

## CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

Cable Services Franchise Agreement (“agreement”) dated December \_\_\_\_, 2009, between the City of Ashland and Ashland Home Net Corporation (AHN), (“Grantee”).

Recitals:

A. AHN is a cable service provider in the City of Ashland and has requested a franchise to, operate and maintain a cable television system within the City of Ashland;

B. City is authorized to grant one or more nonexclusive franchises to construct, operate, and maintain a cable television system within the city limits; and

C. Grantee is willing to accept this agreement and to abide by the terms and conditions;

City and Grantee agree:

**1. Definitions.** For the purposes of this agreement, the following terms, phrases, words and their derivations shall have the meaning set forth below. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

**1.1. Access** means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including City and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:

**1.1.1. Public Access** which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;

**1.1.2. Educational Access** which means Access where schools and educational institutions are the primary users of programming and service

**1.1.3. Governmental Access** which means Access where governmental institutions are the primary users of programming and service; and

**1.1.4. PEG Access** which means Public Access, Educational Access, and Governmental Access, collectively.

**1.2. Access Channel** means any Channel, or portion of any Channel, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

**1.3. Basic Service** means any service tier which includes the retransmission of local television broadcast signals and PEG Access Channels.

**1.4. Cable Acts** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments, including those contained in the Telecommunications Act of 1996.

**1.5. Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

**1.6. Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**1.7. Cable System** means a facility, consisting of a set of doted transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

**1.8. Channel** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.

**1.9. Downstream** means the transmission from the Headend to remote points on the Cable System.

**1.10. FCC** means the Federal Communications Commission.

**1.11. Franchise Area** means the area within the city limits of Ashland as they now exist or as they may be amended in the future.

**1.12. Gross Revenues** means all revenues of Grantee, in any way derived from the operation of the Cable System to provide Cable Services in the Agreement Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any Basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; revenues from rentals or sales of converters or other equipment; advertising sales revenues; revenues from program guides; and revenues from home shopping channels. The term "Gross Revenues" encompasses any and all revenue of any kind, form or nature including franchise fees passed through by Grantee to Subscribers, except that the term does not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt. Gross Revenues shall not include any taxes, fees or assessments of general applicability collected by the Grantee from subscribers for pass-through to a government agency, including, the FCC User Fee.

**1.13. Headend** means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

**1.14. Interconnection** means the provision by Grantee of technical, engineering, physical, and all other necessary components to maintain a physical linking of Grantee's Cable System and Cable Service or any designated Channel or signal pathway with neighboring Cable Systems, so that Cable Service of technically adequate quality may be sent to, and received from, other systems in accordance with this agreement.

**1.15. Leased Access** means the use of Channel capacity designated for commercial use by Persons unaffiliated with Grantee as defined in Section 612 of the Cable Act.

**1.16. Origination Point** means a location where Public, Educational, or Governmental use programming is delivered to the Grantee for Upstream transmission.

**1.17. Person** means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

**1.18. Public Rights of Way** include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of City's right, title, interest, or authority to grant a franchise to occupy and use such streets and easements for a Cable System and only to the extent that sufficient capacity exists for a Cable System. "Public rights of way" shall also include any easement granted to or owned by City or County and acquired, established, dedicated, or devoted for public utility purposes.

**1.19. Quarterly, or quarter**, means the standard calendar periods of January 1 — March 31, April 1 — June 30, July 1 — September 30, and October 1 — December 31, unless otherwise specified in this agreement.

**1.20. School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary schools, and colleges and universities.

**1.21. Street** means each of the following which have been dedicated to the public, or which may be dedicated to the public in the future, and maintained under public authority or by others and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and other public ways.

**1.22. Subscriber** means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

**1.22.1. Commercial Subscriber** means any Subscriber other than a Residential Subscriber.

**1.22.2. Residential Subscriber** means any Person who contracts individually for Cable Service to a residence, whether that residence is a single family unit or located in a multiple dwelling unit.

**1.23. Telecommunications, Telecommunications Facilities and Telecommunications Services** have the same meaning as set forth in Ashland Municipal Code Title 16.

**1.24. Upstream** means the carrying of a transmission to the Headend from remote points on the Cable System.

## **2. Grant of Franchise.**

### **2.1 Grant.**

**2.1.1.** City grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Streets and Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services. However, nothing in this agreement prohibits or limits the parties from entering into other agreements, leases, or contracts regarding Grantee's authorization to make lawful use of the Streets and Public Rights of Way provided that such other agreements specifically states whether this franchise agreement controls in the event of a conflict between the language in the documents.

**2.1.2.** This agreement is intended to convey limited rights and interests only as to those Streets and Public Rights of Way, in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide the Grantee any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in this agreement. This agreement does not deprive the City of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the City's Streets covered by this agreement, including without limitation, the right to perform work on its roadways, rights-of-way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating.

**2.1.3.** This agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This agreement shall not be interpreted to prevent the City from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service so long as similar conditions are also imposed on other similarly situated rights-of-way users. Nothing in this agreement shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.

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

**2.2. Use of Public Streets and Ways.** Subject to City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public utility easements within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and

procedures now in effect or enacted in the future, and must obtain any and all necessary permits from the appropriate agencies of City prior to commencing any construction activities. Grantee, through this agreement, is granted extensive and valuable rights to operate its Cable System for profit using City's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable City construction codes and procedures. As trustee for the public, City is entitled to fair compensation to be paid for these valuable rights throughout the term of this agreement.

**2.3. Duration.** The term of this agreement and all rights, privileges, obligations, and restrictions pertaining to this agreement shall be from the effective date of this agreement through June 30, 2014, unless extended or terminated sooner as provided below.

**2.4. Effective Date.** The effective date of this agreement shall be July 1, 2009, unless Grantee fails to file an unconditional written acceptance of this agreement and post any required bond or deposit within 45 days from Grantee's written acceptance of this agreement. In either event, this agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this agreement shall be of no force or effect.

**2.5. Franchise Nonexclusive.** This agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by City to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee. City may, at any time, grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this agreement, and for such additional Franchises for Cable Systems as City deems appropriate, upon substantially equivalent terms and conditions to those contained in this agreement as City deems appropriate.

#### **2.6. Grant of Other Franchises.**

**2.6.1.** In the event the City enters into a franchise or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's public ways for the purpose of constructing or operating a Cable System, or providing cable Service to any part of the Service Area in which the Grantee is actually providing Cable Service under the terms and conditions of this agreement, or is required to extend Cable Service under the provisions of section 11.2 and 11.3 the material provisions of such other franchise or agreement shall be reasonably comparable to those contained in this agreement, in order that one operator not be granted an unfair competitive advantage over another.

