97233-5910

RE: Measure 49 Claim
Ray and Virginia Hausler (File No. T1-06-065)
Tax Lot 2400, S 07, T 1S, R 1E, Property ID# R327235
Order No. 08-067

Dear Commissioners,

In response to your Notice of Tentative Determination-Hausler Measure 49 Claim (File No. T1-06-065) the Hauslers offer the following factual and legal argument. It is the Hauslers' position that the basis identified in your notice and ordinance for denial of their claim is without legal foundation.

The Hauslers own 3.88 acres in Portland's west hills, of which about three acres are excess to their needs. The property has belonged to the Hausler family since 1933. The excess three acres are ideally suited for at least two single family homes, with an existing paved roadway and underground utilities available to serve the property immediately.

Environmental restrictions placed on the Hauslers' acreage by County agents unknown to the Hauslers and at the time unknown to Hauslers have little relationship to actual conditions on the ground. A surveyor recently told the Hauslers that one environmental restriction includes within its area a neighbors' swimming pool and other improvements. In that same area, there are several single family homes immediately adjoining the Hauslers' property. Clearly the Hausler 3.88 acres are suitable for development of a least two additional residential sites consistent with the requirements of Measure 49 and the concept of compact urban growth.

The Hauslers are pleased to learn from the County's that they satisfy all of the County's requirements under Measure 49 excepting the requirement that mandates a uniquely constructed appraisal report. In response to the proposed decision of denial the Hauslers offer the following legal argument and explanation why the unique appraisal being

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MULTNOMAH COUNTY
PLANNING SECTION

demanding is unattainable, which in turn renders the purported purpose of Measure 59 unattainable.

Measure 49 Sections 9(5)(k), Section 9(6) and Section 9(7)

The standards imposed by the above referenced sections are void and without legal authority. They are arbitrary and capricious and do not further the stated purpose of the statute (Measure 49).

Measure 49, Section 3 (2) states:

“The purpose of sections 5 to 22 of this 2007 act and the amendments to Ballot Measure 37 (2004) is to modify Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.”

Measure 49, Section 4(2), states:

“Just compensation under sections 12 and 14 of this 2007 act shall be based on the reduction in the fair market value of the property resulting from the land use regulation” Emphasis Added

The key word in that provision is ‘property’. However, Section 9(5)(k) makes it impossible to establish a loss for which just compensation will be paid. Section 9(5)(k) requires that an appraisal be undertaken pursuant to terms which effectively render the stated purpose of Measure 49 to pay just compensation unattainable. That provision mandates that the value of a vacant parcel of property be compared to the value of that property improved with a single-family dwelling thereon. As it states in pertinent part:

“...that the basis for the claim caused a reduction in the fair market value of the property, as determined under section 6 of this section, that is equal to or greater than the fair market value of the single family dwellings that may be established on the property under subsection 2 of this section. Emphasis Added

The definition of property found in Section 2 (17) makes no reference to single family dwellings, nor are single family dwellings defined in Measure 49.

Furthermore Section 9 (7)(a) and (b) require that the appraisal be “prepared by a person certified under ORS Chapter 674 ... or ... ORS Chapter 308 and “comply with the Uniform Standards of Professional Appraisal Practice as authorized by the Financial Institutions Reform, Recovery and Enforcement Act of 1989”.

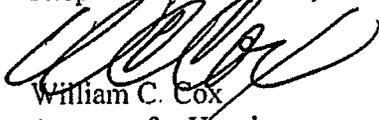
The claimant has been unable to locate anyone that meets the express and implied standards set forth in Section 9 (7) (a) and (b) because there is no ethical manner that an appraiser could accept the challenge of Section 9 (5) with any expectation that the

claimant can ever show a reduction in fair market value of vacant property when it is compared to improved property containing a single family dwelling.

The terms of Section 7 Measure 49 are inequitable, arbitrary and capricious and fail to implement the stated purpose of the Measure.

To deny claimant's claim based upon such a standard is in violation of the rights set forth in the 5th and 14th amendments to the US Constitution and Article I, Section 18 of the Oregon Constitution. Claimant's property value has been taken without just compensation.

Respectfully submitted,



William C. Cox
Attorney for Hausler
WCC/abh



Department of Community Services
MULTNOMAH COUNTY OREGON

Land Use and Transportation Program
1600 SE 190th Avenue
Portland, Oregon 97233-5910
PH. (503) 988-3043 Fax (503) 988-3389
www.co.multnomah.or.us/landuse

July 2, 2008

William Cox, Attorney
0244 SW California Street
Portland, OR 97219

RE: Measure 49 Claim for Ray and Virginia Hausler

Dear Mr. Cox,

Thank you for the June 10, 2008 letter responding to the Board of Commissioner's tentative denial of Ray and Virginia Hausler's Measure 49 claim. It is likely the Board will make a final decision at their July 17, 2008 meeting, and we will forward a copy of your letter for their consideration.

In your letter, you indicate that the property is suitable for at least two additional homes. As I have explained previously, the current R-20 zoning does not prohibit your clients from dividing the property and constructing dwellings. Accordingly, I encourage you to contact the City of Portland to explore options for further developing the property under current regulations. Similarly, with respect to your concern about environmental overlays, I encourage you to contact the City. The City has an administrative process for properly aligning environmental overlays with conditions on ground.

We understand that you object to the appraisal requirement contained in the Ballot Measure and believe it violates the state and federal constitutions. The County is required to implement the measure and must rely upon the required appraisals to substantiate a claim that land use regulations have caused a reduction in the fair market value of the property at issue. Without the appraisal, the County cannot find the claim to be eligible for relief.

Lastly, in your letter, you state that it is your understanding, presumably from the Order of Tentative Determination, Order No. 08-067, that your clients meet all applicable requirements under the measure, except for the appraisal requirement. Please note that through Order No. 08-067 the County tentatively determined that the Hauslers failed to satisfy multiple requirements under the measure, not just the appraisal requirement.

Please let me know if you have questions or would like to discuss this further.

