



RESOLUTION NO. 1076
A RESOLUTION AUTHORIZING A FRANCHISE AGREEMENT WITH COMCAST

WHEREAS, the City of Stayton (the "City") is authorized by state statutes and its charter to grant non-exclusive Franchises to entities desiring to occupy Right-of-Way within the City;

WHEREAS, Comcast (the "Grantee"), a cable and internet provider, desires to install, operate, and maintain its system in Rights-of-Way in the City;

WHEREAS, the purposes of this Franchise are to: establish reasonable regulations applicable to the construction, operation, and maintenance of utilities in, along, across, under, and over City property and the provision of Services within the City; protect the health, safety and welfare of the public in the City; and limit the City's liability for claims arising from the granting of this Franchise and the operations of Grantee pursuant to the Franchise; and

WHEREAS, the franchise agreement has been prepared with input from legal, staff and Comcast, as well as consideration of similar agreements being prepared in neighboring jurisdictions to help ensure consistency in polices and franchise fees; and

WHEREAS, the City Council for the City deems it in the public interest to now grant a Franchise to Grantee under the terms and conditions provided in Exhibit 1.

NOW, THEREFORE, BE IT RESOLVED THAT:

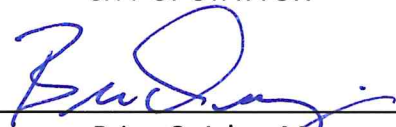
SECTION 1. The Stayton City Council authorizes the City Manager to sign the Franchise Agreement, attached as Exhibit 1 to this resolution.

This Resolution shall become effective upon its adoption by the Stayton City Council.

ADOPTED BY THE STAYTON CITY COUNCIL THIS 6TH DAY OF NOVEMBER 2023.

Signed: 11-6, 2023

BY:

CITY OF STAYTON


Brian Quigley, Mayor

Signed: 11-7, 2023

ATTEST:



Julia Hajduk, City Manager

**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE CITY OF STAYTON, OREGON
AND COMCAST OF OREGON I, INC.**

This Franchise Agreement ("Franchise") is between the City of Stayton, Oregon, hereinafter referred to as "the City" "Grantor" or "Franchise Authority" and Comcast of Oregon, I Inc., hereinafter referred to as "the Grantee." The City and the Grantee are referred to together as "the Parties."

The Grantee represents and the City acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the cable-related needs of the community. The Parties desire to enter into this Franchise for the construction and operation of a Cable System on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Words used in this Franchise that are not defined hereunder but defined in the Stayton Municipal Code, specifically Chapter 12.04, or as otherwise defined below, shall have the meaning specified in the Code definition. Words used in this Franchise that are not defined hereunder but defined in the Cable Act (as defined below) shall have the meaning specified in the Cable Act definition.

- A. "Affiliate," when used in connection with Grantee, means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- B. "Basic Cable" means the lowest service tier that includes the retransmission of local television broadcast signals and other programming provided by the Grantee, and is made available to all subscribers in the Service Area.
- C. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended, and may otherwise be referred to under 47 U.S.C. § 521 et. seq.
- E. "Cable Service" shall have the meaning provided under Federal law and regulations and generally means (1) the one-way transmission to Subscribers of (a) video programming,

or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

- F. "Cable System" shall have the meaning provided under Federal law and regulations. In every case of its use in this Franchise, unless otherwise specified the term will refer to the cable system constructed or operated by the Grantee in the City under this Franchise.
- G. "Commercial Subscriber" means any other Subscriber other than residential Subscribers in single family or multifamily dwellings.
- H. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.
- I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- J. "Franchise" means this agreement between the City and Grantee which grants a privilege to the Grantee to use Rights of Way within the City for the limited, dedicated purpose of providing Cable Service in return for specific compensation.
- K. "Franchising Authority" and "Grantor" means the City of Stayton or the lawful successor, transferee, or assignee thereof.
- L. "Grantee" means Comcast of Oregon I Inc., or the City-approved successor, transferee, or assignee thereof.
- M. "Gross Revenues" means, and will be construed broadly to include all amounts, in whatever form and from all sources derived directly or indirectly by Grantee or an Affiliate from the operation of Grantee's Cable System to provide Cable Service within the Service Area. Gross revenues include, by way of illustration and not limitation:
 - 1. Fees for Cable Service, regardless of whether such Cable Service is provided to residential or commercial subscribers, including revenues derived from the provision of all Cable Service (including but not limited to pay or premium Cable Service, digital Cable Service, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Service);
 - 2. Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service within the Service Area;
 - 3. Fees paid to Grantee for channels designated for commercial/leased access use, which will be allocated on a pro rata basis using total Cable Service Subscribers;
 - 4. Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - 5. Payments for pre-paid Cable Service or equipment;
 - 6. Advertising Revenues as defined herein;
 - 7. Fees including, but not limited to:

a. Late fees, convenience fees, administrative fees and similar multiservice fees, which will be allocated on a pro rata basis using Cable Service revenue as a percentage of total Grantee revenues within the Service Area;

b. Franchise fees;

c. The FCC User Fee;

d. PEG fees, if applicable, and if included on Subscriber billing statements;

8. Revenue from programing guides; and

9. Commissions from home shopping channels and other Cable Service revenue sharing arrangements which will be allocated on a pro rata basis using total Cable Service Subscribers within the Service Area.

“Gross Revenues” will not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. “Gross Revenues”, however, will not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, will be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, will not constitute additional Gross Revenues for the purpose of this Franchise. “Gross Revenues” will include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Service and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. “Gross Revenues” will 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” will not include bad debt.

“Advertising Revenues” will mean amounts derived from sales of advertising that are made available to Grantee’s Cable System Subscribers and will be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms or advertising interconnects or other multichannel video providers, Advertising Revenues subject to Franchise fees will include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., “revenue offsets” and “contra expenses” and “administrative expenses” or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Effectv or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Service Area.

“Gross Revenues” will not include:

1. Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which will be allocated on a pro rata basis using Cable Service revenue as a percentage of total Grantee revenues within the Service Area;

2. Any taxes or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise Fee and the FCC User Fee will not be regarded as such a tax or fee;
3. Launch fees and marketing co-op fees;
4. Unaffiliated third-party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above;
5. Refunds, rebates or discounts made to Subscribers; and,
6. Sales of capital assets or sales of surplus equipment.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Service and non-Cable Services, Grantee will calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation will be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Service Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Cable Service represents 50% of the total rate card for services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than 50% of the price of the bundled service total.

The parties acknowledge that Grantee maintains its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). Grantee further agrees that it will not utilize GAAP to unlawfully, or in contravention of this Franchise, avoid payment of franchise fees. At all times, Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise required document at the time of submittal, identifying each revised Section or line item.

- N. "Non-Cable Services" means the transmission(s) of Telecommunications or information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission facilities are owned by the provider itself, and includes all forms of telephone services and voice, video, data or information transport but does not include (1) Cable Service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communication systems services provided without using the public Right of Way; (4) over-the-air radio or television broadcasting to the public at-large from facilities licensed by the FCC; (5) direct-to-home satellite service within the meaning of Section 602 of the Communications Act; and (6) public communications systems.

- O. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- P. "Right of Way" shall mean the public Right of Way as defined in Stayton Municipal Code Chapter 12.04.
- Q. "Service Area" means the legal boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means.
- R. "Stayton Municipal Code" means the lawfully adopted municipal code, and all applicable ordinances adopted by the City, including all laws that are in effect at the date of this Franchise, or otherwise hereafter adopted, and as amended from time to time. Whenever reference is made to the Stayton Municipal Code, particular attention should be made to Chapter 4.0, Cable Franchise, and Chapter 12.04, Construction and Maintenance of Streets, Sidewalks, and Curbs, given the purposes of this Franchise; however, to the extent applicable, such reference shall be inclusive of any portion of the code, or to any ordinance of the City of Stayton, Oregon, that may be relevant or applicable to the respective rights or obligations stated herein, and such reference shall include all amendments, corrections, and additions made thereto or hereafter adopted.
- S. "Standard Installation" is defined as a location within 125 feet from the nearest segment of the Cable System from which a usable signal is technically available to the Subscriber's terminal.
- T. "Subscriber" means a Person who lawfully receives Cable Service provided by Grantee by means of connection to the Cable System, regardless whether a fee is paid for such service.
- U. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