**2.6.2.** If City grants a Franchise to a third party for service to an area that Grantee is not actually serving or required to extend service to, and which has material provisions that are not reasonably comparable to those contained in this agreement, City shall offer Grantee a franchise to serve the same area under terms and conditions that are reasonably comparable to those set forth in the franchise agreement entered into with the third party.

**2.7. Police Powers.** Grantee's rights under this agreement are subject to the lawful police powers of City to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public and Grantee agrees to comply with all applicable laws and ordinances enacted, or enacted in the future, by City or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter of the enactment. Nothing in

this agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or which may be enacted in the future, by City.

**2.8. Relations to Other Provisions of Law.** This agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This agreement is a contract, subject to the City's exercise of its police and other regulatory powers and such applicable law. This agreement does not confer rights or immunities upon the Grantee other than as expressly provided in the agreement. In cases of conflict between this agreement and any ordinance of general application enacted pursuant to the City's police power, the ordinance shall govern. Nothing in this agreement, however, shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provision of applicable law. The Franchise issued and the Franchise fee paid are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated in this agreement.

**2.8.1.** Without limiting the foregoing, by way of example and not limitation, this agreement shall not include or be a substitute for:

**2.8.1.1.** Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City.

**2.8.1.2.** Any permit, agreement or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, street cut permits; or

**2.8.1.3.** Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City or a private entity.

**2.8.2.** This agreement does not authorize Grantee to provide Telecommunications Services, or to construct, operate or maintain Telecommunications Facilities. This Agreement is not a bar to imposition of any conditions on Grantee with respect to Telecommunications, whether-similar, different or the same as conditions specified herein. This Agreement does not relieve Grantee of its obligations to obtain an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications Facilities, or relieve Grantee of its obligation to comply with any such authorizations.

**2.9. Effect of Acceptance.** By accepting the agreement the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the agreement; (2) agrees that it will not oppose the City's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this agreement; and (4) agrees that the agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

**2.10. Non-Discriminatory Access to Internet Access System.** Grantee shall provide non-discriminatory access to the Grantee's Internet Access System for internet service providers, whether or not such providers are affiliated with Grantee. Grantee may limit such access only in terms of requiring such providers to utilize the network and technological standards developed by Grantee.

### **3. FRANCHISE FEE AND FINANCIAL CONTROLS.**

**3.1. Franchise Fees.** As compensation for the benefits and privileges granted under this agreement, and in consideration of permission to use City's Streets, Grantee shall pay as a Franchise fee to City, throughout the duration of this agreement, an amount equal to five percent of Grantee's Gross Revenues including the franchise fee itself, derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This agreement and the Franchise fees are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

In the event any law or valid rule or regulation applicable to this franchise limits franchise fees below the five percent of gross revenues, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent during all affected time periods.

**3.2. Payments.** Grantee's Franchise fee payments to City shall be computed quarterly. Each quarterly payment shall be due and made available to City no later than 30 days after the last day of the preceding quarter.

**3.3. Acceptance of Payment and Re-computation.** No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

**3.4. Quarterly Franchise Fee Reports.** Each payment shall be accompanied by a written report to City containing an accurate statement in summarized form, as well as in detail, and in a form approved by City, of Grantee's Gross Revenues and the computation of the payment amount.

**3.5. Annual Franchise Fee Reports.** Grantee shall, no later than 180 days after the end of each calendar year, furnish to City a statement (Audited Gross Receipts Report) stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

**3.6. Audits/reviews.** On an annual basis, no more frequently than every 12 months, upon 30 days prior written notice, City shall have the right to conduct an independent audit or review of Grantee's records reasonably related to the administration or enforcement of this agreement, in accordance with generally accepted accounting principles. For purposes of this section, records reasonably related to the administration and enforcement of this agreement include those financial records pertaining to the number and location of cable customers within City's Urban Growth Boundary. The City may hire an independent certified public accountant to audit or review the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. All such records shall be made available in the local offices of the Grantee. If the audit or review shows that Franchise fees have been underpaid by 2% or more, Grantee shall reimburse to City the total cost of the audit or review and the underpayment plus interest, at the rate specified in section 3.7 within 30 days of the City's written demand for same. Records for audit/review purposes shall include without limitation:

**3.6.1.** Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to or included in the determination of franchise fees, revenues or expenses.

**3.6.2.** Source documents that completely explain any and all calculations related to any allocation of any amounts involving franchise fees, revenues, or expenses.

**3.6.3.** Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, or support or correlate to any accounts involving franchise fees, revenues or expenses.

**3.7. Interest on Late Payments.** In the event that a franchise fee payment or other sum is not received by the City on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

**3.8. Additional Commitments Not Franchise Fees.** No term or condition in this agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to City. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this agreement may total more than 5% of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments are not Franchise fees as defined under any federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to City.

**3.9. Costs of Publication.** Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this agreement, and any amendments, including changes in control or transfers of ownership, as such notice or publication is reasonably required by City or applicable law.

**3.10. Tax Liability.** Payment of the Franchise fees under this agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by City.

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

#### **4. ADMINISTRATION AND REGULATION**

**4.1. Authority.** City is vested with the power and right to regulate the exercise of the privileges permitted by this agreement in the public interest, or to delegate that power and right to the extent permitted under state and local law, to any agent, in its sole discretion.

**4.2. Rates and Charges.** All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by City to the full extent authorized by applicable federal, state and local laws.



**4.3. Rate Discrimination.** All of Grantee's rates and charges shall be published and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area. Grantee shall provide equivalent Cable Service to all Residential Subscribers at similar rates and to Commercial Subscribers as authorized by applicable laws. Nothing in this section shall be construed to prohibit:

**4.3.1.** The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

**4.3.2.** The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

**4.3.3.** Grantee from establishing different and nondiscriminatory rates and charges for commercial customers, as well as different nondiscriminatory monthly rates for commercial customers as allowable by federal law and regulations; or

**4.3.4.** Grantee from establishing different and nondiscriminatory rates and charges for Residential Subscribers as allowable by federal law and regulations.

**4.4 Filing of Rates and Charges.** Throughout the term of this agreement, Grantee shall maintain on file with City a complete schedule of applicable rates and charges for Cable Service provided under this agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns, and rates for multiple dwelling units.

Grantee shall provide upon request from City a complete schedule of current rates and charges for any and all Leased Access provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access.

**4.5 Time Limits Strictly Construed.** Whenever this agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this agreement and sufficient grounds for City to invoke any relevant provision of this agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this agreement by reason of a force majeure occurrence, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence. After such occurrence Grantee shall promptly perform the affected obligations under this agreement or procure a substitute for performance which is satisfactory to City. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents. Notwithstanding the foregoing, City shall utilize the procedure in section 13 to resolve any material breach committed by Grantee.