Sincerely,

Derrick I. Tokos, AICP
Principal Planner

xc: Ray and Virginia Hausler
Jed Tomkins, Assistant County Attorney



**LAND USE & TRANSPORTATION
PLANNING PROGRAM**
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

Staff Analysis of Measure 49 Claim

The following matter is scheduled for public meeting, deliberation and possible action before the Multnomah County Board of Commissioners

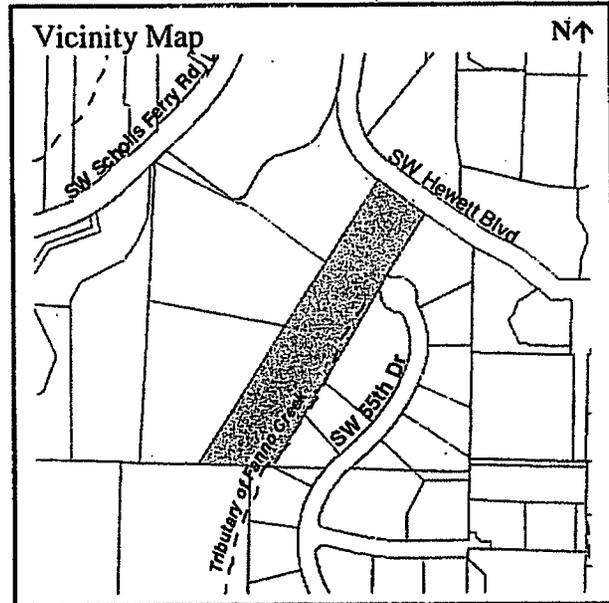
Hearing Date, Time, & Place:

Thursday, May 22, 2008 at 9:30 AM or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

Case File: T1-06-065

Claimant: Ray and Virginia Hausler
c/o William Cox, Attorney

Location: 5514 SW Hewett Boulevard
Alt. Acct #R991070950
Tax Lot 2400, Section 07BA,
Township 1S, Range 1E, W.M.



Claim: Up to 8 single family home sites.

Zoning: Single Dwelling Residential (R-20), Environmental Conservation Overlay (c zone), and Environmental Protection Overlay (e zone)

Site Size: 3.88 acres

Recommendation:

Staff recommends the Board tentatively determine that claimants, Ray and Virginia Hausler, are not entitled to relief under Measure 49 because they failed to provide an appraisal demonstrating that the challenged regulations have reduced the fair market value of the property.

Staff Analysis

(The following is a step-by-step evaluation of the claim, which consists of the materials submitted by the claimants and supplemented by staff. The analysis is structured as a series of questions that must be answered to establish if a claim is valid and eligible for relief under Section 9 of Ballot Measure 49 for claims involving land that is inside an Urban Growth Boundary.)

1. *Is the type of development sought by the claimants eligible under Measure 49?*

Yes. As outlined in their response letter, received January 25, 2008, the claimants are seeking the right to subdivide the property into 8 lots and construct single family dwellings on each lot (Exhibit A1). This is the same type of relief that the claimants sought in their Measure 37 claim and is less than the 10 home site limit provided for in Measure 49.

2. *Did the claimants file a Measure 37 claim with the County prior to the close of the 2007 legislative session?*

Yes. The property is located in an area of unincorporated Multnomah County that has been under an urban planning area agreement between the County and City since January 4, 2002. This agreement transferred land use planning responsibilities to the City; however, the County is still the governing body that adopts the land use regulations. Accordingly, the County is responsible for evaluating and deciding claims. The claimant submitted a Measure 37 claim to the City of Portland on September 4, 2006. The claim was forwarded to the County on September 7, 2006. The legislative session closed on June 28, 2007.

3. *Do the claimants own the property, and have all owners consented in writing to the claim?*

Yes. County assessment information shows Ray and Virginia Hausler as the owners of the property (Exhibit A2). No other owners are listed. The claimant's attorney resubmitted a Measure 37 Lot Book Service prepared by First American Title Company, dated June 29, 2006 (Exhibit A3). This document shows that at that time there were no other parties who owned the property. In a letter received January 25, 2008 the claimant's attorney advised that there has been no ownership changes since the title report was prepared. This evidence, in sum, is adequate to establish that all property owners have consented to the claim.

4. *Is the property located in whole, or in part, within an urban growth boundary?*

Yes. The property is located within an urban unincorporated area that is inside the Metro Urban Growth Boundary.

5. *On their acquisition date, were the claimants lawfully permitted to establish the number of dwellings sought in the claim?*

No. The report prepared by the First American Title Company establishes that the claimant acquired the property on September 24, 1975. On that date the property was zoned Single Family Residential R-20 (Exhibit A4). The zoning rules did not specify a number of dwellings to which a property owner is entitled. They set a minimum lot size of 20,000 square feet, average lot width of 80 feet, and average lot depth of 120 feet. The zoning rules also required public street access, which under

the subdivision rules in effect at the time was a 50 foot minimum right-of-way. Considering terrain and the narrow configuration of this property (approx. 221 ft x 1009 ft), it is not self evident that 8 developable lots could have been divided out of the property in conformance with the regulations in effect at the time.

6. *Is the property zoned for residential use?*

Yes. The property is within a Single Dwelling Residential (R-20) zone district. This district allows residential uses.

7. *Have one or more land use regulations prohibited the claimants from establishing the dwellings?*

No. The claimants assert this to be the case, but provided no substantiating evidence. Current land use regulations include Single Dwelling Residential (R-20) zoning with Environmental Conservation (c zone), and Environmental Protection (e zone) overlays. These regulations restrict how the property can be used, but do not on their face prohibit the claimant from establishing additional dwellings and lots. Staff at the City of Portland offered to meet with the claimants to assist them in achieving their development goals under current regulations (Exhibit A5) and this option will continue to be available irrespective of the Board's decision on the claim.

8. *Would health and safety or other exempt land use regulations under ORS 197.352(3) prohibit the claimant from establishing the dwellings?*

It is possible that health and safety regulations, such as subdivision regulations designed to ensure safe access, or environmental regulations put in place to protect slope stability and water quality would limit the claimant to fewer than 8 home sites. The claimants would need to provide additional information about their plans for developing the property in order for that to be determined.

9. *Were the challenged land use regulations enacted after the property was brought into the Urban Growth Boundary and the Metro Boundary?*

Yes. They challenged land use regulations were enacted January 4, 2002 when planning and zoning authority over the property was transferred to the City of Portland. On that date the property was already inside the Urban Growth Boundary and Metro Boundary.

10. *Has the claimant provided an appraisal, using the methodology outlined in the Measure, demonstrating that the challenged land use regulations have reduced the fair market value of the property in an amount equal to or greater than the fair market value of the dwellings being sought?*

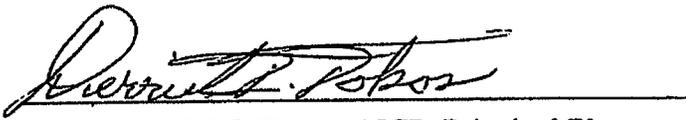
No. The claimants have not provided an appraisal demonstrating that the challenged land use regulations have reduced the fair market value of the property. Measure 49 requires the claimants provide the appraisal within 120 days of the date the County provided the claimant notice of their options under the law. That notice was provided on December 10, 2007, meaning that the 120 days has lapsed.