SECTION 2

Grant of Franchise

2.1 Grant. Pursuant and subject to the Stayton Municipal Code Chapter 4.04, the City hereby grants to the Grantee a nonexclusive and revocable Franchise that authorizes the Grantee to construct and operate a Cable System to provide Cable Service in, along, among, upon, across, above, over, or under the Rights of Way within the Service Area, consistent with the utility location requirements of this Franchise, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Right of Way such facilities and equipment as may be necessary or appurtenant to the Cable System. Prior to construction or alteration within City streets or Rights of Way, the Grantee will in each case request all required permits, pay applicable fees, and receive approval as necessary before

proceeding. This agreement does not authorize or prohibit Grantee from providing Non-Cable Services as allowed for by Federal law.

2.2 No Implied Rights. No rights will pass from Grantor to Grantee by implication. Without limiting the forgoing, by way of example and not limitation, the Franchise will not include or be a substitute for:

- A. Any other permit or authorization required for the privilege of transaction and carrying on a business within the City that may be required under generally applicable ordinances and laws of the Grantor;
- B. Any permit, agreement of authorization required under generally applicable ordinances and laws of the Grantor in connection with operations on or in the Right of Way, including by way of example and not limitation, street cut permits; or
- C. Any permits or agreement for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreement for placing devices on or in poles or wires, conduits, or other structures or railroad easements, whether owned by the Grantor or a private entity. This provision should not be interpreted to restrict Grantee's general franchise rights under 47 U.S.C. Section 541(a).

Grantor agrees to use best efforts in its working relationship with Grantee in permitting processes associated with Grantee's permit requests.

2.3 Other Provisions of Law. This Franchise is subject to the laws of the United States and the State of Oregon, to the general codes and police powers of the City enacted pursuant thereto affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. This Franchise and all rights and privileges granted under it are subject to, and the Grantee must comply with, applicable law as amended over the Franchise term. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance and Stayton Municipal Code. The Grantor will make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations and will upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations. In the event of a material conflict between any ordinance and this Franchise, the Franchise shall control. It is the intent of the Parties that this Franchise be interpreted and applied consistent with the Stayton Municipal Code and other applicable City laws and regulations. Nothing herein will be interpreted to prevent Grantor or Grantee from challenging the lawfulness of enforceability of any provision of applicable law.

2.4 Competitive Equity. Grantor reserves the right to grant additional franchises or similar authorizations to provide Cable Service in the Service Area, including but not limited to those franchises already granted or authorized at the Effective Date of this Franchise. Notwithstanding any contrary provision in this Agreement, if any Cable Service Provider enters into any agreement with the City to provide Cable Service in the Service Area, the City, upon written request of the Grantee, shall negotiate with the Grantee to amend the Franchise to include any

material terms or conditions that the City makes available to the new entrant or provide relief from existing material terms or conditions so as to insure that the regulatory and financial burdens on each entity are materially equivalent. Material terms and conditions include but are not limited to: Franchise Fees; Insurance; security instruments; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent.

2.5 Term. The Franchise granted hereunder shall be for an initial term of ten (10) years commencing on the Effective Date of the Franchise as set forth in Section 9.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.6 Franchise Review. Within sixty (60) days of the third anniversary of the Effective Date of this Franchise, the Franchising Authority may, but is not required to, conduct a review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation, and community needs and interests—including public, education and government access, and consideration of all financial, technological, and operational impacts that may affect the Grantee. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review.

If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations or extending the term of the Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations of the Franchise accordingly.

2.7 Affiliates. Grantee agrees as a condition of exercising the privileges granted by this Franchise that any Affiliate of Grantee which assumes direct management or operational control of the Cable System to provide Cable Service in the Service Area, will also comply with this Franchise.