**5. INDEMNIFICATION.** Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee arising out of the

construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this agreement, provided, however, the Grantee will not be obligated to indemnify City should City intervene in any proceeding regarding the grant of this agreement pursuant to section 5.4; however, Grantee's obligation to indemnify City shall continue for all other proceedings in which the City is not an Intervenor. Without limiting in any way the Grantee's obligation to indemnify the City and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

**5.1.** To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;

**5.2.** Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee, provided, however, that Grantee will not be required to indemnify City for any claims arising out of use of PEG Access Channels by City or its designee.;

**5.3.** Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and

**5.4.** Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the City to issue this agreement to Grantee; or (2) alleges that, in issuing this agreement to Grantee, the City has acted in a disparate or discriminatory manner.

**5.5.** The City shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising from the claim, and the City shall cooperate fully. Grantee shall accept or decline the tender within 30 days. Grantee shall reimburse reasonable attorney fees and costs incurred by the City during the 30 day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of section 13, the City may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by City for defense and in seeking such recovery.

**6. CUSTOMER SERVICE.** Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice to subscribers affected and occur during periods of minimum use.

## **7. REPORTS AND RECORDS.**

## **7.1. Open Records.**

**7.1.1.** Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records directly concerning its gross revenues, including customer identification numbers (e.g. account numbers) and levels of service, open and accessible to City. City shall have access to, and the right to inspect, any books and records of Grantee. Grantee shall not deny City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. City may, in writing, request copies of any such records or books and Grantee shall provide such copies within ten business days of the transmittal of such request. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten business days, that City inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten business days.

**7.1.2.** Grantee shall at all times maintain and allow City, with reasonable notice, access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall include computer maps and shall be maintained in a standard format and medium specified by the city, in sufficient detail to agreed upon by the City and the Grantee. City's review of the plans, records, and as-built maps, shall occur at the Grantee's local office, or, if the Grantee has no office within the city, then at a location within the city specified by the City.

**7.1.3.** The ability for City to obtain records and information from Grantee is critical to the administration of this agreement Grantee's failure to comply with the requirements of this section may result in fines as prescribed in section 13.2.

**7.2. Confidentiality.** Subject to the limits of the Oregon Public Records Law, City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes City aware, whether verbally or in writing, of such confidentiality. If City believes it must release any such confidential books and records in the course of enforcing this agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records that are deemed to be confidential as set forth above to any Person.

**7.3. Copies of Federal and State Documents.** Grantee shall submit to City a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to City no later than 30 days after their filing, mailing or publication. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been

determined to be confidential by a court of competent jurisdiction, or by a federal or state agency. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by City and its duly authorized agents and shall not be made available for public inspection.

**7.4. Inspection of Facilities.** City may inspect upon request any of Grantee's facilities and equipment to confirm performance under this agreement at any time upon at least 24 hours notice, or, in case of an emergency, upon demand without prior notice.

**7.5. False Statements.** Any intentional false or misleading statement or representation in any report required by this agreement may be deemed a material violation of this agreement and may subject Grantee to all remedies, legal or equitable, which are available to City under this agreement or otherwise.

**7.6. Report Expense.** All reports and records required under this or any other Section shall be furnished, without cost, to City.

## **8. PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS.**

**8.1. General Definitions.** With respect to purposes of this section, the following definitions will apply with respect to PEG use of the Cable System.

**8.1.1.** "Access Channel" means any Channel, or portion of any Channel, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service. Each Access Channel shall be six MHz and must be capable of transmitting a standard analog video signal. The capacity can be used to transmit non-commercial signals in any format, and can be used to transmit: audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high-definition signals, and compressed signals.) A non-standard NTSC use shall be subject to the Grantee's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other Channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be commercial use or lease of such PEG capacity without the express written permission of the Grantee.

**8.1.2.** "Digital Access Channel", as used in this Section, means a Channel carrying PEG continuous full-motion video programming in a digital format. Digital Access Channels shall have the same compression ratio and transmission quality as is used to carry any of the commercial Channels that deliver programming to the City in a similar format for delivery to each Subscriber.

**8.1.3.** "Origination Point" means a location, where PEG programming is delivered to the Grantee for Downstream transmission.

### **8.2. Management and Control of Access Channels.**

**8.2.1.** City or its designee may control and manage the use of any and/or all Access Facilities provided by Grantee under this agreement, including, without limitation, the operation of Access Channels. The City or its designee shall have sole and exclusive responsibility for operating and managing such Access Facilities. The City or its designee may formulate rules for the operation of the PEG Access Channels, consistent with this agreement; such rules shall not be designed to control the content of Public Access programming. Nothing

in this section shall prohibit the City from authorizing itself or others to manage or co-manage PEG Access Channels and facilities.

**8.2.2.** Grantee shall cooperate with the City or its designee in the use of the Cable System and Access facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with the City or its designee as may be necessary to facilitate and coordinate the provision of PEG Access, provided that such operating agreements shall not be inconsistent with the terms of this agreement and shall be subject to approval by the City.

**8.2.3.** The Grantee shall cooperate with the City or its designee regarding allocations of Access resources.

**8.2.4.** Grantee shall give the City notice of its intent to utilize PEG channels not being used for PEG programming for its own commercial use ninety (90) days before Grantee intends to begin using the PEG channel. Subject to prior written authorization from the City, the Grantee shall have the right to use temporarily any Channel, or portion of any Channel, which is allocated under this section for PEG uses pursuant to section 611(d) of the Cable Act.

### **8.3. Channel Capacity and Use.**

**8.3.1.** Upon the effective date of this agreement, all Access Channels provided for in this agreement are administered by the City or designee.

**8.3.2.** Upon the effective date of this agreement, the Grantee shall provide five Access Channels for distribution of PEG Access programming on the residential Cable System with provisions for an additional channel for public and government access uses. Such additional channel shall be made available when all channels granted pursuant to this paragraph are used for access purposes with locally produced programming 70% of the available broadcast time. The programming of additional channels required shall be distinct and non-repetitive of the previous channels. A program may be repeated no more than three times for purposes of the trigger calculation. For purposes of this computation, all time allocated to character generated or similar programming shall be excluded for the determination of when such channel is in use and programmed with public and governmental access programming.

**8.3.3.** The Grantee shall provide connection of all PEG Access Channels required by this agreement to and from the Grantee's Headend and the City's, or its designee's, Headends as of the effective date of this agreement. Grantee agrees to provide reconnection for the City's, or its designee's, Headend if it is relocated within 12 months of the effective date of this agreement, at no charge to City or its designee.

**8.3.4.** If video programming is delivered in a digital format or the City requests that PEG Channels be digitized, then, in lieu of the Access Channels provided for in section 8.3.2, there shall be a maximum of 18 PEG continuous, full-motion video programming Digital Channels ("Digital Access Channels"). The City shall determine the number of Digital Access Channels to be activated, not to exceed 18.

**8.4. Relocation of Access Channels.** Grantee shall provide City with a minimum of 60 days' notice, and use its best efforts to provide 120 days notice, prior to the time PEG Access Channel designations are changed. Grantee shall consult with City prior to making a final determination regarding any changes in PEG Access Channel designations/assignments. Any new Channel designations for the PEG Access Channels provided pursuant to this agreement shall be in full compliance with FCC signal quality and proof of performance standards.

## **8.5. Origination Points.**

**8.5.1.** Additional permanent Origination Points required by the City or its designee shall be provided by Grantee within 90 days following receipt of written notice from City at the expense of City or its designee.

**8.5.2.** By mutual agreement by City and Grantee, upon six weeks written notice in advance of the scheduled cablecast, and provided that an active drop is available at the desired location, Grantee shall provide additional Origination Points on a short term basis for the live cablecast of Access Programming. The incremental, out-of-pocket costs to Grantee shall be paid for by City or its designee. Grantee shall not be required to facilitate more than one such Origination Points in any one week period.

**8.5.3.** There shall be no charge to the City, nor to any other person for the use of the upstream capacity from the program origination locations described in this section, so long as the transmissions are designed for rerouting and distribution on any PEG Channels.

## **8.6. Access Interconnections.**

**8.6.1.** The Grantee shall maintain for the duration of this agreement any and all existing Interconnections of Access Channels with contiguous cable systems.

**8.6.2.** Grantee shall be capable of interconnection of PEG Access Channels in the Cable System and Cable Systems in Franchise Areas that are geographically adjacent to City, provided that City has secured the written permission for such Interconnection from the regulatory authority for the adjacent Franchise Area. The cost of such Interconnections shall be Grantee's so long as Grantee or Grantee's affiliate owns the adjacent Cable System. If the adjacent Cable System is not owned by Grantee, the cost for interconnection shall be equally shared by the two Cable Systems.

**8.6.3.** All Interconnections shall have the capability of transmitting and receiving PEG programming. All Interconnections shall be accomplished in a manner that permits the transmission of signals for Access Programming channels to be distributed to subscribers with the same original audio and video quality as provided by the PEG facility. Installation of all interconnect capacity shall be completed at the Grantee's expense, except as otherwise provided in this agreement.

**8.6.4.** The City, or its designee, shall have the right to control and schedule the operation of all interconnected Access Channels and capacity. In addition, the City, or its designee, shall have the right to use, at its sole discretion and at no cost, any Access Channels and capacity provided under this agreement for non-commercial purposes, in furtherance of PEG use. However, the requirement to interconnect PEG programming with adjacent Cable Systems of willing franchise authorities shall not result in an increase in the number of PEG Channels beyond the number of Access Channels provided for in section 8.3.

**8.6.5.** The Grantee shall take all necessary steps to ensure that technically adequate signal quality in compliance with FCC requirements are initially and continuously provided for all Access Interconnections and Origination Points.

**8.7. Access Channels on Lowest Available Tier.** All Access Channels provided to Subscribers under this agreement shall be included by the Grantee, without limitation, as a part of the lowest available tier offered by the Grantee on its Cable System.

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

**8.9. Technical Quality.** The Grantee shall maintain all Upstream and Downstream Access services, Channels and Interconnections ensuring that Access Programming channels will not be subject to any signal deterioration, and that the signal will be distributed to subscribers with the same original audio and video quality as provided by the PEG facility, and required by all other applicable laws, rules and regulations for Residential Subscriber Channels. The Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including associated cable and equipment in use upon the effective date of this agreement, necessary to carry a quality signal to and from the City's or its designee's facilities. City and Grantee agree that the point of demarcation will be the input RF connection to Grantee's Fiber Optics Laser Transmitter, with Grantee responsible for repair and maintenance from the point of demarcation to Grantee's headend.

**8.10. Promotional Services.** The Grantee shall allow the City to include two bill stuffers per year. The City or its designee shall be responsible for the cost of printing its bill stuffers, the costs of inserting the information into Grantee's bills, and for any incremental postage costs. Bill stuffers must conform to Grantee's mailing requirements. Grantee shall be provided an opportunity to review and approve all PEG bill stuffers.

**8.11. Channel Identification.** If requested by the City or its designee, at City's or its designee's costs, the Grantee will identify the PEG Channels in its printed and electronic programming guides, by the general type of programming carried on the Channel. Grantee will bill the City or its designee for the costs of these listings.

## **9. GENERAL STREET USE AND CONSTRUCTION.**

### **9.1. Construction.**

**9.1.1.** Subject to applicable laws, regulations and ordinances of City and the provisions of this agreement, 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 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, prior to issuance, all applicable fees of the requisite construction permits.

**9.1.2.** Prior to beginning any construction, Grantee shall provide City's Department of Public Works with a construction schedule for work in the Streets. All construction shall be performed in compliance with this agreement and all applicable City Ordinances and Codes, especially AMC Chapter 16.12 and section 16.12.090. When obtaining

a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

**9.1.3.** City shall have the right to inspect all construction or installation work performed within the franchise area as it shall find necessary to ensure compliance with the terms of this agreement and other pertinent provisions of law.

**9.2. Location of Facilities.** Within 48 hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

**9.2.1.** Mark on the surface all of its underground facilities within the area of the proposed excavation;

**9.2.2.** Notify the excavator of any un-located underground facilities in the area of the proposed excavation; or

**9.2.3.** Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

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

#### **9.4. Restoration of Streets.**

**9.4.1.** 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 refill within 24 hours the opening and restore the surface to a condition satisfactory to City.

**9.4.2.** If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the jurisdiction within the area affected by the excavation. City may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense shall be paid by Grantee. City may, after providing notice to Grantee, remove or repair any work done by Grantee that, in the determination of City, is inadequate. The cost, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this agreement, and this section in particular, shall be done in strict compliance with all rules, regulations and ordinances of City. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to City.

#### **9.5. Maintenance and Workmanship.**



**9.5.1.** 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 City, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, City's authority.

**9.5.2.** Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to City's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

**9.6. Reservation of City Street Rights.** Nothing in this agreement shall prevent City or utilities owned, maintained or operated by public entities other than City, from constructing sewers; grading, paving, repairing or altering any Street; 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 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, Grantee's Cable System shall be removed or replaced in the manner City shall direct, and City shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by City's written notice to Grantee, City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by City due to Grantee's delay.

**9.7. Street Vacation.** If any Street or portion of any Street used by Grantee is vacated by City during the term of this agreement, unless City specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to City, 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 City. In the event of failure, neglect or refusal of Grantee, after 30 days' notice by City, to restore, repair or reconstruct such Street, City may do such work or cause it to be done, and the reasonable cost, as found and declared by City, shall be paid by Grantee within 30 days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this agreement.