Had an appraisal been provided staff expects that it would have addressed issues outlined in this report, including whether or not the claimants could have established 8 home sites when they acquired the property, and whether or not health and safety or current land use regulations have prohibited development sought by the claimants. Consequently, the lack of an appraisal is the determining factor for why this claim must be denied.

Conclusion

Considering the above analysis, claimants Ray and Virginia Hausler have failed to establish that they are entitled to relief under Measure 49.

Issued by:



By: Derrick I. Tokos, AICP, Principal Planner

For: Karen Schilling- Planning Director

Date: May 7, 2008

Exhibits

Copies of the exhibits, referenced herein, and all other materials submitted to the County related to this claim are included in the case record that is on file at the Land Use and Transportation Planning Office.

Exhibit #	# of Pages	Description of Exhibit
A1	2	Letter from William Cox, claimants attorney, received January 25, 2008
A2	4	Assessment and Taxation printout for the property with map
A3	4	Measure 37 Lot Book Service prepared by First American Title Company, dated June 29, 2006
A4	5	R-20 zoning in effect when the claimant acquired the property with map
A5	1	Letter from Chris Dearth, City of Portland Measure 37 Program Manager, dated January 10, 2007

William C. Cox attorney at law

Land Use, Real Estate and Development Consultation

Gary P. Shepherd
Of Counsel
(503) 233-1985

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MULTNOMAH COUNTY
PLANNING SECTION

January 23, 2008

Karen Schilling, Planning Director
Multnomah County Depart. of Comm. Services
Land Use and Transportation. Program
1600 SE 190th Avenue
Portland, Oregon 97233

Re: Ray and Virginia Hausler,
5514 SW Hewitt Blvd.
Portland, Oregon 97221
Measure 37 Claim File No. T1-06-065
Your Letter of December 10, 2007

Dear Ms. Schilling,

In response to the above identified letter please be informed that the Hauslers will continue their claim. I will briefly address the 7 issues you identify in your letter and supplement my responses with copies of previously submitted materials.

- A. **Owner of the Property:** At all times relevant the Hauslers have and continue to be the owners. You should have in your possession a June 29, 2006 First American Title Insurance Company "Measure 37 Lot Book Service" report. There has been no change in ownership since that report was issued. (Copy Enclosed).
- B. **Owner Consent.** Pursuant to the existing Powers of Attorney documents (still viable) also submitted with the Measure 37 claim all owners (Ray and Virginia Hausler have consented in writing to the claim. (Copies Enclosed).
- C. **Number of Dwellings Permitted.** As is explained in the attached copies of the State, City of Portland and Multnomah County Measure 37 claims, at the date of acquisition the Hauslers' could have established 8 lots on their 3.88 acres which were then and currently are zoned R-20.
- D. **Regulations Prohibiting Zoned Density.** Again please refer to the attached copies of the Measure 37 claims. Included in the list of offending regulations are the Slope, S, C, and P overlay zone designations.
- E. **ORS 197.352 (3) Applicability.** Section 3 excludes from Measure 37 protection, land use regulations regarding: A) public nuisances under common law; B) the protection of public health and safety, such as fire and building

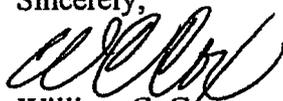
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codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; C) regulations required by federal law; D) use of a property for the purpose of selling pornography or performing nude dancing; or E) Enacted prior to the date of acquisition of the property by the owner or a family member. The offending restrictions do not fall within any of those exemptions.

- F. **Enactment of Regulations.** The offending regulations were enacted after the property was brought into the UGB and Metro Boundary.
- G. **Reduction in FMV.** At this time the undersigned is not aware of any appraisers who have undertaken to measure the reduction in FMV as that measurement is defined by Measure 49. If you are aware of any that have been certified to and are conducting such appraisals in the Metro area please so inform me.

Also enclosed please find a copy of the February 27, 2007 DAS/LCDC grant of waiver for the subject property.

Sincerely,



William C. Cox
Attorney for Hauslers

WCC/abh

CC: Clients without enclosures.

**Multnomah Assessor
PROPERTY INFORMATION**

Owner Name AUSLER, RAY S & VIRGINIA Y	Property ID # R327235
Owner Address 514 SW HEWETT BLVD PORTLAND, OR 97221	Map Tax Lot # 1S1E07BA -02400
 situs Address 514 SW HEWETT BLVD PORTLAND, OR 97221	Neighborhood R472
Alternate Account Number 991070950	Levy Code Area 118
Information on Ordering Copies http://multcotax.org/	Portland Maps http://www.portlandmaps.com
Exemption Tax Roll Description SECTION 07 1 S 1 E; TL 2400 3.88 ACRES	Expiration Date Map Number 3323 OLD 1S1E07BA -02400
Split/Merge Account Message	Parcel Property Use B - RESIDENTIAL IMPROVED
Special Account Information	Year Built Account Status 1934 A - Active
Related Accounts	Linked Accounts

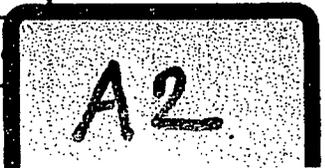
Need	Grantor (Seller)	Grantee (Buyer)	Instrument	Date	Consider Amt
VEST	HAUSLER, RAY S &	HAUSLER, RAY S &	10630627		\$0

Last Certified Year (2007) Information for R327235			
Taxable Assessed Value	Taxable Real Market Value	Land Value	Improvement Value
\$569,030	\$946,180	\$569,400	\$376,780

Important Information About R327235
 If applicable, the described property is receiving special valuation based upon its use. Additional rollback taxes which may become due based on the provisions of the special valuation are not indicated in this listing.