2.8 Franchise Nonexclusive. This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Right of Way, and is also subject to Grantor's right to use the Rights of Way for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

2.9 Police Powers. Notwithstanding any other provision of this Franchise, Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances of general applicability to protect or advance public safety, health, or welfare of the general public and Grantee agrees to comply with all applicable laws, regulations and ordinances enacted by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

SECTION 3

Franchise Regulation

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

3.2 Areas of Regulation and Administration. The Grantor (or its designee) has authority for regulation in the following areas:

- A. Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.
- B. Formulating long-range cable communications policy of Grantor for the City.
- C. Disbursing and utilizing franchise revenues paid to the Grantor.
- D. Regulating rates, to the extent permitted by law.
- E. Customer service, to the extent permitted by law.
- F. Planning and facilitating development of public, education, and government access programming, to the extent such programming or channels are used, both within the City and through interconnection with adjacent systems.
- G. All other areas as provided by the Cable Act.

Nothing in this Section is intended or will be interpreted to expand or diminish Grantee's scope of authority authorized by applicable law.

3.3 Administration and Regulation.

- A. Authority. Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.
- B. Rate Discrimination. All of Grantee's rates and charges will be published and will be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee will apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status or physical or mental disability, or geographic location in the Service Area to the extent required by applicable law. Grantee will apply non-discriminatory rates and charges to all Subscribers purchasing similar services,

regardless of race, color, creed, sex, marital or economic status, age, national origin, or sexual preference, except as otherwise provided herein. Nothing in this Franchise will prevent the Grantee from establishing discounted rates and charges for low-income Subscribers or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.

- C. Filing of Rates and Charges. Throughout the Term of this Franchise, Grantee will maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Franchise.
- D. The provisions of this Section will be subject to the provisions of Section 623 of the Cable Act (47 U.S.C. Section 543), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor and Grantee in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights will be deemed superseded by those provisions of the Act.

SECTION 4

Construction Standards and Location

4.1 Conditions of Occupancy. The Cable System installed by the Grantee shall be subject to all applicable provisions of the Stayton Municipal Code, and shall be located so as to cause the least possible interference with the proper use of Rights of Way and with the rights and reasonable convenience of property owners who own property that adjoins any Rights of Way.

4.2 Relocations; Public improvements; Third Party Requests. Upon request by the City, the Grantee shall, at its sole cost and expense, protect, support, temporarily disconnect, design and relocate any of its equipment, infrastructure, or facilities as may be required to promote the public interest or support public improvements to address traffic conditions, public safety, street vacation, freeway and street construction or improvements, change or establishment of street grade, installation of sanitary or storm sewer lines, water pipes, power lines, signal lines, or tracks, or any other type of structures or public improvements by City or its agents. Relocation of facilities required by the City shall be completed within a time limit mutually agreed to by the City and Grantee. With respect to third party requests related to installing or modifying public infrastructure, upon request by the City or any Person holding a lawful permit issued by the Franchising Authority, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Right of Way as necessary any property of Grantee, provided: (A) the expense of such Grantee work shall be paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given written notice to prepare for such changes, specifically no less than ten (10) business days in the event of a temporary relocation, and no less than 20 days for a permanent relocation. The City under no circumstances shall be responsible for cost or expense of any relocation or removal of the facilities or infrastructure owned and maintained by the Grantee. If federal, state, or other funds become available to offset the costs of a relocation of impacted utilities, Grantee is eligible to apply for those funds.