**9.8. Discontinuing Use of Facilities.** Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that City allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, City may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. City 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 City. Until such time as Grantee removes or modifies the facility as directed by City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, City may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

## **9.9. Hazardous Substances.**

**9.9.1.** Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Streets.

**9.9.2.** Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Grantee, City may inspect Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this agreement, Grantee shall also remove all residue of hazardous substances.

## **9.10. Undergrounding of Cable.**

### **9.10.1. Wiring.**

A. Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines services at no additional expense to the City or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utilities are placed underground, (2) statute, ordinance, policy, or other regulation requires utilities to be placed underground, or (3) all overhead utility lines are placed underground.

Related Cable System equipment such as pedestals must be placed in accordance with applicable Code requirements and underground utility rules as interpreted by each City's appropriate public works official. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.

B. The Grantee shall utilize existing poles and conduit wherever possible.

C. This agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the City upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

### **9.10.2. Repair and Restoration of Property.**

A. Grantee shall protect public and private property from damage. If damage occurs the Grantee shall promptly notify the property owner within 24 hours in writing.

B. If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other City property shall be restored, in a manner and within a timeframe approved by the City's Director of Public Works or other appropriate designated official. If restoration of public right-of-way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works or other appropriate designated official may, after prior notice to the

Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the City, then the Grantee shall pay all of the City's actual costs and expenses resulting from the non-payment, including penalties, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than 72 hours.

C. Prior to entering onto private property to construct, operate or repair its Cable System in a manner in which it is assumed that temporary property damage will occur or the work will be of a duration exceeding four hours, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users. Such notification is not required when Grantee is performing connection, disconnection and/or repair of its drop system or in times of emergency restorations of its plant.

**9.10.3. Movement of Cable System For and By City.** The City may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the City in the case of fire, disaster, or other emergency, or when a project or activity of the City's makes the removal, replacement, modification or disconnection necessary or less expensive for the City. Except during an emergency, the City shall provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Reasonable notice to Grantee includes notice by telephone. Following notice by the City, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any public right-of-way, or on any other property of the City, except that the City shall provide at least 60 days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee. Within 30 days of receipt of an itemized list of those costs, the Grantee shall pay the City.

**9.10.4. Movement for Other Franchise Holders.** If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least 30 days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Those Persons shall determine how costs associated with the removal or relocation shall be allocated.

**9.10.5. Movement for Other Permittees.** At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.

**9.10.6. Tree Trimming.** Subject to acquiring prior written permission of the City, the Grantee shall have the authority to trim trees that overhang a public right-of-way of the City so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

**9.11. Codes.** Grantee shall strictly adhere to all building and zoning codes currently in effect or in effect in the future. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, City may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

### **9.12. Standards.**

**9.12.1.** All work authorized and required shall be done in a safe, thorough and worker-like manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

**9.12.2.** Grantee shall ensure that individual Cable System drops are properly bonded to the electrical power ground at the home, and are consistent, in all respects, with the requirements of the National Electric Code and the National Electrical Safety Code.

**10. TEST AND COMPLIANCE PROCEDURES.** Upon request, Grantee shall advise City of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of City may witness tests, and written test reports may be made available to City upon request.

As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. In addition, an annual Fly Over signal leakage test will be performed as specified according to 47 CFR 76.601 regarding Technical Standards Performance Tests. Grantee shall provide City summary written reports of the results of such tests.

## **11. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION**

**11.1. Equivalent Service.** It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

### **11.2. Service Availability.**

**11.2.1.** Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: (A) Within 60 days of the time when foundations have been installed in 50% percent of the dwelling units in any individual subdivision; or (B) Within 30 days following a request from a resident. For purposes of this section, a receipt shall be deemed to be made on the signing of a service agreement, receipt of funds by the Grantee, receipt of a written request by Grantee, or receipt by Grantee of a verified verbal request.

Grantee shall provide such service: (i) With no line extension charge except as specifically authorized elsewhere in this agreement; (ii) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than 25 feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to City; and at nondiscriminatory monthly rates for Residential Subscribers.

**11.3. Required Extensions of Service.** Whenever the Grantee shall receive a request for service from at least ten residences within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Customers at no cost to the Customers for Cable System extension, other than the usual connection fees for all Customers within 90 days, provided that such extension is technically feasible, and if it will not adversely affect the operation, of the Cable System, or as provided under section 2.6.

**11.3.1.** No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate a cable drop underground, existence of more than 125 feet of distance from distribution cable to connection of service to Customers, or a density of less than ten residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten residences. Customers who request such service will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

**11.3.2.** Failure to meet these standards shall subject grantee to enforcement actions on a per Subscriber basis in section 13.

**11.3.3. Connection of Public Facilities.** Grantee shall, at no cost to City, provide one outlet of Basic and expanded basic programming to City' public use buildings, as designated by City, and all libraries and Schools. In addition, Grantee agrees to provide, at no cost, one outlet of Basic and expanded basic programming to all such future public buildings if the drop line to such building does not exceed 125 cable feet or if City agrees to pay the incremental cost of such drop line in excess of 125 feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of City.

**12. STANDBY POWER.** Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least 12 hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two hours duration. In addition, throughout the term of this agreement, 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 City no later than 90 days following the effective date of this agreement.

## **13. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE.**

### **13.1. Procedure For Remediating Franchise Violations.**

**13.1.1.** If City believes that Grantee has failed to perform any obligation under this agreement or has failed to perform in a timely manner, City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

**13.1.2.** The City must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of 30 days to cure the violation or 30 days to present to the City a reasonable remedial plan. The City shall, with Grantee's consent, decide whether to accept, reject, or modify the remedial plan presented by the Grantee. Fines shall be assessed only in the event that either a cure has not occurred within 30 days or the City rejects the remedial plan. The procedures provided in section 13 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Grantee receives notice of the violation provided, however, that if City has actual knowledge of the violation and fails to give the Grantee the notice, then the date of the violation shall be no earlier than ten business days before the City gives Grantee the notice of the violation. Grantee shall have 30 calendar days from the date of receipt of such notice to:

**13.1.2.1.** Respond to City, contesting City's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.1.5, or

**13.1.2.2.** Cure the violation, or;

**13.1.2.3.** Notify City that Grantee cannot cure the violation within the thirty (30) days, and notify the City in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, City shall set a hearing date within 30 days of receipt of such response in accordance with section 13.1.3.

**13.1.3.** In the event that the Grantee notifies the City that it cannot cure the violation within the 30 day cure period, City shall, within thirty 30 days of City's receipt of such notice, set a hearing. At the hearing, City shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the City, who may waive all or part of the fines for such extended cure period in accordance with the criteria set forth in section 13.1.7.

**13.1.4.** In the event that the Grantee fails to cure the violation within the 30 day basic cure period, or within an extended cure period approved by the City pursuant to section 13.1.3, the City shall set a hearing to determine what fines, if any, shall be applied.

**13.1.5.** In the event that the Grantee contests the City's assertion that a violation has occurred, and requests a hearing in accordance with section 13.1.2.1., the City shall set a hearing within 60 days of the City's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

**13.1.6.** In the case of any hearing pursuant to this section, City shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to

be heard, examine City's witnesses, and to present evidence in its defense. The City may also hear any other person interested in the subject, and may provide additional hearing procedures as City deems appropriate.

**13.1.7.** The fines set forth in section 13.2 may be reduced at the discretion of the City, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (A) Whether the violation was unintentional;
- (B) The nature of the harm which resulted;
- (C) Whether there is a history of prior violations of the same or other requirements;
- (D) Whether there is a history of overall compliance, or;
- (E) Whether the violation was voluntarily disclosed, admitted or cured.

**13.1.8.** If, after the hearing, City determines that a violation exists, City may use one or more of the following remedies:

- (A) Order Grantee to correct or remedy the violation within a reasonable time frame as City shall determine;
- (B) Establish the amount of fine set forth in section 13.2, taking into consideration the criteria provided for in section 13.1.7 of this section as appropriate in City's discretion;
- (C) Revoke this agreement, or
- (D) Pursue any other legal or equitable remedy available under this agreement or any applicable law.

## **13.2. Fines.**

13.2.1. Failure to comply with provisions of the agreement may result in Injury to City. It will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this agreement are intended as a reasonable forecast of compensation to City for the harm caused by violation of this agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided in this agreement. The fine for violating any provision of this agreement shall be \$250 per day for every day the violation continues with a cap of \$10,000.

**13.2.2.** Collection of Fines. The collection of fines by the City shall in no respect affect:

- (A) Compensation owed to Subscribers; or
- (B) The Grantee's obligation to comply with all of the provisions of this agreement or applicable law; or

(C) Other remedies available to the City.

**13.3. Revocation.** In addition to all other rights and powers retained by the City under this agreement or otherwise, the City reserves the right to forfeit and terminate this agreement and all rights and privileges of the Grantee, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to the following:

**13.3.1.** Violation of any material provision of this agreement or any other agreement between City and Grantee, or any material rule, order, regulation, standard or determination of the City or authorized agent made pursuant to this agreement or other agreement;

**13.3.2.** Attempt to evade any material provision of this agreement or to practice any fraud or deceit upon the City or its Subscribers or customers;

**13.3.3.** Failure to restore service after 48 consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the City;

**13.3.4.** Material misrepresentation of fact in the application for or negotiation of this agreement, or

#### **13.4. Relationship of Remedies.**

**13.4.1.** Remedies are Non-exclusive. The remedies provided for in this agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed. By way of example and not limitation, the collection of fines by City shall in no respect affect:

(A) Compensation owed to subscribers; or

(B) Grantee's obligation to comply with the provisions of this agreement or applicable law.

**13.4.2.** No Election of Remedies. Without limitation, the recovery of amounts under the insurance, indemnity or penalty provisions of this agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the agreement for fines or otherwise; or an excuse of faithful performance by Grantee.

#### **13.5. Removal.**

**13.5.1.** In the event of termination, expiration or revocation of this agreement, City may order the removal of the above-ground Cable System facilities and such underground facilities as required by City in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.



**13.5.2.** If Grantee fails to complete any required removal to the satisfaction of City, City may cause the work to be done and Grantee shall reimburse City for the reasonable costs incurred within 30 days after receipt of an itemized list of the costs.

**13.6. No Recourse Against City.** Grantee shall not have any monetary recourse against City or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this agreement or its enforcement, in accordance with the provisions of applicable federal, state and local law. The rights of the City under this agreement are in addition to, and shall not be read to limit, any rights or immunities the City may enjoy under federal, state or local law.

**13.7. Non-enforcement by City.** Grantee is not relieved of its obligation to comply with any of the provisions of this agreement by reason of any failure of City to enforce prompt compliance. City's forbearance or failure to enforce any provision of this agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

## **14. ABANDONMENT**

**14.1. Effect of Abandonment.** If the Grantee abandons its System during the agreement term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City or until the agreement is revoked and a new Franchise is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate-the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

**14.2. What Constitutes Abandonment.** The City shall be entitled to exercise its options and obtain any required injunctive relief if:

**14.2.1.** The Grantee fails to provide Cable Service in accordance with this agreement to the Franchise Area for 96 consecutive hours, unless the City authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in section 4.5; or

**14.2.2.** The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this agreement.

## **15. FRANCHISE RENEWAL AND TRANSFER.**

### **15.1. Renewal.**

**15.1.1.** Any proceedings undertaken by the City that relate to the renewal of Grantee's agreement shall be governed by and comply with the provisions of the Cable Act (47 USC §546), unless the procedures and substantive protections there set forth shall be deemed

to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

**15.1.2.** Notwithstanding anything to the contrary set forth in this agreement, City and Grantee agree that at any time during the term of the then current agreement, while affording the public adequate notice and opportunity for comment, City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current agreement and the City may grant a renewal. Grantee and City consider the terms set forth in this section to be consistent with the express provisions of the Cable Act.

## **15.2. Transfer of Ownership or Control.**

**15.2.1.** The Cable System and this agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall the title, either legal or equitable, or any right, interest, or property pass to or vest in any Person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld. Grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign the Cable System or this agreement.

**15.2.2.** The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used in this section is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of 10% of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a 10% interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this agreement subject to cancellation unless and until the City shall have consented.

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

**15.2.4.** The City shall render a final written decision on the request within 120 days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

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

**15.2.6.** In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this agreement by Grantee.

**15.2.7.** The consent or approval of the City to any transfer by the Grantee shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this agreement.

**15.2.8.** Notwithstanding anything to the contrary in this section, the prior approval of the City shall not be required for any sale, assignment or transfer of the agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the agreement.

## **16. MISCELLANEOUS PROVISIONS.**

**16.1. Alternative Remedies.** If any section, subsection, paragraph, term, or provision of this Franchise agreement or any ordinance, law, or document incorporated by reference is determined to be illegal, invalid, unenforceable or unconstitutional by a court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction determination shall be confined in its operation to the section, subsection, paragraph, term, or provision directly involved in the controversy in which such determination shall have been rendered, and shall not in any way affect the validity of any other section, subsection, paragraph, term, or provision. Under such a circumstance the Grantee shall, upon the City's request, meet and confer with the City to consider amendments to the Franchise agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this agreement within 60 days either party may (1) seek appropriate legal remedies to amend the agreement, or (2) shorten the agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. Subsection 546. Each party agrees to participate in up to 16 hours of negotiation during the 60 day period.

**16.2. Preferential or Discriminatory Practices Prohibited.** Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations.