Total Tax Payoff Amount		
Current Year Tax Owed	Interest Date	Total Tax Payoff Amount
\$9,149.88	05/07/2008	\$9,149.88

Current Property Tax						
Third	Begin Balance	Amount Paid	Taxes Paid	Interest Paid	Discount	Date Paid



Property Summary

1st	2,932.66	0.00	0.00	0.00	0.00	Unpaid
2nd	2,932.65	0.00	0.00	0.00	0.00	Unpaid
3rd	2,932.65	0.00	0.00	0.00	0.00	Unpaid

Information Subject to Disclaimer - See Home Page

Tax Summary

Year	Total Levied	Ad Valorem	Special Assessments	Principal	Interest	Date Paid	Total Owed
2007	8,797.96	8,762.96	35.00 [561] 35.00	8,797.96	351.92	Unpaid	9,149.88
2006	7,657.40	7,615.40	42.00 [561] 42.00	0.00	0.00	11/15/06	0.00
2005	7,190.90	7,148.90	42.00 [561] 42.00	0.00	0.00	10/16/06	0.00
2004	7,911.85	7,869.85	42.00 [561] 42.00	0.00	0.00	07/26/05	0.00

Property Tax History Summary

Tax Year	Taxes Levied	Total Paid	Taxes Paid	Interest Paid	Date Paid	Total Owed
2007	8,797.96	0.00	0.00	0.00	Unpaid	9,149.88
2006	7,657.40	7,427.68	7,427.68	0.00	11/15/06	0.00
2005	7,190.90	7,869.17	7,190.90	678.27	10/16/06	0.00
2004	7,911.85	8,303.88	7,911.85	392.03	07/26/05	0.00

Assessment History

Year	Improvements	Land	Special Mkt/Use	RMV	Exemptions	Assessed
2007	\$376,780	\$569,400	\$0 / \$0	\$946,180		\$569,030
2006	\$317,530	\$516,800	\$0 / \$0	\$834,330		\$552,460
2005	\$388,730	\$330,470	\$0 / \$0	\$719,200		\$536,370
2004	\$347,080	\$295,070	\$0 / \$0	\$642,150		\$520,750
2003	\$381,440	\$292,150	\$0 / \$0	\$673,590		\$505,590
2002	\$370,330	\$283,640	\$0 / \$0	\$653,970		\$490,870
2001	\$370,330	\$283,640	\$0 / \$0	\$653,970		\$476,580
2000	\$333,630	\$255,530	\$0 / \$0	\$589,160		\$462,700
1999	\$320,800	\$245,700	\$0 / \$0	\$566,500		\$449,230
1998	\$302,600	\$231,800	\$0 / \$0	\$534,400		\$436,150
1997	\$290,900	\$222,900	\$0 / \$0	\$513,800		\$423,450
1996	\$277,000	\$212,300	\$0 / \$0	\$489,300		\$489,300
1995	\$266,400	\$204,100	\$0 / \$0	\$470,500		\$470,500

2008 Land Information (Unedited and Uncertified)

ID	Type	Acres	Sq Ft
L1	RES - RESIDENTIAL LAND	3.88	169012

2008 Improvement Information (Unedited and Uncertified)

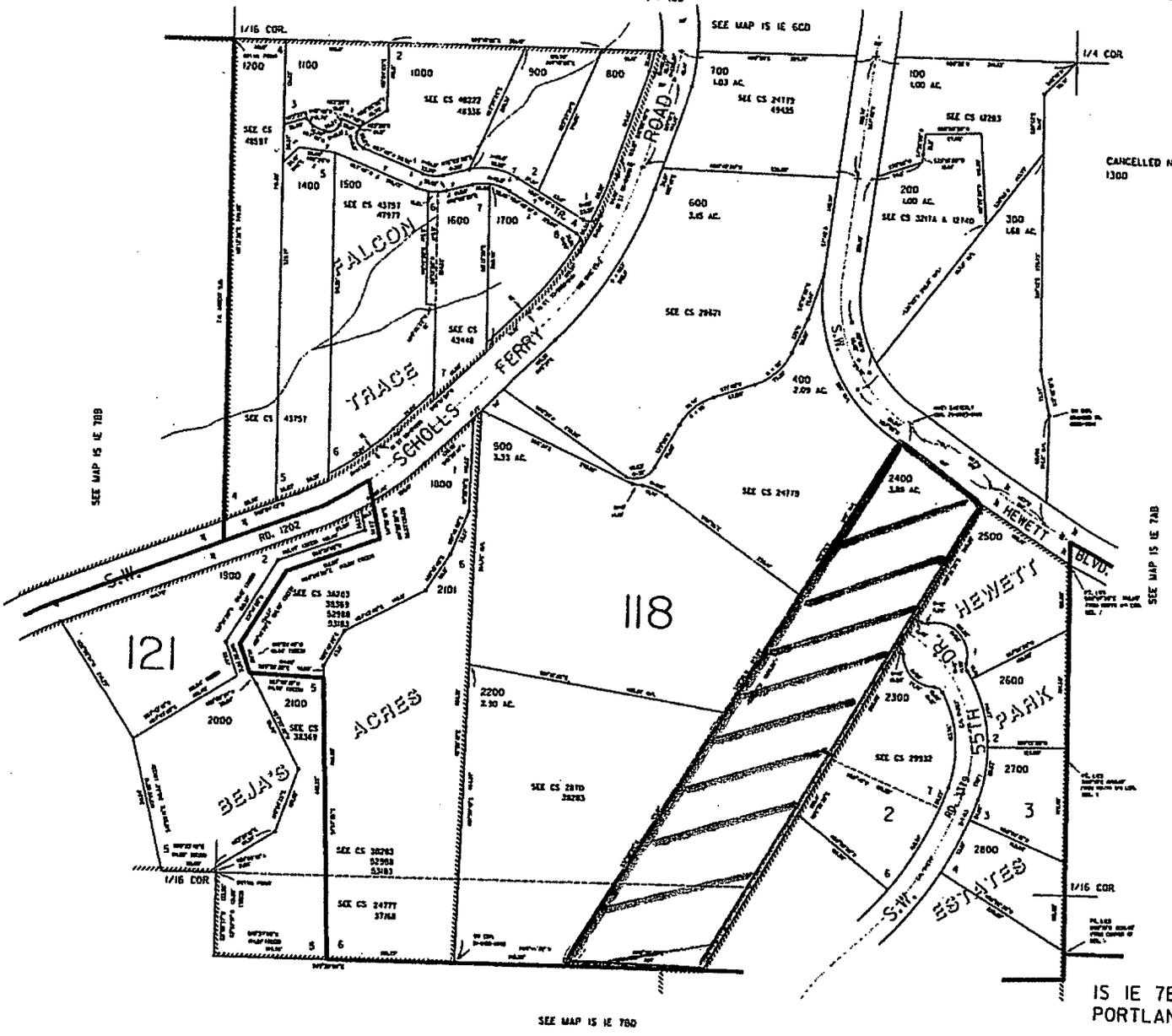
ID	Type	Class	Area	Year Built Actual/Effective
1	(SFR) SINGLE FAMILY RESIDENTIAL	H		
1.1	(MA) MAIN	5.0	1739	1934 / 1934
1.2	(FS) FIN SECOND	5.0	1102	
1.3	(FB) FIN BSMT	5.0	1739	
1.4	(DEC) DECK	5.0	1200	
1.5	(BLK) BLACKTOP	5.0	3000	

1.6	(DGX) DET GAR	5.0	400
1.7	(CON) CONCRETE	5.0	860

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

NE1/4 NW1/4 SEC. 7 T.1S. R.1E. W.M. MULTNOMAH COUNTY

IS 1E 7BA PORTLAND



CANCELLED NO. 1300

IS 1E 7BA PORTLAND



First American

First American Title Insurance Company of Oregon
222 SW Columbia Street, Suite 400
Portland, OR 97201
Phn - (503)222-3651 (800)929-3651
Fax - (503)790-7858

MULTNOMAH COUNTY TITLE UNIT
FAX (503)790-7858

Title Officer: **Lauren Finbraaten**
(503)222-3651

MEASURE 37 LOT BOOK SERVICE

William C. Cox, Attorney
0244 SW California
Portland, OR 97219-2330

Order No.: 7019-853968
June 29, 2006

Attn:
Phone No.: (503)246-5499 - Fax No.: (503)244-8750
Email: wccox@landuseattorney.com

Re:

Fee: \$500.00

We have searched our Tract Indices as to the following described property:

The land referred to in this report is described in Exhibit A attached hereto.