4.3 Construction and Location.

- A. Subject to applicable laws, regulations, and ordinances of the Franchising Authority and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System to provide Cable Service. All construction and maintenance of any and all facilities within the Right of Way 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, installation or relocation of any facilities, and for excavating and laying any facilities within the Right of Way. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.
- B. Prior to beginning any construction, Grantee shall provide the Franchising Authority with a construction schedule for work in the Right of Way. All construction shall be performed in compliance with this Franchise and all applicable lawful ordinances and codes of the Franchising Authority. 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, permittees and other franchisees so as to reduce as far as possible the number of cuts in the Right of Way.
- C. The Franchising Authority shall have the right to inspect all construction or installation work performed within the Service Area as it shall find necessary to ensure compliance with the terms of this Franchise and other lawful pertinent provisions of law. In addition to providing notice to the public of ongoing work as may be required under applicable law, Grantee shall make available upon the Franchising Authority's request information regarding any ongoing construction, operation or installation of its Cable System sufficient to show: (1) the nature of the work being performed; (2) where it is performed; (3) its estimated completion date; and (4) progress towards completion.
- D. Within forty-eight (48) hours after notification of any proposed Right of Way excavation, Grantee shall, at Grantee's expense: (1) mark on the surface all of its underground facilities within the area of the proposed excavation; (2) notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or (3) notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.
- E. In the event any street, alley, public highway or portion thereof used by Grantee shall be vacated by the Grantor, or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall remove its above ground facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. The Grantee shall in all cases have the right of abandonment of its underground facilities.

4.6 Trimming of Trees and Shrubbery. In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation to provide space for its facilities. Tree or vegetation trimming will be done only in accordance with the Stayton Municipal Code, and other current rules and regulations of Grantor, or hereafter adopted or established during the Term of this Franchise, and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. No trimming shall be performed in the Right of Way without previously informing the Franchising Authority. Nothing contained in this Franchise will be deemed to empower or authorize Grantee to cut, trim, or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

4.7 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

4.8 Underground Construction. In those areas of the Service Area where any transmission or distribution facilities of public utilities providing telephone communications and electric or other services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section 4.8 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances. The Franchising Authority shall not incur any cost or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 4.8.

4.9 Access to Open Trenches. The Franchising Authority agrees, to the extent consistent with applicable law, to require that any developer (A) give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) provide Grantee with reasonable access to the open trench. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench nor shall failure of any Developer to contact Grantee under this section be considered a violation of this Agreement.

4.10 Extensions of the Cable System. It is the Grantor's general policy that all Persons receiving Cable Service in the Grantor's Service Area should have equivalent availability of service from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee will not arbitrarily refuse to provide Cable Service to any Person within the Service Area subject to Section A below.

A. If Grantee provides Cable Service to a residential dwelling unit within the Service Area, and the average density is equal to or greater than twenty-five (25) dwelling units per linear strand cable mile as measured from Grantee's nearest segment of Cable System from which a usable signal is technically available, such service shall be:

1. At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot drop connecting from the nearest segment of Cable System from which a usable signal is technically available to an outside wall for residential Subscribers with additional charges for non-standard installations

computed on a time plus material basis to be calculated on that portion of the installation that exceeds the standard one hundred twenty-five (125) foot drop.

2. In all new subdivisions or other areas where undergrounding is required, cable plant and drops will be placed underground; in other areas, new or replacement cable plant and drops will be placed underground whenever feasible.
- B. If Grantee provides Cable Service to potential Subscribers that do not meet the density requirement set forth in Section 4.10(A), by agreement between the Grantee and the Person requesting service for payment of line extension construction costs:
1. Grantee will provide service at its normal, published installation charge for the initial one hundred twenty-five (125) feet of extension.
 2. The Subscriber will pay all costs for the extension for the distance greater than one hundred twenty-five (125) feet.
- C. Notwithstanding the above, Grantee may establish different and non-discriminatory rates and charges and classes of services for Commercial Subscribers, as well as different and non-discriminatory monthly rates for classes of Commercial Subscribers.
- D. In new subdivisions, Cable Service will be made available under the terms of this Section, either (i) contemporaneously with other utility services; or (ii) no more than sixty (60) days from first occupancy, if Grantee's system has been built out to that geographic area of the franchise area, whichever is first.
- E. Notwithstanding any other provision in this franchise, Grantee will not be required to extend its Cable Service to any area of the City that already receives Cable Service from a provider that is not commonly owned to any degree by Grantee.