**16.3. Dispute Resolution.** Should a dispute arise between the parties concerning any aspect of this agreement 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 City 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 parties 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 to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

**16.4. Notices.** Throughout the term of the agreement, Grantee shall maintain and file with City a designated legal or local address for the service of notices by mail. A copy of all notices from City to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this agreement, such addresses shall be:

AHN Television  
607 Siskiyou Blvd.  
Ashland, Oregon 97520

All notices to be sent by Grantee to City under this agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this agreement, such address shall be:

City Administrator  
City of Ashland  
20 East Main Street  
Ashland, Oregon 97520

Either party may with 30 days prior written notice to the other party, change the address(es) to which notice shall be sent pursuant to this section 17.3.

**16.5. Binding Effect.** This agreement shall be binding upon the parties, their successors and assigns.

**16.6. Authority to Amend.** This agreement may be amended at any time by written agreement between the parties.

**16.7. Governing Law.** This agreement shall be governed in all respects by the laws of the State of Oregon.

**16.8. Captions.** The captions and headings of this agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this agreement.

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

**16.10 Construction of Agreement.** The provisions of this agreement shall be liberally construed to promote the public interest.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By: Ashland Home Net

By: City of Ashland

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Recorder

Reviewed as to Content By:

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Richard Appicello, City Attorney

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Michael Ainsworth, Dir. of Information Technology

CABLE HEADEND SYSTEM LEASE AND TRANSFER AGREEMENT  
BETWEEN  
CITY OF ASHLAND, OREGON  
AND  
ASHLAND HOME NET CORPORATION

THIS CABLE HEADEND SYSTEM LEASE AND TRANSFER AGREEMENT (the "Agreement") entered this \_\_\_\_ day of \_\_\_\_\_, 2009, between the City of Ashland, Oregon, by and through its division Ashland Fiber Network (AFN), hereinafter referred to as "City," and Ashland Home Net Corporation, a Nevada Corporation, hereinafter referred to as "AHN."

WHEREAS, on July 31, 2006, the City of Ashland (the "City") issued a request for proposals ("RFP," attached hereto as Exhibit A) for the lease of the Cable Headend System (as defined below) and the provision of cable television services over the Cable Headend System, which was then operated by AFN; and

WHEREAS, AHN submitted a proposal in response to the RFP (the "Proposal," attached hereto as Exhibit B) on August 24, 2006; and

WHEREAS, after reviewing AHN's proposal and proposals submitted by other offerors, the City selected AHN to lease the Cable Headend System and provide cable television services as described in the RFP; and

WHEREAS, AFN and AHN entered into a Contract for Cable Television Services, dated September 19, 2006 (hereinafter referred to as the "Cable Services Agreement"); and

WHEREAS, City and AHN intended that the Cable Services Agreement would serve as a lease agreement for the Cable Headend System and as a transfer of certain obligations of AFN under the Cable Television System Franchise Agreement between the City and AFN, dated August 17, 2004; and

WHEREAS, the existing Franchise Agreement between the City and AFN will terminate when AHN executes a Franchise Agreement with the City because AFN is no longer a cable operator and will not be renewing its franchise; and

WHEREAS, the City and AHN wish to enter into this Agreement to clarify the terms originally set forth in the Cable Services Agreement and to ensure that the Agreement reflects the intent and current practices of the parties.

NOW, THEREFORE, THE CITY AND AHN HEREBY AGREE AS FOLLOWS:

**1. LEASE OF CABLE HEADEND SYSTEM:** City hereby leases to AHN a Cable TV analog video Headend and all the associated equipment located at City of Ashland, Service Center, 90 N. Mountain Avenue, Ashland, Oregon 97520, as set forth in Exhibit A of the RFP and attached hereto, and 450 MHz WAN bandwidth provided by and through City's hybrid fiber coax network (the "Network") as required to provide cable television service to residents of the City of Ashland,

subject to the limitations set forth herein (hereinafter referred to as the "Cable Headend System"). The Cable Headend System does not include the outside plant.

**2. RENT:** AHN shall pay City, as rent for the Cable Headend System, the sum of two thousand dollars (\$2,000.00) per month, due and payable no later than the first day of each calendar month. All rent shall be paid without deduction or setoff of any kind, at the address of City as set forth in this Agreement. The rent for the Cable Headend System shall increase annually by five percent (5%) per month each year for the duration of this lease.

**3. TERM OF AGREEMENT:** The initial term of this Agreement shall commence on the date noted above and continue through June 30, 2012. City may, in its sole discretion, extend the term of this Agreement for two additional one year terms, which extension shall be acknowledged in writing by City and AHN.

**4. USE OF PROPERTY:** AHN shall use the Cable Headend System only for the provision of cable television services to residents of the City pursuant to the RFP, Proposal and Cable Franchise. As used herein, "cable services" means (A) the one-way transmission to subscribers of video programming. AHN is not permitted under this Agreement to use the Cable Headend System to provide any non-cable services or for any other purpose.

**5. CONDITIONS OF USE:**

- a. AHN's use of the Cable Headend System shall be conditioned upon its compliance with the requirements and obligations set forth in the RFP, Proposal, and Cable Television System Franchise Agreement (hereinafter "Cable Franchise"). Failure to comply with these requirements and obligations may result in termination of this Agreement pursuant to the termination provisions set forth herein. City agrees to provide all information, documents, materials and services that are within its possession or control and are required by AHN for performance of the requirements and obligations set forth in the RFP, Proposal and Cable Franchise.
- b. AHN's use of the Cable Headend System shall also be conditioned upon maintaining market penetration of at least ten percent (10%) of serviceable homes passed.
- c. AHN shall be responsible for all applicable taxes including, but not limited to, franchise fees and PEG fees due pursuant to the Cable Franchise. AHN shall not deduct from rent due under this Agreement any such taxes or fees paid by AHN.
- d. AHN shall obtain all necessary permits and licenses required to operate the Cable Headend System and to provide cable television services over the Cable Headend System.
- e. AHN acknowledges that the Cable Headend System is located in the same facility as City's network and that the bandwidth provided to AHN under this Agreement is also used by City to provide internet access services over its Network. AHN acknowledges and agrees that the terms of this Agreement do not limit City's access to that facility for any purpose associated with the operation, maintenance, repair or use of the Network, nor does it grant AHN the exclusive use of the Network or otherwise place any limitations on City's use of the Network.
- f. AHN further agrees to the following conditions on access to and use of the Cable Headend System:

- i. City and its agents shall at all times (upon reasonable notice to AHN) have access to the Cable Headend System for the purpose of inspecting it and assessing its condition and state of repair.
- ii. AHN shall, at its own expense, operate, maintain, and repair the Cable Headend System and keep it in proper operating condition during the term of this Agreement.
- iii. AHN may not operate the Cable Headend System in a manner that fails to maintain the signal integrity of City's Network or to meet ingress and signal to noise specifications to City's standards.
- iv. AHN may upgrade the Cable Headend System pursuant to the RFP; provided that any alteration, improvement, or addition(s) to the Cable Headend System shall be conducted by AHN with City's prior written permission, and such changes, additions or alterations shall be at the sole expense of AHN. All alterations, improvements, or additions to the Cable Headend System shall become property of the City after installation.
- v. Notwithstanding the grant of use in Section 2.2 of the franchise, Grantee shall not be permitted to erect, install, construct, repair, replace, reconstruct and retain the Cable Headend System, or any part thereof, without the City's written permission.
- vi. AHN shall only allow access to the Cable Headend System by designated staff who have passed background checks by the Ashland Police Department and any other law enforcement entities deemed necessary by the Ashland Police Department.
- vii. AHN shall not store any equipment or supplies on City property, and shall not park vehicles on City property other than in authorized parking spaces.
- viii. AHN shall not access the network equipment or any other area within City's property, or use City property for any reason other than as permitted herein or in the RFP.

**6. EFFECT ON PREVIOUS AGREEMENTS AND FRANCHISE AGREEMENT:** Upon execution of this Agreement by both parties, this Agreement shall supersede and render null and void all previous leases, agreements, and contracts between AFN and AHN, including the Cable Services Agreement. In addition, the provisions of this agreement shall control if there is a conflict between this agreement and AHN's Cable Franchise with the City.

**7. COMPLIANCE WITH LAWS:**

- a. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon. AHN shall promptly observe and comply with all present and future laws, orders, regulations, rules and ordinances of federal, state and local governments with respect to the lease of the Cable Headend System and the requirements and obligations of the RFP and Proposal, including but not limited to provisions of ORS 279B.220, 279B.230 and 279B.235.
- b. AHN is a "subject employer" as defined in ORS 656.005 and shall comply with ORS 656.017. If it has not already done so as required by the Cable Services Agreement, within 10 business days of the execution of this Agreement, AHN shall certify to City that it has workers' compensation coverage required by ORS Chapter 656. If AHN is a carrier insured employer, AHN shall provide City with a certificate of insurance. If AHN



is a self-insured employer, AHN shall provide City with a certification from the Oregon Department of Insurance and Finance as evidence of AHN's status.

**8. INSURANCE:**

- a. AHN shall, at its own expense, at all times during the term of this Agreement, maintain in force:
  - i. A comprehensive general liability policy including coverage for contractual liability for obligations assumed under this contract, blanket contractual liability, products and completed operations and owner's and contractor's protective insurance; and
  - ii. A comprehensive automobile liability policy including owned and non-owned automobiles.
- b. The coverage under each liability insurance policy shall be equal to or greater than the limits for claims made under the Oregon Tort Claims Act with minimum coverage of \$1,000,000 per occurrence (combined single limit for bodily injury and property damage claims) or \$500,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage. Liability coverage shall be provided on an "occurrence" basis. "Claims made" coverage is not acceptable, except for the automobile liability policy coverage required by Section 6(b).
- c. Certificates of insurance acceptable to City shall be filed with City within 10 business days of the execution of this Agreement, if not already on file with City. Each certificate shall state that coverage afforded under the policy cannot be cancelled or reduced in coverage until at least thirty (30) days prior written notice has been given to City. A certificate that states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

**8. INDEMNIFICATION:** AHN shall defend, indemnify and hold City, its officers, agents, and employees harmless from any and all claims, actions, costs, judgments, damages or other expenses resulting from injury to any person (including injury resulting in death), or damage to property (including loss or destruction), of whatsoever nature arising out of or incident to the negligent performance of this Agreement by AHN (including but not limited to, the negligent acts or omissions of AHN's employees, agents and others designated by AHN to access the Cable Headend System, provide cable television services or to perform work or services attendant to this Agreement). AHN shall not be held responsible for any claims, actions, costs, judgments, damages or other expenses, directly and proximately caused by the negligence of City.

**9. DEFAULT:**

- a. There shall be a default under this Agreement if either party fails to perform any act or obligation required by this Agreement within 10 days after the other party gives written notice specifying the nature of the breach with reasonable particularity. If the breach specified in the notice is of such a nature that it cannot be completely cured within the 10 day period, no default shall occur if the party receiving the notice begins performance of the act or obligation within the 10 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- b. Notwithstanding Section 9a, either party may declare a default by written notice to the other party, without allowing an opportunity to cure, if the other party repeatedly breaches the terms of this Agreement.

- c. If a default occurs, the party injured by the default may elect to terminate this Agreement and pursue any equitable or legal rights and remedies available under Oregon law. All remedies shall be cumulative.
- d. Any litigation arising out of this Agreement shall be conducted in Circuit Court of the State of Oregon for Jackson County.

**10. TERMINATION WITHOUT CAUSE:** In addition to the right to terminate this Agreement under Section 9, City may terminate without cause by giving AHN 60 days prior written notice. If City terminates without cause under this Section, AHN shall be paid all fees earned and costs incurred prior to the termination date set forth in the notice. AHN shall not be entitled to be compensated for lost profits.

**11. WAIVER:** Failure of City or AHN in any one or more instances to insist upon the performance of any of the terms of this Agreement, or to exercise any right or privilege conferred herein, or the waiver of any breach of any term of this Agreement should not thereafter be construed as a waiver of such term, which shall continue in force as if no waiver had occurred.

**12. NOTICES:** Any notice required to be given under this Agreement or any notice required to be given by law shall be in writing and may be given by personal delivery or by registered or certified mail, or by any other manner prescribed by law.

- a. Notices to City shall be sent to:

Director of Information Technology  
City of Ashland  
90 N. Mountain Avenue  
Ashland, Oregon 97520

With a copy to:  
City Administrator  
City of Ashland  
20 East Main Street  
Ashland, Oregon 97520.

- b. Notices to AHN shall be sent to:

Ashland Home Net  
123 N. 1" Street, Suite 1  
Ashland, Oregon 97520.

**13. ASSIGNMENT:** City and AHN and the respective successors, administrators, assigns and legal representatives of each are bound by this Agreement to the other party and to the partners, successors, administrators, assigns and legal representatives of the other party. AHN shall not assign or subcontract AHN's rights or obligations under this Agreement without prior written consent of City. Except as stated in this Section, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City or AHN.

**14. MODIFICATION:** No modification of this Agreement shall be valid unless in writing and signed by the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement at Ashland, Oregon, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By: City of Ashland

By: Ashland Home Net

\_\_\_\_\_  
Michael Ainsworth, Interim Director of IT

\_\_\_\_\_  
President

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**ORDER**

The governing body hereby approves and authorizes the terms of this lease as set forth above.

\_\_\_\_\_  
Mayor/Mayor's Designee, City of Ashland

\_\_\_\_\_  
Date