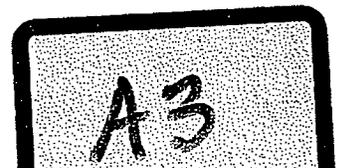
and as of June 20, 2006 at 8:00 a.m.

We find that the last deed of record runs to

Ray S. Hausler and Virginia Y. Hausler, as tenants by the entirety

We also find the following apparent encumbrances within ten (10) years prior to the effective date hereof:

1. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
2. Easement, including terms and provisions contained therein:
Recording Information: November 18, 1970 in Book 760, Page 1074
From: Columbia-Wilcox Service District No. 6
For: Sewer



3. Line of Credit Trust Deed, including the terms and provisions thereof, given to secure an indebtedness of up to \$160,000.00

Grantor: Ray S. Hausler and Virginia Y. Hausler
 Beneficiary: U.S. Bank National Association
 Trustee: U.S. Bank Trust Company, National Association
 Dated: May 13, 2003
 Recorded: June 13, 2003
 Recording Information: 2003-135603

The lien of said Deed of Trust was subordinated to the lien of the instrument recorded July 25, 2005 as Fee No. 2005-137573 by agreement recorded July 25, 2005 as Fee No. 2005-137574 .

4. Deed of Trust and the terms and conditions thereof.

Loan No. : 01-0978-068822798-2
 Grantor/Trustor: Ray S. Hausler and Virginia Y. Hausler, as tenants by the entirety
 Grantee/Beneficiary: Washington Mutual Bank, a Washington corporation
 Trustee: Ticor Title Insurance Company, an Oregon corporation
 Amount: \$225,000.00
 Dated: July 18, 2005
 Recorded: July 25, 2005
 Recording Information: 2005-137573

5. Unrecorded leases or periodic tenancies, if any.

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

NONE

We also find the following unpaid taxes and city liens:

1. Taxes for the year 2005-2006
- | | | |
|--------------------|----|---|
| Tax Amount | \$ | 7,190.90 |
| Unpaid Balance: | \$ | 7,190.90, plus interest and penalties, if any |
| Code No.: | | 118 |
| Map & Tax Lot No.: | | 1S1E07BA-02400 |
| Property ID No.: | | R327235 |

In our search for recorded deeds to determine the vestee herein we find the following:

Title of Conveyance: Warranty Deed
 Recorded: September 24, 1975
 As: Book 1063, Page 627
 Grantor: Jean W. Hausler
 Grantee: Ray S. Hausler and Virginia Y. Hausler

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listing do to include additional matters which might have been disclosed by an examination of the record title. We assume no liability in connection wit this Measure 37 Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

Exhibit "A"

Real property in the County of Multnomah, State of Oregon, described as follows:

THAT PORTION OF SECTION 7, TOWNSHIP 1 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF MULTNOMAH AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED FROM CAROLINE S. LOMBARD TO H.J. POWER AND OLGA C. POWER, RECORDED AUGUST 16, 1929 IN BOOK 23, PAGE 109 SAID POINT LYING IN HEWITT BOULEVARD; THENCE SOUTH 29° 26' WEST 1009.36 FEET; THENCE NORTH 88° 36-1/4' EAST 221 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE TO A POINT IN CENTER HEWITT BOULEVARD, WHICH LIES 168 FEET SOUTHEASTERLY MEASURED ALONG THE CENTER LINE OF SAID HEWITT FROM THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF HEWITT BOULEVARD, 168 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING IN SW HEWITT BOULEVARD.

Tax Parcel Number: R327235

340 SINGLE FAMILY RESIDENTIAL DISTRICT R-20

3.41 USE. No building, structure or land shall be used and no building or structure shall be hereafter erected, altered, or enlarged in this district except for the following uses:

3.411 Single family dwellings.

3.412 Accessory buildings such as garages, carports, studios, pergolas, private workshops, play-houses, private greenhouses or other similar structures related to the dwelling in design, whether attached or detached.

3.413 Farming, truck gardening, orchards and nurseries, provided that no retail or wholesale business sales office is maintained on the premises, and provided that no poultry or livestock, other than normal household pets, shall be housed within one hundred (100) feet of any residence other than the dwelling on the same lot.

3.414 Special uses, such as parks, playgrounds or community centers, churches, schools, golf courses and uses of similar nature, as provided in the Community Service Section (7.00), when approved by the Planning Commission.

3.415 Temporary structures may be allowed in this district if these structures relate to the building or sale of land or homes, provided, however, that a temporary permit shall be issued for these structures by the Board of Adjustment. This permit shall expire at the end of one (1) year, but may be renewed by the Board of Adjustment at the end of that period.

3.416 Where the side of a lot abuts on a commercial or industrial district, the following transitional uses are permitted provided they do not extend more than one hundred (100) feet into the more restricted (residential) district:

(a) Two-family dwellings.

(b) Medical offices, dental offices and clinics.

(c) Parking, as required in section 6.20.

(d) Other uses of a transitional nature as determined by the Planning Commission. These transitional uses shall conform to all other requirements of this ordinance which apply.

3.417 Signs. The following signs shall be permitted in this district:



- (a) A sign advertising the sale or rental of a premises; not artificially illuminated, of a temporary nature, with a maximum area on one side of eight (8) square feet, when erected at least ten (10) feet behind the front property line.
- (b) A sign advertising the sale of a tract of land or a legally approved subdivision or development; not artificially illuminated, of a temporary nature, with a maximum area on one side of eighty (80) square feet, when erected at least ten (10) feet behind the front property line. Any such sign shall be approved by the building inspector before erection as to location in regard to health, safety, view obstruction, or other such conditions.
- (c) A sign stating the name of the owner or occupant of the property; with a maximum area on one side of two (2) square feet.
- (d) In transitional areas a sign, illuminated or otherwise, but not of a flashing intermittent type, with a maximum area on one side of eighteen (18) square feet. Any external sign displayed shall pertain only to the use conducted within the building. Artificially illuminated signs shall not be permitted if they face an abutting residential district.