4.11 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, all requested extensions are subject to Section 4.10 herein and may include a requirement that the Subscriber(s) share the capital costs of extending the Cable System. In the event that Grantee decides to build out the Cable System to an area that is currently unserved, the Grantee may require that potential Subscribers pay their capital contribution in aid of construction prior to constructing the extension. Subscribers shall also be responsible for any non-standard installation charges to extend the Cable System from the tap to the residence.

4.12 Cable Service to Public Buildings. If the Grantor requests Cable Service be provided to a government-owned or government-occupied building, Grantee will connect such locations within 90 days of written request at Grantee's regular and nondiscriminatory charges.

4.13 Emergency Use. Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan, and the local EAS plan, if any, that applies to Grantor. Grantee will establish procedures and provide the system capability for the Franchising Authority to override all video and audio on all channels of the

Cable System to provide emergency messages, consistent with the FCC's directives. Grantee will allow Grantor to transmit an emergency alert message from locations designated by the Grantor to all subscribers.

In times of emergency, the Grantor will permit only appropriately trained and authorized persons to operate the Emergency Alert System ("EAS") and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, will indemnify and hold harmless the Grantee, its employees, officers, and assigns from any claims arising from Grantor's use of the Cable System or the EAS. Additionally subject to limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantor will defend, indemnify, and hold harmless the Grantee for the negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section.

In non-emergency situations, only the Grantee is authorized to operate the EAS equipment. Upon request, the Grantor will be permitted to participate in or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, then Grantee will make any necessary adjustment to the EAS and the EAS will be retested.

4.14 System Standards. The Cable System shall meet or exceed all applicable technical and performance standards of the FCC. The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests.

Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office and shall be available for inspection during Grantee's normal business hours by the Franchising Authority upon written request. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copy of such test results prepared in accordance with FCC rule.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or maintaining the Cable System, Grantee shall do so at such times that will cause the least amount of inconvenience to Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to Subscribers. Notwithstanding anything to the contrary, Grantee's obligation to provide, replace, construct, maintain or operate the Cable System under this Franchise shall be excused for any period during which such service is prevented or interrupted by causes beyond the control of Grantee including acts of nature, fire, flood, unavoidable casualty, extra-ordinary delays in transportation, strikes or power interruption, or regulations. Cable Service shall thereafter be restored as soon as reasonably possible.

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 Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may be laid in the Right of Way by, or under, the Franchising Authority's authority.

4.15 Customer Service Standards/Complaint Resolution. Grantee shall comply with the customer service standards set forth in Part 76 of the FCC's Rules and Regulations, as may be amended from time to time.

4.16 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (a) is not misleading and (b) does not omit material information. Notwithstanding anything to the contrary in section 4.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by the Cable Act.

4.17 Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

4.18 Strand Mounted WiFi Facilities. Subject to the provisions of this Franchise, applicable safety and electrical codes, and required permits and authorizations, Grantee may be allowed to place strand mounted WiFi and other similar equipment on its own cable strung between existing utility poles. All strand mounted WiFi and other similar equipment shall be installed and deployed consistent with any and all applicable City and/or third-party pole provider standards and procedures applicable at the time of installation. The parties agree that in the event of a change in standards, Grantee's previously installed facilities will be considered compliant under the change in standards. To the extent Grantee performs work in the Rights of Way associated with the installation, maintenance, construction, repair or upgrade of these strand mounted WiFi and other similar equipment, prior to commencing such work Grantee is required to (1) obtain the appropriate permits and authorizations and (2) provide Grantor with written evidence of necessary permits and authorizations. Such strand mounted facilities must be operated as part of the Cable System granted by this Franchise. The deployment of these strand mounted WiFi and other similar equipment shall not be considered small-cell wireless facilities.

SECTION 5

Regulation by the Franchising Authority

5.1 Franchise Fee.

A. Payment:

1. As compensation for the Franchise to be granted, and in consideration of permission to use the Rights of Way of the Grantor for construction, operation, and maintenance of a Cable System providing Cable Service within the Service Area, the Grantee will pay to Grantor an amount equal to five percent (5%) of annual Gross Revenues, as defined in this Franchise. The franchise fee payment shall be calculated quarterly and shall be due and payable within thirty (30) days after the close of each calendar quarter. Each payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety (90) days' notice to Grantee by Franchising Authority. In the event that any law or valid rule or regulations limits or

prevents the Grantor from imposing a franchise fee in the amount provided for herein, Grantee shall pay to Grantor at the times provided for, the maximum permissible amount up to the agreed upon 5% of annual Gross Revenues referenced herein.