3.418 Uses customarily incident to any of the above uses, including home occupations.

3.42 RESTRICTIONS.

3.421 Lot Size. The minimum lot size shall be twenty-thousand (20,000) square feet. The minimum average lot width shall be eighty (80) feet. The minimum average lot depth shall be one hundred and twenty (120) feet.

3.422 Yard Requirements.

- (a) Front Yard. There shall be a front yard having a minimum depth of thirty (30) feet, unless a previous building line less than this has been established, in which case the minimum front yard for interior lots shall be the average of the set-backs of the main structures on abutting lots on either side if both lots are occupied; if one lot is occupied and the other vacant, the set-back shall be the set-back of the occupied lot, plus one half of the remaining distance to

the required thirty (30) foot set-back. If neither of the abutting side lots or tracts are occupied by a structure, the set-back shall be thirty (30) feet.

- (b) Side Yard. Side yards shall be a minimum of ten (10) feet.
- (c) Rear Yard. There shall be a rear yard with a minimum depth of thirty (30) feet to any permanent structure.

3.423 Accessory Buildings. Accessory buildings may be allowed if they fulfill the front, side and rear yard requirements of the main building.

* **3.424 Off-street Parking.** Two (2) automobile spaces on the lot shall be provided for each dwelling unit.

3.425 Height Restrictions. Maximum height of any structure shall be two and one-half (2½) stories or thirty-five (35) feet, whichever is less.

3.426 Lot Coverage. The maximum area that may be covered by the dwelling unit and accessory buildings shall not exceed thirty percent (30%) of the total area of the lot.

3.427 All lots in this district shall abut a street, or shall have such other access held suitable by the Planning Commission.

3.428 Half Streets. The minimum front or side yards or other setbacks as stated herein, shall be increased where such yard or setback abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and the additional yard or setback requirements in such cases.

3.429 No sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard or setback requirements of this district.

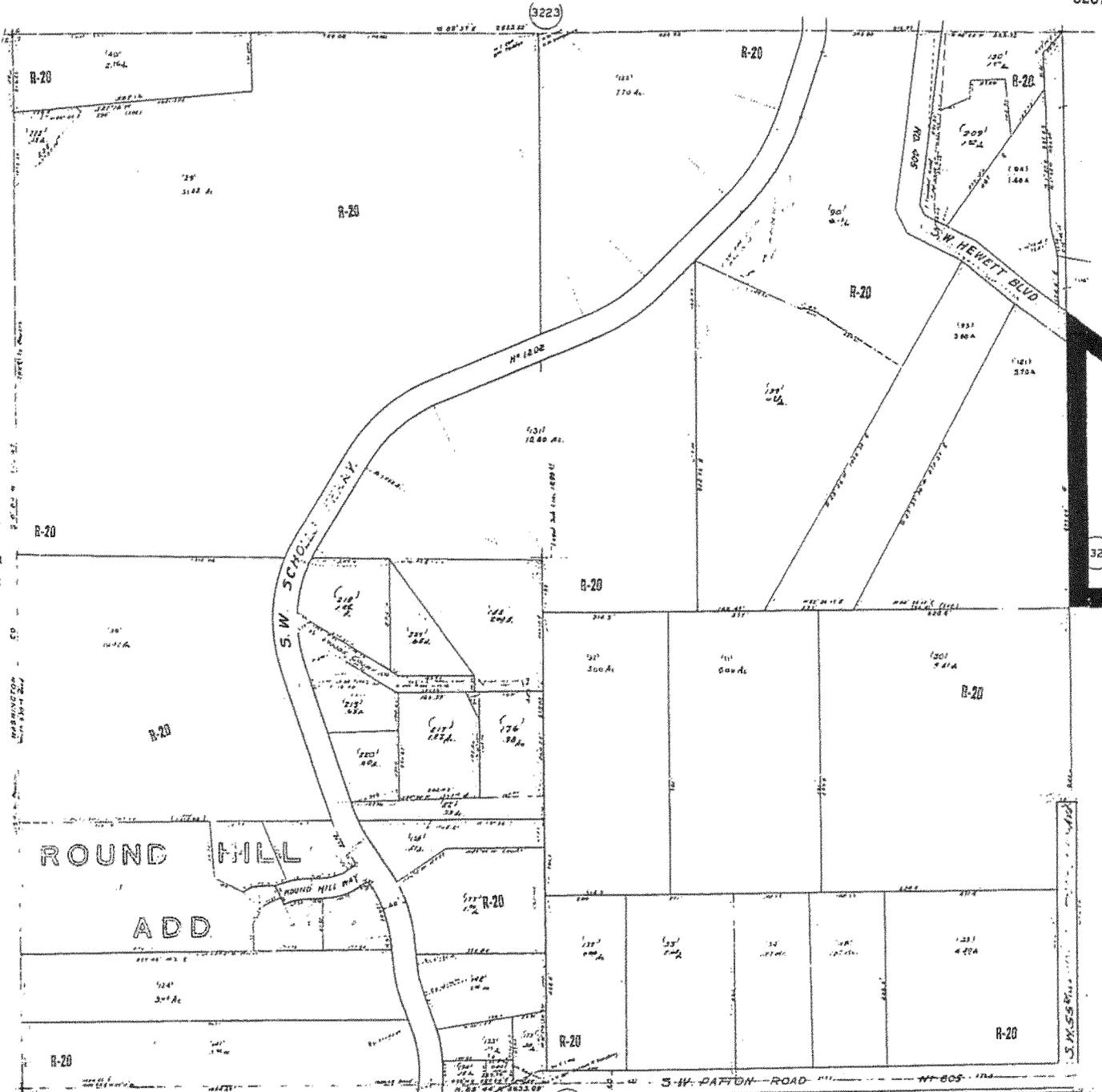
3.43 EXCEPTIONS.

3.431 Housing Project. When a developer of four (4) or more acres of land submits plans for an entire development program, with the objective of providing suitable view, ample yard area and other aesthetic conditions in harmony with the neighborhood, the Planning Commission may waive the front, side or rear yard requirements if it holds that the proposed de-

sign is the best interest of the public and adequate to provide desirable places in which to live. In this case the lot area, width and depth requirements shall remain the same as for this residential district.

3.432 Where a lot has been a deed of record of less than eighty (80) feet in width, or an area of less than twenty thousand (20,000) square feet, and was held under separate ownership, or was on public record at the time this ordinance became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than three thousand (3,000) square feet.

3.433 If topographical or other conditions exist which make these requirements unreasonable, the Board of Adjustment may waive the front, side or rear yard requirements.



3323
200 SCALE



CITY OF PORTLAND, OREGON
BUREAU OF
Planning

Tom Potter, Mayor
Gil Kelley, Director

1900 S.W. 4th Ave., Ste. 4100
Portland, OR 97201-5380

Phone 503-823-7700

FAX 503-823-7800

TTY 503-823-6868

Email pdxplan@ci.portland.or.us

www.portlandonline.com/planning

January 10, 2007

William C. Cox
0244 SW California St.
Portland, OR. 97219

Re: Claim for Compensation under ORS Chapter 197 (Measure 37)
5514 SW Hewett Blvd., Property ID #R327235

Multnomah County Case File Number T1-06-065

Dear Mr. Cox:

The City of Portland received the Claim for Compensation you submitted on behalf of Ray and Virginia Hausler on September 4, 2006. On September 7, 2006 this claim was forwarded to Multnomah County because our records show that this area falls within the City of Portland's Urban Service Boundary but it is an unincorporated area of Multnomah County.

While the City of Portland is responsible for land use planning and zoning in this area, the County is responsible for Measure 37 claims. Even though the City of Portland is not responsible for you clients' Measure 37 claim, we would like to offer you the opportunity to meet with planners at the Portland Bureau of Planning to discuss how we may be able to assist you and your clients in achieving their development goals on their property under current regulations. In our experience, we have found that many claimants are able to do more than they realize. Please contact my assistant, Brent M Dorig at 503-828-1174 to schedule an appointment.

Thank you,

Chris Dearth
Measure 37 Program Manager

Cc: Ray and Virginia Hausler
Derrick Tokos, Multnomah County Planning

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. _____

Order of Final Determination Denying the Ballot Measure 49 Claim Filed by Ray and Virginia Hausler for Property Located at 5514 SW Hewett Boulevard, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. Claimants, Ray and Virginia Hausler, seek relief under Oregon Laws 2007, chapter 424 (Ballot Measure 49) with respect to real property located entirely within the Metro boundary at 5514 SW Hewett Boulevard, Multnomah County, Oregon and identified by the Multnomah County Assessor as:

Tax Lot 2400, Section 07, Township 1S, Range 1E, W.M.;

Property ID # R327235
- b. Multnomah County (county) satisfied the requirements in Ballot Measure 49, section 10 (2) by mailing the notice required therein to the claimants on December 10, 2007.
- c. Claimants filed timely the notice required under Ballot Measure 49, section 10 (3) on January 25, 2008.
- d. Claimants have satisfied the threshold requirement set forth in Ballot Measure 49, section 9 (1) that claimants seeking relief under section 9 must have "filed a claim under ORS 197.352 on or before the date of adjournment *sine die* of the 2007 regular session of the Seventy-fourth Legislative Assembly." The date of adjournment *sine die* of the 2007 regular session of the Seventy-fourth Legislative Assembly was June 28, 2007. As explained in more detail below, the claimants filed a claim under ORS 197.352 (2005) on September 4, 2006.
- e. Claimants have satisfied the threshold requirement set forth in Ballot Measure 49, section 9 (5) that "the claimant must have filed a claim for the property with the city or county in which the property is located." Prior to filing the present claim under Ballot Measure 49, claimants filed a claim for the property under ORS 197.352 with the City of Portland, Oregon (city) on September 4, 2006. The city forwarded the claim under ORS 197.352 to the county on September 7, 2006, for review and determination.
- f. Claimants have established the ownership and consent criteria in Ballot Measure 49, section 9 (5)(a) and (b). County assessment records show claimants as the sole owners of the property. The Lot Book Service report (title report) prepared on June 29, 2006, by First American Title Company, previously submitted with the claim filed under ORS 197.352 and resubmitted with the Ballot Measure 49 claim, shows claimants as the sole owners of the property. In the notice of claim under Ballot Measure 49, claimants assert in writing that they have consented to the claim and that there has been no change in ownership since the title report was prepared.

- g. Claimants have not established per Ballot Measure 49, section 9 (5)(d) that, on their acquisition date, the claimants lawfully were permitted to subdivide the property into eight lots as requested.
1. The title report submitted by the claimants shows that the claimants acquired the property on September 24, 1975. On that date, the property was zoned Single Family Residential R-20, which set forth the following requirements: 20,000 square foot minimum lot size; 80 foot average lot width; and a 120 foot average lot depth. That zoning code also required public street access and subdivision rules in effect at the time required a 50 foot minimum right-of-way. Considering the terrain and the narrow configuration of the property, a rectangular shape approximately 221 feet in width and 1009 feet in length, the information provided by the claimants does not establish that eight developable lots could have been divided out of the property in conformance with the regulations in effect at the time of the claimants' acquisition of the property.
 2. In response to this Board's Order of Tentative Determination of the Hausler's claim, Order No. 08-067, claimants asserted by letter dated June 10, 2008, that approximately three acres of their property is available for subdivision and that such portion of their property is "ideally suited for at least two single family homes, with an existing paved roadway and underground utilities available to serve the property immediately." Without more, this assertion does not establish that eight developable lots could have been divided out of the property in conformance with the regulations in effect at the time of the claimants' acquisition of the property.
- h. Claimants have established per Ballot Measure 49, section 9 (5)(e) that the property is zoned for residential use. The current zoning designation for the property is Single Dwelling Residential (R-20), which allows residential uses.
- i. Claimants have not established per Ballot Measure 49, section 9 (5)(f) that "one or more land use regulations prohibit" the relief requested by the claimants. Current land use regulations include Single Dwelling Residential (R-20) zoning with Environmental Conservation (c zone) and Environmental Protection (e zone) overlays. These regulations restrict how the property can be used, but do not, on their face, prohibit the claimant from establishing additional dwellings and lots.
- j. Claimants have not established per Ballot Measure 49, section 9 (5)(g) that the relief requested by the claimants "is not prohibited by a land use regulation described in ORS 197.352 (3)." Land use regulations restricting or prohibiting activities for the protection of public health and safety are described in ORS 195.305 (3) (formerly ORS 197.352 (3)). Claimants have not provided any information regarding the applicability of land use regulations restricting or prohibiting activities for the protection of public health and safety.

- k. Claimants have established per Ballot Measure 49, section 9 (5)(c), (h) and (i) that the challenged land use regulations were enacted after the date the property was brought into the Urban Growth Boundary and Metro Boundary. The property was already entirely within both of those boundaries when the challenged land use regulations were enacted on January 4, 2002.
- l. Claimants have not established per Ballot Measure 49, section 9 (5)(k) that the “enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.” Satisfaction of Ballot Measure 49, section 9 (5)(k) is achieved in part through submission of an appraisal as set forth in that subsection as well as Ballot Measure 49, sections 9 (6) and (7). In addition under Ballot Measure 49, section 10 (3), the deadline for filing the required appraisal was April 8, 2008. Claimants have not filed the required appraisal and, therefore, have not satisfied any of the requirements identified in this paragraph.

The Multnomah County Board of Commissioners Orders that:

Based on the foregoing findings, the claimants do not qualify for relief under Ballot Measure 49, section (9).

ADOPTED this 17th day of July, 2008.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Jed R. Tomkins, Assistant County Attorney

SUBMITTED BY:
Agnes Sowle, County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 08-107

Order of Final Determination Denying the Ballot Measure 49 Claim Filed by Ray and Virginia Hausler for Property Located at 5514 SW Hewett Boulevard, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. Claimants, Ray and Virginia Hausler, seek relief under Oregon Laws 2007, chapter 424 (Ballot Measure 49) with respect to real property located entirely within the Metro boundary at 5514 SW Hewett Boulevard, Multnomah County, Oregon and identified by the Multnomah County Assessor as:

Tax Lot 2400, Section 07, Township 1S, Range 1E, W.M.;
Property ID # R327235
- b. Multnomah County (county) satisfied the requirements in Ballot Measure 49, section 10 (2) by mailing the notice required therein to the claimants on December 10, 2007.
- c. Claimants filed timely the notice required under Ballot Measure 49, section 10 (3) on January 25, 2008.
- d. Claimants have satisfied the threshold requirement set forth in Ballot Measure 49, section 9 (1) that claimants seeking relief under section 9 must have "filed a claim under ORS 197.352 on or before the date of adjournment *sine die* of the 2007 regular session of the Seventy-fourth Legislative Assembly." The date of adjournment *sine die* of the 2007 regular session of the Seventy-fourth Legislative Assembly was June 28, 2007. As explained in more detail below, the claimants filed a claim under ORS 197.352 (2005) on September 4, 2006.
- e. Claimants have satisfied the threshold requirement set forth in Ballot Measure 49, section 9 (5) that "the claimant must have filed a claim for the property with the city or county in which the property is located." Prior to filing the present claim under Ballot Measure 49, claimants filed a claim for the property under ORS 197.352 with the City of Portland, Oregon (city) on September 4, 2006. The city forwarded the claim under ORS 197.352 to the county on September 7, 2006, for review and determination.
- f. Claimants have established the ownership and consent criteria in Ballot Measure 49, section 9 (5)(a) and (b). County assessment records show claimants as the sole owners of the property. The Lot Book Service report (title report) prepared on June 29, 2006, by First American Title Company, previously submitted with the claim filed under ORS 197.352 and resubmitted with the Ballot Measure 49 claim, shows claimants as the sole owners of the property. In the notice of claim under Ballot Measure 49, claimants assert in writing that they have consented to the claim and that there has been no change in ownership since the title report was prepared.

- g. Claimants have not established per Ballot Measure 49, section 9 (5)(d) that, on their acquisition date, the claimants lawfully were permitted to subdivide the property into eight lots as requested.
1. The title report submitted by the claimants shows that the claimants acquired the property on September 24, 1975. On that date, the property was zoned Single Family Residential R-20, which set forth the following requirements: 20,000 square foot minimum lot size; 80 foot average lot width; and a 120 foot average lot depth. That zoning code also required public street access and subdivision rules in effect at the time required a 50 foot minimum right-of-way. Considering the terrain and the narrow configuration of the property, a rectangular shape approximately 221 feet in width and 1009 feet in length, the information provided by the claimants does not establish that eight developable lots could have been divided out of the property in conformance with the regulations in effect at the time of the claimants' acquisition of the property.
 2. In response to this Board's Order of Tentative Determination of the Hausler's claim, Order No. 08-067, claimants asserted by letter dated June 10, 2008, that approximately three acres of their property is available for subdivision and that such portion of their property is "ideally suited for at least two single family homes, with an existing paved roadway and underground utilities available to serve the property immediately." Without more, this assertion does not establish that eight developable lots could have been divided out of the property in conformance with the regulations in effect at the time of the claimants' acquisition of the property.
- h. Claimants have established per Ballot Measure 49, section 9 (5)(e) that the property is zoned for residential use. The current zoning designation for the property is Single Dwelling Residential (R-20), which allows residential uses.
- i. Claimants have not established per Ballot Measure 49, section 9 (5)(f) that "one or more land use regulations prohibit" the relief requested by the claimants. Current land use regulations include Single Dwelling Residential (R-20) zoning with Environmental Conservation (c zone) and Environmental Protection (e zone) overlays. These regulations restrict how the property can be used, but do not, on their face, prohibit the claimant from establishing additional dwellings and lots.
- j. Claimants have not established per Ballot Measure 49, section 9 (5)(g) that the relief requested by the claimants "is not prohibited by a land use regulation described in ORS 197.352 (3)." Land use regulations restricting or prohibiting activities for the protection of public health and safety are described in ORS 195.305 (3) (formerly ORS 197.352 (3)). Claimants have not provided any information regarding the applicability of land use regulations restricting or prohibiting activities for the protection of public health and safety.

- k. Claimants have established per Ballot Measure 49, section 9 (5)(c), (h) and (i) that the challenged land use regulations were enacted after the date the property was brought into the Urban Growth Boundary and Metro Boundary. The property was already entirely within both of those boundaries when the challenged land use regulations were enacted on January 4, 2002.
- l. Claimants have not established per Ballot Measure 49, section 9 (5)(k) that the “enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.” Satisfaction of Ballot Measure 49, section 9 (5)(k) is achieved in part through submission of an appraisal as set forth in that subsection as well as Ballot Measure 49, sections 9 (6) and (7). In addition under Ballot Measure 49, section 10 (3), the deadline for filing the required appraisal was April 8, 2008. Claimants have not filed the required appraisal and, therefore, have not satisfied any of the requirements identified in this paragraph.

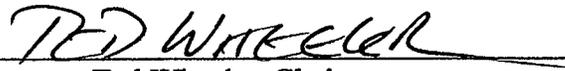
The Multnomah County Board of Commissioners Orders that:

Based on the foregoing findings, the claimants do not qualify for relief under Ballot Measure 49, section (9).

ADOPTED this 17th day of July, 2008.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Jed R. Tomkins, Assistant County Attorney

SUBMITTED BY:
Agnes Sowle, County Attorney