2. To the extent that revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Service, as defined herein, and non-Cable Service, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate for such components at the published standalone retail rate pricing before discounts are applied. Grantee may not allocate discounts for bundled services for the purpose of evading payments of franchise fees to the Franchising Authority. The Grantor reserves its right to review, approve, or modify Grantee's calculations.

3. No acceptance of any payment shall be construed as an accord by Franchising Authority that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Franchising Authority may have for further or additional sums payable or for the performance of any other obligations of Grantee.

4. The Franchise Authority agrees that all amounts paid by the Grantee as Franchise Fees may be passed through to customers and identified as a separate line item on the bill in accordance with 47 U.S.C 542 added to the price of Cable Services and collected from the Grantee's customers as "external costs" as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as Franchise Fees may be separately stated on customers' bills as permitted in 47 C.F.R. 76.985.

5. In the event that Grantee is required to pay a franchise renewal and/or application fee pursuant to any Franchise Authority local ordinance, the franchise renewal and/or application fee shall be offset against any franchise fees due and shall be payable to City on the first quarterly payment after execution of this or any renewal Agreement.

B. Audit of Franchise Fee Payments:

1. Franchising Authority or its designee may conduct an audit of or other inquiry in relation to payments made by Grantee, as provided by Stayton Municipal Code. In the event an audit discloses the Grantee's underpayment of non-disputed franchise fees an amount greater than three percent (3%) as measured on a quarterly basis, then Grantee shall pay for the cost of the audit not to exceed \$10,000.00.

A. Limitation on Franchise Fee Actions.

The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

5.2 Inspections for Compliance. The Franchising Authority may inspect the Cable System within the Service Area, during reasonable times and in a manner that does not unreasonably

interfere with the normal business operations of Grantee, in order to determine compliance with applicable FCC standards. Except in emergency circumstances, such inspections may be undertaken only after giving not less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's Cable System has substantially failed to comply with applicable FCC standards, the reasonable costs of the inspection shall be borne by Grantee. In the event such inspection demonstrates that Grantee has substantially complied with applicable FCC standards, the cost of the inspection shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

5.3 Renewal of Franchise. Renewal of the Franchise shall be subject to the Stayton Municipal Code and respective timelines set by Section 626 of the Cable Act (47 U.S.C. 546). The Franchising Authority and the Grantee further agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626.

5.4 Grantor Acquisition of the Cable System. The parties shall be subject to the provisions of Section 627 of the Cable Act (47 U.S.C. 547), as amended from time to time. It is not intended that this Franchise diminish the rights of either the Franchising Authority or the Grantee under Section 627 of the Act, and any provision of this Franchise that purports to diminish such rights shall be deemed superseded by the Act.

5.5 Transfer of Franchise. Subject to Section 617 of the Cable Act (47 U.S.C. 537), no transfer of the Franchise or change in control of Grantee will occur without the prior written consent of Grantor, provided that such consent will not be unreasonably withheld.

SECTION 6

Books, Records, and Maps

6.1 Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review at the Grantee's business office, during normal business hours and on a non-disruptive basis, such of its books and records as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise, which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority the ability to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature unless the Franchising Authority can protect the proprietary or confidential information from disclosure under Oregon law, nor disclose books and records of

any affiliate of Grantee which is not providing Cable Service in the Service Area. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing.

To the extent provided under Oregon law, the Franchising Authority agrees to treat any information expressly labeled as such and disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof, provided that such information is reasonably considered confidential, proprietary or trade secrets under applicable federal or state law and is clearly marked "Confidential" on each page or, in the case of verbal disclosures, Grantee informs the Franchising Authority that it is confidential information at the time of the disclosure. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

6.2 Maps. Grantee shall maintain "as built" drawings for the Cable System at Grantee's business office and make them available to the Franchising Authority for inspection during normal business hours upon written request. The parties agree that Grantee shall not be required to leave maps or schematics showing location of Grantee facilities behind with the Franchising Authority. "As built" drawings shall be updated as changes occur in the Cable System serving the Service Area. The Franchising Authority recognizes that the information contained in such maps may be confidential and proprietary, and, to the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from the public.

SECTION 7

Insurance and Indemnification

7.1 Insurance Requirements. The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the Franchise.

7.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Grantor, its officers, agents, volunteers, representatives, boards and employees, from and against any liability for damages and for any liability, claims, damages, costs or expenses, including court and appeal costs and reasonable attorney fees or expenses, that arise out of Grantee's construction, operation, or maintenance of its Cable System or otherwise related to the Franchise, provided that the Franchising Authority shall give Grantee prompt written notice of its obligation to indemnify the Franchising Authority pursuant to this Section 7.2. Notwithstanding the foregoing, Grantee shall not indemnify the Franchising Authority for any damages, liability, or claims resulting directly from the willful misconduct or sole negligence of the Franchising Authority.

7.3 Bonds and Other Surety. Grantee shall execute a performance bond the City deems acceptable to ensure Grantee's performance of this Agreement. Said Bond or other security shall be ten thousand dollars (\$10,000.00). City may seek payment from the Bond or other security whenever Grantee fails to perform any act this Agreement requires of Grantee. City shall give

reasonable notice to Grantee of its intent to seek payment from the Bond or other security. Grantee shall immediately replenish the Bond or security, it being a material element of this Agreement that such Bond or security be available to the City in fully funded amount at all times material to this Agreement. This obligation shall survive termination.

SECTION 8

Enforcement and Termination of Franchise

8.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

8.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 8.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in Sections 8.1 and 8.2, or in the event that the alleged default is not remedied within thirty (30) days or the date reasonably projected, if it intends to continue its investigation into the default, then the Franchising Authority may schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

8.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 8.3, or otherwise, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to terminate the Franchise in accordance with Section 8.5; or
- D. Take any other lawful action it deems appropriate or necessary to enforce its rights under this Franchise.

8.5 Termination. Should the Franchising Authority seek to terminate the Franchise after following the procedures set forth in Section 8.1-8.4 above, the Franchising Authority may terminate the Franchise.

8.6 Technical Violations. The Franchising Authority agrees that it is not its intention to subject the Grantee to revocation or termination of the Franchise for so called “technical” breaches or violations of the Franchise, which shall include but not be limited to matters where a violation or breach of the Franchise Agreement by the Grantee was good faith error that resulted in no or minimal negative impact on the customers within the Service Area. Notwithstanding the above, it is not the intention of this section to shield Grantee from violations whether “technical” in nature or not. The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. Section 555a, as may be amended, is applicable to this Franchise.

8.7 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

SECTION 9

Miscellaneous Provisions

9.1 Actions of Parties. Time is of the essence in this Agreement. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld. Grantee is not relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance. The Franchising Authority’s forbearance or failure to enforce any provision of this Franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the Franchising Authority on one or more occasions to exercise a right or to require compliance or performance under this Franchise 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.

9.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

9.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a

properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) delivered electronically by email, or d) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Manager
City of Stayton
362 N. Third Ave
Stayton, OR 97383

Notices or responses to the Grantee shall be addressed as follows:

Comcast of Oregon I, Inc.
Attention: Government Affairs
11308 SW 68th Parkway
Tigard, OR, OR 97223

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

9.4 Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

9.6 Effective Date. The effective date of this Franchise is _____, 2023 pursuant to the provisions of applicable law. This Franchise shall expire on _____, 2033 unless extended by the mutual agreement of the parties.

By executing this Agreement, the undersigned warrant and declare that each has the authority to and consent of their respective entities to execute this Agreement and bind their principals.

CITY OF STAYTON, OREGON

COMCAST OF OREGON I, INC.

By:
Title:

By:
Title: