CITY OF BEAVERTON COUNCIL AGENDA

FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
MARCH 19, 2007
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes for the Regular Meetings of February 12 and March 5, 2007

07055 A Resolution Forming the Murray Boulevard Extension Local Improvement District (Resolution No. 3893)

Contract Review Board:

07056 Authorize the City Attorney to Enter into a Professional Services Contract with Outside Counsel to Provide Municipal Court Prosecution

07057 Bid Award - South Central "A" Utility Improvements Project

WORK SESSION:

07058 Verizon Cable TV Franchise

ORDINANCES:

First Reading:

07059 An Ordinance Granting a Non-Exclusive Cable Franchise to Verizon Northwest Inc. (Ordinance No. 4433)

Second Reading:

07052 TA 2006-0003 (PUD Text Amendment) (Ordinance No. 4430)

07053 TA 2006-0010 (Sunset Transit Center and Teufel Town Center MPR Text Amendment) (Ordinance No. 4431)

07054 TA 2006-0012 (Merlo & Tektronix MPR Text Amendment) (Ordinance No. 4432)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

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DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
FEBRUARY 12, 2007

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, February 12, 2007, at 6:32 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Bruce S. Dalrymple, Dennis Doyle and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Assist. City Attorney Bill Kirby, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Public Works Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop, Development Services Manager Steven Sparks, Associate Planner Liz Jones and Deputy City Recorder Catherine Jansen.

PRESENTATIONS:

07026 Annual Report of the Beaverton City Library Board

Library Board Chair Dot Lutkins, Co-Chair Anne Doyle and Library Director Ed House presented a PowerPoint presentation on the 2006 Annual Report from the Library Board.

Ms. Doyle explained how the Library served as the heart of the community and reviewed statistics for 2006, noting circulation had reached 1,700,000 items and there were 600,000 visitors to the Library yearly. She explained how circulation contributed to Library funding and that in 2006 volunteers contributed 13,840 hours valued at $249,835. She said the Self-Check machines and Patron Pickup of Holds had freed staff to provide other needed services.

House reviewed how revenue from the Washington County Cooperative Library Services (WCCLS) levy was distributed. He said WCCLS would receive $15,379,011 from the levy in Fiscal Year 2007-08; the Beaverton City Library would receive $3,754,193 of that revenue. He said that 80% of the revenue comes from circulation, 10% from door count, 5% from reference transactions and 5% from internet public access.

Ms. Doyle reviewed the Library's programs and services in detail. She stressed children needed to have good reading skills in order to develop into successful adults.

House explained that Hennen's American Public Library Rating System rates libraries across the country on their services. He said Hennen's ranked Beaverton No. 1 among Oregon Public Libraries that serve a population of 100,000 to 249,999; No. 1 among all of the WCCLS libraries; and No. 5 in the Top 10 of all Oregon Libraries. He said these ratings were based on data collected in the Fiscal Year 2004-05.

Ms. Lutkins said in 2006 the Library Board developed an Advisory Board Handbook for new board members. She reviewed the Handbook's table of contents, Chapter 4 on Intellectual Freedom, and the Library Bill of Rights.

Ms. Doyle said that with the passage of the WCCLS levy, Library hours were restored, the book budget was increased and programs were restored or enhanced. She said the Library needed additional room for its collections, especially the multi-lingual and large-print collections. She concluded with an overview of the vital role the Library has played in the community.

Coun. Stanton confirmed with House that the Library receives $1.50 for each item checked out at the Library from the WCCLS levy. She encouraged citizens to checkout more items from the Library, for that would increase the funding for the Library.

Coun. Bode thanked them for the presentation. She said presenting this report at the Council meeting keeps the community connected to the City and Library. She said it was good when citizens report to other citizens.

Coun. Doyle noted that in September 2007 four hours would be added to the number of hours the Library would be open. He asked how close that would bring the Library to restoring the open hours it had a few years ago when services had to be cut.

House replied that the Library was open 61 hours when the cutbacks occurred after the failure of the May 2004 levy; the Library cutback its hours to 49. He said with the nine hours added in January 2007 the Library was now open 58 hours; and with the addition of four hours in September 2007, the Library would be open 62 hours.

Coun. Stanton explained that people could donate their used books, videos, CDs, and books on tape to their local library. She said in Beaverton the donations were used to supplement the Library's collection and the overflow goes to the Friends of the Library's used bookstore. She said the donations should be current and in good condition.

VISITOR COMMENT PERIOD:

Mayor Drake said public comment was not included on the first reading of the ordinance relating to the use and possession of replica firearms in a public place (Agenda Bill 07025) for the hearing on that issue was closed. He said general comment would be taken if anyone wished to speak. No one came forward to speak.

Kathryn Harrington, Metro Councilor, said she was honored to be Beaverton's Metro Councilor and was looking forward to working with Council. She said she was here in the spirit of collaboration and she would report quarterly to the Council on Metro activities. As a Beaverton resident, she thanked the Mayor and Council for their leadership and work to meet the needs of the community.

Ms. Harrington said she was interested in receiving Council input on how Metro could help the City in the areas of economic vitality and quality of life. She said on March 8, 2007, at 2:00 p.m., the Metro Council would meet in Sherwood and on March 15 the Metro Council would meet in the morning at the Metro Office.

Coun. Stanton said on February 13 there would be a joint meeting between the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council on the Metropolitan Transportation Improvement Program (MTIP) which provides flexible funds for transportation improvements throughout the region. She asked Harrington if the State and Federal transportation funds that come into the region were divided evenly among the three counties.

Harrington replied there was no strict formula for geographic parity in that distribution.

Coun. Stanton said that meant Washington County could get less funding than Multnomah or Clackamas Counties. She urged citizens to attend the meeting and testify that funds were needed in Washington County for transportation projects.

Harrington said the hearing would start at 5:30 p.m. in the Metro Offices. She said citizens could also provide input over the Web and by e-mail.

Brian Wegener, Tualatin Riverkeepers, thanked the City for its help in reprinting the Riverkeepers' brochure *Field Guide to Erosion Prevention and Sediment Control: Construction Sites.* He thanked Council for supporting habitat-friendly development and said low-impact development was part of habitat-friendly development. He said the Riverkeepers were conducting a bus tour of low-impact development projects in Washington County on February 22, from 8:00 a.m. to noon. He invited Council to attend and said they would meet at the Tualatin Hills Nature Park on Millikan Boulevard. He distributed copies of the book *Field Guide: Discovering the Tualatin River Basin* to Council. He said the book was assembled by 10,000 hours of volunteer labor and contributions from professional wildlife photographers. He said the book had excellent pictures of the resources that were protected through habitat-friendly development.

07034 APP 2006-0005 - Appeal of TA 2006-0007 (Code Applicability for Annexed Areas Amendment)

Steve Kaufman, Beaverton, said he was pleased to see that TA 2006-0007, which he had appealed, was withdrawn. He said many stakeholders were concerned about the development of the Barnes/Cedar Hill property, including the City, County, the Peterkorts and residents of Cedar Mill and Beaverton. He said the residents wished to be part of a constructive process to develop a project in which everyone would win. He said Measure 37 (M37) had raised questions about development of the site. He asked that the City be a leader/facilitator in bringing all the stakeholders together to discuss the future of this site.

Paul Parker, Portland, said this conversation was important and it should happen sooner rather than later. He said they would be happy to prepare a one-page proposal to get the process started. He said they were excited about "going from what cannot happen to what could happen."

Mayor Drake explained that the developer filed several M37 claims for properties in that area. He said it might be difficult to assemble such a discussion but they could try and the potential for talking with the property owners was good. He said without a full understanding of M37 and the developer's claims, it was difficult. He said the Legislature was also looking at a potential time-out for M37. He said currently much was unknown and the target kept moving, so the circumstances were different than they were three years ago.

Kaufman said they recognized the uncertainty that currently existed, but at some point discussion was always helpful, especially when planning something this important. He said they would look to the City to help facilitate that dialogue.

Mayor Drake said he would take this under advisement.

Coun. Stanton said that though this text amendment was pulled, it might come back to Council in smaller individual pieces. She suggested that they be vigilant and pay attention.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that the Council direct staff to refund the appeal fee for APP 2006-0005, paid by the appellant, Save Cedar Mill, to appeal the Planning Commission's recommendation on proposed text amendment TA 2006-0007 (Code Applicability for Annexed Areas Amendment). Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5-0)

COUNCIL ITEMS:

Coun. Stanton said that on February 22, 2007, at the Westside Economic Alliance Breakfast Forum, Tom Brian would present the State of the County message. She said at the Washington County Public Affairs Forum on February 19, there would be a presentation on a potential new Federal Cabinet, the National Department of Peace.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the Consent Agenda be approved as follows:

Minutes of Special Meeting of October 23, 2006 and Regular Meeting of January 22, 2007

07003 A Resolution Adopting the City of Beaverton Habitat Friendly Development Practices Guidance Manual (Resolution No. 3885) (*Carried over from meeting of 01/08/07)*

07027 Liquor Licenses: New Outlet - Pacific Coast Wine Club

07028 Liquor License Renewals: Annual Renewals

07029 Traffic Commission Issue No. :
-TC 604: Stop Signs on SW Palomino Place and SW Saddle Drive at Stallion Drive
-TC 607: Revise Adopted Priorities for Consideration of New Traffic Signals
-TC 608: Revise Stop Control at the Intersection of SW Stratus Street and Creekside Place
-TC 610: Speed Limits on SW Koll Parkway and SW Greystone Court

Contract Review Board:

07030 Waiver from Sealed Bidding – Award Contract for Collection Agency Services From the State of Oregon Price Agreement #5250

07031 Waiver of Sealed Bidding - Authorization for Rental of Copy Machines from Various Price Agreements

Coun. Dalrymple clarified that on the minutes of January 22, 2007, page 10, paragraph 8, he asked if automobiles were considered as opaque containers.

Coun. Stanton referred to Agenda Bill 07029, TC 607 Revised Adopted Priorities for Consideration of New Traffic Signals. She asked if approving this would support placing a traffic light in any particular location.

Transportation Engineer Randy Wooley said this would cleanup the priority list and make it clear that the previous signals had been considered and were no longer on the list. He said that left the Brockman/Sorrento Road signal up for consideration but it was not required that it be built. He said approving TC 607 was necessary so the Brockman/Sorrento appeal could proceed.

Question called on the motion. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

RECESS:

Mayor Drake called for a brief recess at 7:20 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 7:32 p.m.

PUBLIC HEARING:

07032 APP 2007-0001 Appeal of Pointer Road PUD

Mayor Drake announced the public hearing for APP 2007-0001, the appeal of the Planning Commission's approval of the Conditional Use application for the proposed Pointer Road Planned Unit Development (PUD).

Community Development Director Joe Grillo read a prepared statement defining the process to be followed for this hearing, including the various required disclosure statements (in the record).

Grillo asked if any Councilor had a potential or actual conflict of interest.

None were declared.

Grillo asked if any Councilor had an ex parté contact to declare.

Coun. Bode said while on her way to view the property she got lost and she asked a couple of people walking for directions. She said they wanted to give her information about the project, but she explained she could not discuss it with them. She said she did not know the ladies' names but they showed her the property location.

Grillo asked if any Councilor wished to declare any site visits.

Couns. Arnold, Bode, Doyle and Stanton indicated they visited the site.

Grillo asked if any member of the audience wished to challenge the right of the Council to consider this matter or challenge the right of any Councilor to participate in this hearing, or wish to request a continuance of the hearing to a later date.

No one submitted a challenge or requested a continuance of the hearing.

Development Services Manager Steven Sparks introduced himself and Liz Jones the City Planner for this project. Sparks explained the Planning Commission approved two applications for this site; a Land Division application and a PUD. He said the Land Division application was for eleven lots; the Planning Commission approved ten lots. He said the PUD decision was appealed but the Land Division decision was not. He said the Land Division approval and PUD were linked and the applicant could not proceed with the Land Division without the PUD. He said if the Council modified or denied the PUD, a change would be required on the Land Division approval. If the Council denied the appeal and supported the Planning Commission's decision, the Land Division could proceed as approved by the Commission.

Sparks said this site was extensively reviewed by the City. He said the applicant presented various proposals to the City over the past 18 months and overcame a number of issues, including access. He said the Planning Commission felt eleven lots was too far out of character for the surrounding neighborhood in that some of the lots were less than 5,000 square feet. He said with ten lots, all of the lots were over 5,000 square feet except one that was close to 5,000 square feet. He said per the Code, the minimum density for this site was seven units (80%). He said the proposed ten units were above the 80% minimum requirement but under the 100% maximum density.

Sparks said the Council had received a memorandum from the appellant, dated February 9, 2007, with three letters attached. He said one of the letters, dated February 8, was from Alaina and Adelle Pomeroy, regarding several stormwater runoff issues. He said a staff memorandum in response to the Pomeroy letter was distributed to Council earlier in the meeting. It was noted that the memorandum should be dated February 12, 2007, rather than December 13, 2006.

Sparks said in their letter, the Pomeroy's expressed concern that the City hoped to divert stormwater runoff from the PUD site to their property. He stressed the City was not proposing to divert any runoff onto anybody's property. He said the City stated in the Conditions of Approval, that the developer has options for connecting to existing stormwater facilities. He said the developer needed to obtain an easement from a private property owner; if the developer could not obtain the easement, he would have to connect the PUD's stormwater facilities to the existing system in SW Canyon Lane. He said the PUD site currently had no stormwater retention or routing; the water sheets off the site creating major problems for surrounding properties. He said the PUD project was required to handle the stormwater runoff it creates on this site. He said this project could not fix all of the stormwater problems in the West Slope neighborhood, but it had to address its own stormwater issues. He said there was a detention pond on the south end of the property that would assist in detaining flows during peak runoff; the water would slowly drain into the stormwater system after the peak of the storm.

Coun. Arnold asked where the Pomeroy's property (2065 SW 75th Avenue) was located.

Jones said the Pomeroy property was Tax Lot 4400 on the site plan.

Coun. Arnold asked if any stormwater was being diverted anywhere from this PUD.

Sparks said the intent of the condition was that all of the water from this property would funnel into the detention facility at the southern corner of the site. He said the facility design would be handled during Site Development; in the land use process, they have enough detail to know that it is feasible. He said the size of the detention pond could fluctuate, depending on the amount of impervious surface created by the development. He said the City engineers believe that with this development the stormwater runoff situation would be better than the existing condition.

Coun. Stanton noted staff had said water would not be diverted to the Pomeroy property. She asked if there would be any discharge of stormwater from this development onto the Pomeroy property.

Sparks replied that if easements could not be obtained from neighboring properties, the stormwater discharge would go to the existing stormwater line in SW Canyon Lane. He said the site would drain to the detention pond; from the pond there would be a pipe down to the SW Canyon Lane line.

Coun. Stanton reconfirmed with Sparks that there was no plan to divert or discharge stormwater runoff onto the Pomeroy property. She asked if it was certain that there would be a stormwater drainage pipe from the site to the line in SW Canyon Lane if the easement could not be secured from adjacent property owners.

Sparks replied Site Development would not be issued and the developer could not build unless that was done. He said in development, utility infrastructure was done first; once that was in place the developer could do the final plat. He said until the final plat was recorded the lots could not be sold.

Coun. Stanton asked how the developer would get the pipe from the site down to SW Canyon Lane when Tax Lots 4500 and 4700 would have to be crossed. She asked if easements would be required or would it run down the gravel road.

Sparks said the applicant should respond to that question.

Coun. Stanton asked theoretically if the developer would not be able to develop the site if he could not get easements from Tax Lots 4500 and 4700.

Sparks replied that was conceivable.

Coun. Bode asked staff to address the issue of pesticide and herbicide contamination that was raised in the Pomeroy letter.

Sparks said there was a long history of agricultural products being used on that site and neighbors have testified that discolored water runs off the site. He said there was a Condition of Approval that prior to obtaining a Site Development Permit, a Level 2 Toxin Environmental Report would be required to test the soil on the site and determine if any soil needed to be remediated, removed or mitigated. He said the intent was to prohibit any movement of soil that could make the toxins airborne. He said if levels of soil toxicity were found, that would have to be treated or removed first, prior to any construction taking place.

Coun. Doyle said that attached to the appellant's February 9, 2007, memorandum was a letter from the Tualatin Valley Fire & Rescue District (TVF&R) dated September 6, 2006, that listed several concerns. He asked if those concerns were resolved.

Jones said a number of issues were resolved including the provision of an emergency turnaround. She said the Conditions of Approval require that the developer obtain sign-off from TVF&R prior to Site Development Permit issuance. She said many of TVF&R's concerns would be dealt with at that time.

Sparks referred to the TVF&R letter and said the developer had either solved those issues or had demonstrated that they could be resolved. He said they would not want to issue approval for anything that would fail at the construction stage; if they saw anything that could be a fatal flaw, it was addressed up front so there were no surprises later on. He said TVF&R's issues, if not resolved in the Land Use process, would be resolved by the Site Development and Building Permit stage.

Coun. Dalrymple asked if there was anything about this application, other than the toxin report, that was out of the ordinary from any other Land Division or PUD application for the same type of development.

Sparks said there was nothing out of the ordinary.

Jones said the only unusual element she found was the irregular shape of the site and that there was limited access on the north and south sides. She added that these same conditions exist on other sites in the city.

Coun. Dalrymple said that might have been unique 20 years ago, but not today for it has been difficult to find property to develop at the density levels developers are required to meet.

Sparks said the closest similarity in terms of an oddly-shaped parcel would be the Garden Grove PUD that Council considered a few years ago.

Coun. Stanton asked if the garbage collectors would drive down Wilson Way since it was a private street. She said she knew of other places where the garbage collection was done from the main street and residents had to haul their cans to the main street.

Sparks said they had not received a response from the waste hauler for that area. He said he knew from past experience that the waste haulers would provide services for streets that were narrower than this one. He said this could also be a requirement of their franchise agreement. He said these private streets were maintained by homeowners' associations.

Coun. Stanton said these property owners may assume that they have normal city services, which would mean garbage service at the curb.

Coun. Stanton said she was concerned about the turnaround at the southwest end of the street and TVF&R's requirement for two access points. She said she was also concerned about the comment in the staff report about Wilson Way being extended west with future development. She said she needed to know that there would be no deed restrictions or remonstrances for a Local Improvement District (LID), for these ten homes for construction of a road that would connect to SW Canyon Lane. She said she was concerned about the impact of this to the people who would live on that street.

Sparks said the question about future potential for right-of-way was speculative at this time. He said it was not known if redevelopment would occur in that area or in what fashion it would occur. He said it could be expanded in future development. He said there were no conditions to require or prohibit a LID.

Coun. Stanton asked if the City could prohibit or pre-empt deed restrictions or remonstrances.

City Attorney Alan Rappleyea said the decision to form a LID and what properties to include in the assessment, would be made when the LID was formed. He said when a LID is planned for the future a requirement can be made for a waiver or remonstrance. He said currently the neighbors do not want this, so there was no condition for a waiver or remonstrance. He said that would be a strange condition to include in a Land Use Order. He said if this area redeveloped the City could decide on the creation of a LID.

Jones clarified that in the earlier versions of the application there were two access points and an emergency-only gate at the terminus of Wilson Way. She said that was revised and currently there was only one access point into the development at SW Pointer Road. She said with only one access there would be sprinklers in each unit. She said that at the end of Wilson Way there would be a fence with bike and pedestrian access only; there would be no vehicular access onto the gravel lane connecting to SW Canyon Lane.

Coun. Dalrymple referred to Coun. Stanton's comment's regarding the extension of Wilson Way. He asked if that would be a separate application that would go through a public process; and that no restrictions or conditions would be placed on it at this time.

Sparks replied that was correct; any conditions would depend on the application submitted and the situation at the time.

Mayor Drake opened public hearing.

APPLICANT:

Karl Mawson, Compass Engineering, representing the applicant, said this project was infill development; it was not developed previously because of the odd shape of the site. He said the first plans had two access points, but because of problems with SW Canyon Lane and the narrow access lane the southern access was eliminated. He said due to the single access, the lack of a turnaround and because the slope between this site and the fire station was over 10%, the applicant had agreed to install sprinklers in the homes if required by TVF&R. He said he pushed for a break-away gate but that was not acceptable to staff or TVF&R.

Mawson said regarding the stormwater issue, this property was a non-conforming commercial use; most of it was greenhouses and pavement and the gravel and dirt sections were so densely packed in that it was probably 90% impervious surface. He said this development would greatly decrease the amount of impervious surface, it would have stormwater facilities and the overflow would go underground under SW Canyon Lane and into the drainage facility downstream. He said originally the PUD process was designed to develop typical land with creative housing. He said the PUD had evolved over the years to develop non-typical land with standard housing. He said in this case they have single-family homes on smaller lots, so the impact would be smaller. He said the only way to develop this site was through the PUD. He said if they tried to develop a standard subdivision, most of the property would go for the street and impervious surface and the lots would have jagged edges and be difficult to use. He said with this application they have an open space facility that was visible to most of the units, there was a buffer from the existing houses, density requirements were met and this was less than maximum density. He said they worked on this for over a year and given the site, restrictions and density they believed they developed the best design possible.

Ron Wilson, representing *R. K. Wilson* the developer, said the density on this project was in the middle; the minimum density was 7 units and the maximum was 11.5. He said the development has open space, a basketball court and a play structure. He said they did their best to maximize the open space and the homeowners' association would take care of the facilities to prevent future deterioration. He said he owned the property down to SW Canyon Lane so there was no issue with running the stormwater lines to that road. He said he tried to obtain easements from the neighbors to run the stormwater runoff as the City wanted, but some of the neighbors would not grant the easements. He said this development was an improvement over what currently existed on the site; he said he tried to appease the neighbors. He asked that the Council support the Commission's decision.

Mawson said that there were multiple easements on this site, copies of which were in the staff report. He said initially they thought they could purchase the easements, but the owners of the easements wanted to maintain the access to SW Canyon Lane. He said they decided to develop a plan that would honor the easements and maintain the residents' access to SW Canyon Lane.

Coun. Stanton asked Wilson if he had said that he owned the property south of the development.

Wilson replied he owned the strip of land that was south and connects to SW Canyon Lane; that part of the property was the access for stormwater lines.

Coun. Dalrymple asked about the grade from the point of the road and where were the contours located.

Mawson said the grade was not over 10%. He said the ROW property at the intersection of SW Pointer Road was owned by the State. He said through this process the ownership of the ROW was transferred to the City. He said they have plans to landscape and maintain the property so at some point the City might want to transfer ownership to the developer.

Coun. Stanton asked if the proposed homes would be ranch-style or two or three story.

Wilson said preliminary plans indicated this development as two-story single-family homes about 25 feet high.

Mawson said the colored elevations were part of the record submitted for the Planning Commission hearing.

Wilson said the Planning Commission instituted architectural guidelines that would have to be followed to ensure that the development would fit into the neighborhood.

Coun. Arnold asked Wilson if he owned the 12-foot lane that goes to SW Canyon Lane, and if he would use it for stormwater access but not vehicular access.

Wilson reconfirmed he owned that lane. He said with the many layers of easements that were attached to that lane and due to its narrow width, they could not service the subdivision. He said that was why Wilson Way continued out to SW Pointer Road.

Mawson said that one issue raised at the Commission hearing and in the appeal, was the use of the access lane to the west which was a private street. He said the concern was that people would want to use SW Canyon Lane, so they would go to SW Pointer Road, make a left and then a second left to use that private driveway. He said they understood the problem and they were willing to pay for street bumps or a gate to prevent that; however that road was off-site from this project and the owners would have to be in consensus as to what they want. He said the applicant was willing to work with them.

Coun. Stanton said she thought there would be a barrier at the end of Wilson Way that would block vehicular traffic.

Mawson said that was correct; the only way to access SW Canyon Lane was to go north to SW Pointer Road turn west, then turn south (onto the private street). He said it might be possible to extend that private street to SW 75th Avenue; however, SW 75th Avenue exists on an easement. He said that no matter what direction they went on this project there were barriers to development.

Mayor Drake said that staff wished to clarify a point about easements.

Sparks said regarding the stormwater drainage, he mentioned obtaining an easement or going down SW Canyon Lane. He said that condition was for the sanitary sewer not for the stormwater sewer. He said the stormwater sewer would run to the south along with the sanitary sewer.

Coun. Stanton asked if that meant that two sets of pipes would be laid out going south, one for stormwater and one for sanitary sewer, and the developer would do both.

Sparks replied that was correct.

APPELLANT:

Dan Cox, appellant, presented a slideshow that indicated the access lane, easement and path that he referred to during his testimony (in the record). He said he represented many people from the neighborhood that were in the audience. He said they felt disenfranchised and disrespected; some felt that the project was being railroaded. He said this project was a crushing change to the historic nature of the West Slope neighborhood. He said there was almost a lack of good faith with the applicant and the City regarding informing or hearing the public on this matter. He said the Planning Commissioners said that this was the toughest decision they have had to make in a long time, yet they made a decision that night rather than taking time to delve into issues raised at the meeting. He said that was disrespectful and truncated the process. He said a neighborhood meeting was required for the project, yet neighborhood residents were not notified of the meeting and were not certain that it took place.

Cox said the Planning Commission hearing was repeatedly rescheduled, beginning in the fall, until it was held in the middle of December during the holiday rush when people had multiple obligations. He said fewer people were able to attend each subsequent hearing. He said that did not reflect the intent of the process to allow the public to be heard; it was a way to create an attrition effect on the public hearing process and people were ruffled.

Cox said the Neighborhood Association Committee (NAC) submitted inquiries and received no response and that was not good. He said the compatibility issue was their biggest concern. He said West Slope was a wonderful historic neighborhood with large lots, mature trees and lots of space. He said the proposed development did not match the rest of the neighborhood. He said the Commission erred when it found that the application satisfied Code Section 40.15.15.C.5, for the site could not easily accommodate ten lots.

Cox displayed an aerial photograph with an overlay of the proposed development (in the record) and said this demonstrated how crowded the new lots were in relation to the surrounding neighborhood. He said the adjoining properties were described in terms of acres, not feet; they were large lots and contrast strongly from what was proposed.

Cox said the Planning Commission erred when it found the application satisfied Code Section 40.15.15.C.6 as the development was not reasonably compatible with the livability of the surrounding neighborhood because it would introduce many nuisances including light, noise, traffic and loss of privacy. He said introducing two-story homes into a neighborhood dominated by single-story homes was a huge issue. He said the Commission was correct when it said that the site grows more incompatible as the lot sizes decrease below 7,000 square feet. He said nothing in the law entitled the applicant to ten lots. He said compatibility could not be established by finding that increased infill in surrounding areas would occur in the future. He said compatibility must be based on current existing conditions.

Cox said another issue was fire and life safety. He said the Commission erred when it adopted Condition of Approval No. 10, for it failed to adequately recognize the public safety risk associated with the easement access. He said that posting signs and installing speed bumps was an ineffective and unenforceable remedy for a real safety problem. He said with pedestrians, bicycles and cars there would be considerable congestion on that easement. He said new residents would use that easement even if signs were posted, because it was a shortcut. He said he previously submitted a letter from Todd Mobley, Transportation Engineer, Lancaster Engineering, in which Mobley said that: 1) this project would generate 100 automobile trips per day (per national standards); 2) the lane to the south was too narrow to allow two cars to pass; 3) site lines were restricted by on-street parking; 4) such access lanes were not intended for through traffic or for an area with a large number of homes; 5) it was possible that drivers would use this access as a shortcut to SW Canyon Lane, avoiding the circuitous route of SW Pointer Road to Camelot Court to SW Canyon Lane; 6) the speed bumps would reduce speed but do not limit traffic; and 7) signage alone was ineffective at influencing a driver's route. He said Mobley recommended installing a resident-controlled gate south of SW Pointer Road as the most effective way to limit use and maintain safety on that easement.

Cox said he submitted a letter from John Dalby, Deputy Fire Marshal, Tualatin Valley Fire & Rescue. He said in a phone conversation last week, Dalby expressed concerns about the fire safety issues. He said he appreciated the clarification provided by staff but the questions were still hanging in the air. He said Dalby stated in his letter that TVF&R would not accept any type of break-away gate; the access from SW Canyon Lane was too narrow, that the requirement for sprinklers had not yet been conditioned and that sprinklers were not helpful in non-fire emergency calls. He concluded his testimony by reading from the Dalby letter *"The fire district does not endorse the design concept wherein 20 feet of unobstructed roadway width is not provided."*

Coun. Dalrymple referred to Cox's comments that there was no official neighborhood meeting and then that there was a meeting but it was held in the holiday season which was an inopportune time for the neighborhood residents to attend. He asked staff if there was anything in the record confirming there was an official neighborhood meeting.

Rappleyea stated that the neighborhood meeting was held and that was confirmed on page 140 of the staff report.

Coun. Stanton said that this was discussed at the October 18, 2005, meeting of the West Slope NAC and those minutes were on page 220 of the record.

Sparks explained that the notice of the neighborhood meeting was on page 203 of the record and it was sent to the NAC representative resident as standard process. He said the meeting took place on October 18, 2005.

Coun. Dalrymple asked Cox why he had said there was no meeting but then there was a meeting held during the holiday season when it was difficult for people to attend.

Cox clarified that they were unaware of any official neighborhood meeting and received no notices of the meeting. He said that was an example of the lack of communication that surrounded this process. He said the meeting he referred to that they attended during the holiday season was the Planning Commission hearing in December.

Coun. Dalrymple asked for clarification on which meeting they felt they had not received notification; the Planning Commission meeting or the neighborhood meeting.

Cox said they did not know when the official neighborhood meeting was and the NAC Chair was also unclear about when that occurred.

Coun. Dalrymple said these meetings were usually noticed and he wanted to be clear on whether or not that happened.

Community Development Director Joe Grillo referred to pages 207 to 210 which listed the individuals who were noticed for the neighborhood review meeting, who are the registered property owners in 2006. He said the list represents the most current available records from the Washington County Department of Assessment and Taxation, and it was sent to those who live within 500 feet of the proposed development.

Coun. Dalrymple asked Cox where his house was located.

Cox said he did not live within 500 feet of the development. He indicated on the map that he lived further south on SW Canyon Lane.

Mayor Drake noted that NAC Chair Sid Snyder was present and might be able to clarify some of the issues raised when he testified.

Coun. Stanton asked Cox if he was a member of West Slope NAC.

Cox said he was not a member though he had attended some meetings.

Coun. Arnold confirmed that the residents' concern was that residents from the new development would turn left on SW Pointer Road and then left again on the easement access road to weave their way down to reach SW Canyon Lane. She noted that that access currently existed and that she drove on that lane in her car.

Cox confirmed that was correct and that lane currently was drivable and that would not change. He said they feared the new residents would discover that shortcut and use it, which was a concern because of the number of children, pedestrians and bicyclists who use the path. He said the combination of cars, pedestrians and bicyclists on this lane was not good and that issue had not been adequately addressed.

Coun. Arnold asked if there was currently an issue with cut-through traffic.

Cox said he used that access daily and right now there was only limited use of the lane. He said other people would testify directly to that issue.

Coun. Arnold asked Cox to elaborate about the public safety risk.

Cox said the public safety risk was that automobile traffic from the new development would use the easement lane, creating congestion and putting children, pedestrians and bicyclists at risk. He said the site lines were very limited and some driveways run directly into the lane. He said this safety issue needed to be addressed and required more than speed bumps and *Private Drive-Do Not Enter* signage.

Coun. Doyle asked if the Traffic Engineer's recommendation was to put a gate at the north end of SW Pointer Road at the easement lane.

Cox replied that was correct.

There were no further questions for the appellant.

RECESS:

Mayor Drake called for a brief recess at 8:52 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 9:04 p.m.

AUTHORIZED GROUPS:

Sid Snyder, Chair West Slope NAC, said the NAC's official action was to oppose Planning Commission Order 1933, approving the Pointer Road PUD. He said the opposition was based on the belief that the PUD violates the condition that the new homes within the development are compatible with the age and amount of architectural detail found in the surrounding area and the conditions of approval do not adequately recognize the public safety risk associated with the existing access easement. He said ten homes on that site would be too many. He said the motion was voted on by seven of the ten NAC Board Members (5 Ayes; 0 Opposed; 2 Abstentions) at an ad-hoc meeting of the Board held electronically, as allowed by the NAC Bylaws.

Coun. Stanton asked how many of seven Board Members who voted attended the neighborhood meeting in October.

Snyder replied that most of them had attended the meeting. He said in terms of the October 18, 2005, NAC meeting, a developer first came to the NAC unofficially to talk about ideas and concepts they were considering. He said they would later attend an official NAC meeting to present a project and that meeting would be noticed. He said it was his understanding that the October 18 meeting was the unofficial meeting and that was what he told the appellant. He said one of the reasons he thought it was the unofficial meeting was because of the way it was presented to him when they asked for a meeting. He said the developer said they had a couple of ideas in mind that they wanted to get feedback from the residents. He said he did not recall getting a notice, but he was not sure he lived within 500 feet of the site. He said several people who live within the 500 feet did not recall receiving a notice.

Coun. Dalrymple asked if the NAC Chair receives official notice.

Sparks replied per the Code, the NAC Chair, the Community Development Director and property owners within 500 feet of the subject site were supposed to be notified.

Snyder said he did not recall seeing the notice.

Coun. Doyle asked how many people come to normal NAC meetings.

Snyder said it varied depending on the agenda, but the meetings were relatively well attended. He said at the October 18 meeting the room was full and there was spirited discussion.

SUPPORT:

Kent Slack, Beaverton, said he lived on SW Pointer Road and he owned the easement lane that people were concerned would be used as a cut-through. He said he would like to see the biggest deterrent possible to prevent people from coming down that easement. He said the greenhouse was an offensive, scary eyesore and he did not want it there anymore. He said if this was protracted for much longer it could be years before that building was removed. He said he knew the UGB required development of that site and that large lots were not typical. He said he accepted the new development because he was motivated to get rid of the greenhouse.

Coun. Stanton said there was discussion at the Planning Commission hearing about installing a gate on that lane.

Slack replied he was the impetus for that suggestion. He said he accepted the speed bumps and signage suggestion but he would love a remote control gate.

Coun. Doyle asked Slack if he explored the feasibility of a gate and if there currently was no problem with having cars drive down the lane.

Slack said there were few people who used it, but the new residents on Wilson Way would probably take this shortcut. He said currently only a handful of people used the lane regularly.

Coun. Arnold asked Slack the route he uses to go east.

Slack said he used SW Pointer Road to SW Camelot Court to the highway. He said coming to City Hall tonight he went the back way. He said only a handful had easements to use that back route and they would still be able to do that with the development.

Coun. Arnold asked how long it took to get to SW Canyon Road going east on his usual route.

Slack said it would probably take an extra minute to use the regular route.

Coun. Arnold said she had been on that back route and it was circuitous and difficult. She said she did not think she would use that back route if it would only take a minute to use the safer route.

Carla Ralston, Portland, said she thought everyone was in favor of development because the site was a nightmare; however, they would like to see fewer lots. She said at the NAC meeting they were shown several pictures, but this was the first time they had seen this proposal. She said at the meeting they were told by the developer that he would come back and show them the final version, which is why there was confusion about the neighborhood meeting; they were never shown the final proposal. She said PUD Code Sections 60.35.05(2 through 6) state that a PUD creates a comprehensive development plan that was equal to or better than that resulting from traditional lot-by-lot land development and that it uses design flexibility afforded by the PUD provisions to improve compatibility of the development with surrounding property and uses. She said the proposed development did not speak to the spirit of the PUD. She said she would like to see a development closer to what currently exists in the area. She asked that the spirit and standards of the PUD be applied more closely. She concluded that the lots were too small; there were too many and the homes planned were opulent and not compatible with the existing neighborhood.

Coun. Stanton explained that the City was constrained by Metro's development requirements and the site would have to be built at 80% to 100% density. She said one of the values to a PUD, because of topography and wetland constraints, was that you could see how much you could build on the whole site, even the unbuildable area. She said that was what drove these numbers.

Carl Tebbe, Portland, said he lived at the end of SW Pointer Road, where SW 75th Avenue ends. He said the property owners on SW 75th Avenue own that street. He reviewed the location of the bike path and said it was heavily used. He said higher density in that area would result in increased vehicular and bicycle traffic, and more parking on the street, especially if a gate was placed on that road. He asked how a fire engine would reach his home with the increased traffic, parking on the street and only a single hydrant that serves SW Pointer Road. He said any infill development has to be kept at a minimum. He said that at least once a month the children and teachers from the elementary school walk from their school, up SW Pointer Road, to their second campus. He said with the new development and increased traffic, they would not be able to do that. He said regarding the NAC neighborhood meeting, the notice he received said this would be a preliminary informational meeting; the notice did not indicate that this was the final project presentation. He said he was not opposed to development but ten units was too many; it should be kept to seven or eight.

Coun. Stanton clarified for Tebbe that the gate would not be on Wilson Way; it would be on the access road to the west off of SW Pointer Road.

Coun. Doyle asked if currently there was parking on that road.

Tebbe said there was no room for parking, although people had parked there. He said the road was not posted for "No Parking."

Andrew Shelton, said he was acting as a proxy for Adelle Pomeroy, Portland, and read her statement into record. Pomeroy opposed having ten homes on that site. She said she feared for the safety of her two younger brothers, herself and other pedestrians. She said the roads were narrow and surrounded by mature foliage. She said the safety of the inhabitants of the area should be the highest priority.

Cyrus Pomeroy, Portland, said he was speaking for himself and other children in the neighborhood. He said they were concerned about traffic on the easement driveway. He said he had nearly been hit on that driveway by cars and bicyclists. He said ten houses were too many and he was nervous about this development for safety reasons.

Maria Pomeroy, Portland, said her property was adjacent to the greenhouse property and her major concern was public safety. She said the easement driveway that empties onto SW Canyon Lane was very narrow with low visibility; and encouraging bicyclists and pedestrians to use this easement lane was negligent at best. She said she hit a pedestrian once and it was terrifying. She said ten homes were too many for this lane. She said this development would increase the traffic and pedestrians on this lane exponentially, and the likelihood of an accident was great. She said if this danger was not dealt with in a responsible way someone would be held accountable.

Maria Pomeroy said Conditional Use Criteria No. 10, the public safety risk, was not fully addressed. She asked who would be liable for an accident on this private road once the developer was gone. She asked if the developer would inform the homeowners that they need additional insurance to cover their private road that was opened to public access. She said that easement drive would be used illegally by the new residents of the development; speed bumps and signage would do little to deter them. She said the staff report states that the private drive issue should be dealt with civilly. She said this was not acceptable and they need to ensure that trespassing would not occur. She said previous use of this road was very limited and controlled by the owner. She said she would not stay silent on this matter. She said she understood the Fire Marshal's comments were not fully addressed. She asked if in the future the new homeowners from the development could take over this road and demand that the gate be removed and that they be given the right to use the road.

Maria Pomeroy said in reviewing the staff report, there were too many loopholes regarding this easement road and this issue could balloon in the future and become a neighborhood feud. She said there were major drainage issues in this area that the developer could help the City pay for; drainage issues were never responsible for anyone's death so what price would they put on that.

Coun. Dalrymple asked Pomeroy if she had hit a pedestrian on this easement.

Pomeroy replied no, that happened somewhere else many years ago and was not associated with this application.

Coun. Stanton referred to the access from Wilson Way to SW Canyon Lane. She said providing a barricade at the west end of Wilson Way would prevent cars from Wilson Way accessing the easement lane. She asked Pomeroy if that would meet her needs.

Maria Pomeroy said the staff report did not firmly state that the road would be permanently closed. She said the homeowners on Wilson Way own that road. She said in the future what would prevent them from coming together and stating that they own the road and want access.

Mayor Drake explained that if it was conditioned that Wilson Way would stop at the west end with a permanent barrier, it could not be removed without going back through a similar public process.

Maria Pomeroy said that would need to be stated in the final order. She added that there needs to be a gate. She said this would encourage more pedestrians and bicyclists to use that lane because that would connect a bike thoroughfare on SW Canyon Lane to a bike route on SW Pointer Road. She said that makes it more accessible for public use and the developer was encouraging public access. She pointed out where the road was located on the aerial photograph. She reiterated it was very narrow and dangerous as it winds through the properties with poor visibility and several driveways that abut the road.

Coun. Dalrymple asked Pomeroy if she was saying she was not worried about the additional vehicular traffic; only about additional pedestrian and bicycle traffic.

Maria Pomeroy replied she was concerned about vehicular traffic because they would find that shortcut. She said she was also concerned about pedestrian and bicycle traffic.

Joe Hughes, Portland, SW 75th Avenue resident, said he was a contractor and developer and he was not anti-development. He said he felt in this case ten houses was too many. He said previous testimony covered his other issues, however, he wanted to point out an ambiguity to Council. He noted that this site was ten acres, the lots were smaller but with the open space the 5,000 square foot lots were compatible with the neighborhood. He said the surrounding properties average one-third of an acre (2 1/2 times the size of the 5,000 square foot lots). He said ten lots averaging one-third of an acre would be about 130,000 square feet. He said the lots in this development would cover 52,000 square feet; that leaves a net of 78,000 square feet that is needed to make the lots similar to the surrounding lots. He said this development has 19,000 square feet of open space, which leaves a shortage of 68,000 square feet in achieving what was implied in the application. He said the proposed open space was not in parity with the surrounding lots. He said West Slope did not have parks and consideration should be given to having fewer houses, more open space and possibly putting in a pocket park that would benefit the whole neighborhood.

Coun. Stanton explained to Hughes that one-third acre lots were no longer allowed.

Hughes said he was aware of that but his point was that proposed open space was not even in rough parity with the amount of existing open space. He said he was not sure he favored a PUD. He reiterated ten houses were too many.

Coun. Dalrymple asked staff what Tualatin Hills Park and Recreation District's (THPRD) response was to this application.

Sparks said THPRD provided no comment to this application.

Angel Khalsa, Portland, said she lived on SW Pointer Road, and she favored a gate with six remotes for the property owners who needed access to this road. She said as a former business woman, she agreed with the City's Goal 1, To Preserve and Enhance the Community, and she felt ten houses were too many to preserve and enhance their sense of community.

Coun. Dalrymple confirmed with Khalsa that she was in favor of development of the site, but not ten units.

Ernest Peterson, Portland, said he did not oppose development but ten lots were too many. He said pedestrian safety and character of the neighborhood needed to be considered when determining the number of lots.

Mary Kroger, Portland, said ten lots were too many for that site and two-story homes would not match the surrounding neighborhood. She said ten homes would hugely impact SW Pointer Road and the access lane, increasing traffic and affecting safety. She said Code Section 40.15.15.C.6 promised minimal impact on the neighborhood. She thanked the Council for honoring existing neighborhoods.

Coun. Arnold asked if SW 75th Avenue was a dead-end road or could the residents from the new subdivision use it to reach SW Canyon Lane.

Kroger showed Council on the aerial photograph how residents could go west on SW Pointer Road and then south on SW 75th Avenue to reach SW Canyon Lane.

Julie Draper, Portland, said she had lived in this neighborhood for 15 years and ten houses were too many; the development should stay within the 7,000 square foot lot size at the most. She said West Slope was unique in its charm and they would like to preserve that character even though the UGB mandates supporting development. She said she thought it would be possible to preserve the character of the neighborhood and still develop the greenhouse site. She said the soil had not been tested for herbicide contamination.

Draper said the City has a proposed capital project to deal with the stormwater problems in West Slope. She said one of the pending capital projects would have the stormwater runoff run into Golf Creek and she did not feel that stormwater should be dumped into that creek. She referred to Comprehensive Plan Policy 3.13.1a and b, and said that this PUD did not further the policy of diverse housing needs and types. She said the proposed houses do not fit into the neighborhood. She said Comprehensive Plan Policy 3.13.1h required innovative design coupled with compatible scale and setbacks similar to the existing neighborhood. She said that was their issue, for large mansions would

not look right in this neighborhood. She said she disagreed with the staff report that said there were no significant trees, groves or landscape trees on the site. She said at the entrance to the proposed road there were cedar trees, a mature maple tree, a healthy mature birch tree, a poplar tree and a laurel hedge. She said the northeast corner of the property should be considered a small but mature garden greenspace. She said the proposed PUD had too many unanswered questions and issues to be rushed into approval. She said to make this a win-win for the neighborhood and the developer, the Council should not approve the subdivision until the number of lots was lowered and all the other issues were sufficiently addressed.

Doug Gentner, Portland, said this was an issue of scale; the houses were not in the same form as the surrounding bungalow homes. He said the proposed houses were more upscale and it would be jarring and would not fit in with the neighborhood. He said if seven homes were developed, instead of ten, the developer would still make a profit and it would minimize the impact on the neighborhood.

LaVonne Blowers, said she would like to see the number of houses reduced for safety reasons. She said she was a bicyclist and rides on SW Pointer Road at least once a week and her husband bikes to work on that road every day. She said many bicyclists use that road, including children going school. She said that she has seen many drivers pulling out of driveways on SW Pointer Road and going into the opposite lane. She said that was a safety concern for bicyclists.

Ed Higdon, Portland, said most of his concerns about runoff were brought up previously. He asked if the area was developed would the herbicides and pesticides be stirred up into the water. He said he would like to maintain the 7,000 square foot lot minimum.

Coun. Arnold asked Higdon if he had issues with water runoff.

Higdon said there was water runoff onto his property from surrounding areas. He said he put in a drainage ditch to help the water go down the street to the stormwater drains. He said in heavy rain periods, the water would seep into his front yard and the daylight basin. He said with improvements he installed it no longer seeped into the basement. He said the water runs down the side of his property to the fence.

Sid Snyder, Beaverton, representing himself, said that many pedestrians and bicyclists use the access easement lane to get onto SW Canyon Lane. He said allowing more traffic on the lane was a tragedy waiting to happen. He said he favored the development but adding 100 trips per day was too many. He said when the developer came to the October 18 meeting, he had two different plans; one was for seven lots and the other for nine. He said a year later, in the middle of the holiday season, the final application was for 11 lots and ten were approved. He said what the residents heard at the meeting was not what happened. He said the developer characterized the development as a "parade of homes" caliber. He said that sent shudders through the neighborhood residents. He said the proposed homes crowded onto small lots were antithetical to the character of the older neighborhood.

Mayor Drake asked Snyder what he thought would be ideal number of homes instead of ten.

Snyder replied seven or eight units would be better, but he really preferred the 7,000 square foot lots that the developer showed at the NAC meeting.

Coun. Stanton explained that developers were not required to show final plans at NAC meetings. She said they often come in with preliminary ideas that they think they might be able to do and then it could get scaled back. She said this was not the first time this has happened.

Snyder said they were promised that they would get to see something later and that did not happen. He said this makes it difficult to convince people that the NAC meetings are meaningful because there was a high level of cynicism when people were told this was their chance to be heard. He said there has to be some connection to that meeting and the reality on the ground.

APPLICANT REBUTTAL:

Mayor Drake reminded the applicant that if any new material was raised during the rebuttal the appellant would have the opportunity for surrebuttal.

Wilson said the Metro standards allowed seven to eleven lots; this proposal was in the middle. He said he was willing to do what the City wants to take care of the additional traffic. He said he went to two NAC meetings. He said he went to the first meeting and then he received a phone call asking him to come back and talk about the project a month later, which he did; that was a question-and-answer type of meeting and he spent a long time answering their questions.

Mawson said on NAC meetings there was always a trade off. He said if you go early in the process, there was always a change in plans, which was what happened. He said if you go later in the process, with set plans, there was less likelihood that the plans would change and the residents feel they were not listened too because the plans were not changed. He said the private street issue could be solved either through a gate or other means. He said since the property owners on that street own the lane, they have privileges on changing the street that people do not have on public streets. He suggested not making a decision at this time. He said if the subdivision generated 100 trips per day, they would not all use that street; later they would know the better way to solve the issue, if there was one. He said the number of units was always a problem. He said the bigger the lots, the bigger the houses that would be built; they would be more expensive and out of character. He said the zoning allowed 7000 square feet and with the PUD the lots can be smaller. He said the impervious surface area would not increase much with fewer lots. He said there would be some change in the character. He said not many people in the neighborhood would be looking directly at these houses or driving through this area. He said it would be a bit isolated and it would become compatible fairly quickly.

Rappleyea confirmed that there was no new testimony in the rebuttal.

Coun. Dalrymple noted there was concern regarding people entering that private easement and a suggestion was made to install a gate on the north end. He asked what would happen if someone entered on the south end of the lane, went north and found a gate at the north end. He said putting a gate at the north end was not the only answer.

Coun. Stanton said she heard that the value to the gate would be that it would stop anyone on Wilson Way from going west on SW Pointer Road then south on the easement lane to cut down to SW Canyon Lane. She said it was not about access for the people who live on the north end of the access road to get back to their property. She said the gate would prohibit the residents of Wilson Way from making the loop to connect to SW Canyon Lane. She said she suspected that very few people, if any, go from SW Canyon Lane to SW Pointer Road on the easement lane.

Grillo said regarding asking the applicant to be held responsible for putting a gate off-site to mitigate traffic, the dilemma was that normally off-site traffic mitigation was done in the public domain. He questioned whether or not a rational nexus could be made that this applicant had to do something on private property when there was nothing on the record that said that even if he was going to proffer to do that, it could be implemented. He said if they were to get into proffering it or requiring it, they would not have a final land use decision.

Rappleyea said the difficulty was the legal issue because there were so many people who own the easement, they all have a property interest on that lane, and they would have to get an agreement with all the people who own that easement, to have a gate and how it would be constructed. He said that was the difficulty with an off-site condition. He said there would be no final decision because there would be nothing in the record that would say this condition could be met.

Grillo said he did not think the Council could go in the direction of conditioning an applicant to do an improvement on property that was not part of the application. He said if they were to put a condition on a project that a developer had to do an off-site improvement, the people who own that off-site property could hold a developer hostage by not releasing their property interest. The developer could not complete the condition of the development, so there would be no final land use decision.

Coun. Arnold asked if the City could request a traffic mitigation fee.

Rappleyea said that would be unusual and all the conditions have to be made roughly proportionate. He said it would be difficult to say on a mitigation fee what would be roughly proportionate.

Coun. Arnold said it could be the cost for installing the gate one time.

Rappleyea said something of that nature might be acceptable to the applicant if there was an offer of a certain amount, to use this money for mitigation of any means they see fit. He said that would be something to discuss with the applicant rather than the City imposing a fee.

Grillo said the 120-day deadline was February 23, 2007, and the Council was under an obligation to render a decision. He said he was not speaking for the neighborhood or the developer; however, if the developer was interested in trying to find a solution he could request a continuance without violating the 120-day rule and it could be brought back to Council. He said this would provide the opportunity for the developer to work out some of the issues with the neighborhood. He said the issue would have to come back to Council by the beginning of March. He added that another issue was that no one

present knew what the cost would be to mitigate a Level 2 Environmental Toxin. He said without that information, if the Council were to decide on fewer lots this could be a non-starter. He said he thought this was a real dilemma and there was little time left.

Mayor Drake summarized that under State law the City has 120 days to render a final decision and adopt a final order. He said the City could not ask a developer to go beyond the 120 days. He said there were a number of issues being considered and he felt the Council was at a point where they did not have all the answers. He said the Council could deny the application or this could be continued if the developer agreed. He said if he was the developer he would not be sure that he wanted a decision made this late in the evening. He asked the staff for options.

Rappleyea said the Council's two options were to approve or deny the development. He agreed with Grillo's comments regarding the difficulty of conditioning a developer to do off-site improvements on property he does not own. He said the other option would be to try to reconfigure the parcel, but there was no time to do that. He said if the Council did not like the density on the project it could deny the development; if Council felt the density was acceptable, it could approve the development. He said the decision could then be appealed to the Land Use Board of Appeals.

Mayor Drake asked if the Council denied the project, would the option of prejudice vs. non-prejudice apply to the Council.

Rappleyea said it would apply; if the Council denied the application without prejudice that would allow the applicant to reapply.

Mayor Drake closed the public hearing at 10:28 p.m.

RECESS:

Mayor Drake called for a brief recess at 10:28 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 10:41 p.m.

Sparks said that in speaking with the applicant and his representative, they were willing to continue this matter to March 5, 2007. He asked that the applicant go on the record to indicate that he agreed to the continuance.

Rappleyea said the City would need another week in the extension of the 120-day rule to do the final order.

Sparks said in speaking with the applicant it was agreed that the City would send the form to extend the deadline to the applicant. He said the form contained the information the applicant would need to do the extension.

Rappleyea said the idea was to close the public hearing but to limit the new testimony to the issue of the number of lots.

Mayor Drake said the next city council meeting would be March 19. He said if there was an extension it would have to be long enough to cover that two-week period.

Sparks said the absolute deadline for the written decision was March 27, 2007.

Mayor Drake said that having a condition requiring the gate was probably a non-starter. He said that it appeared this issue was something that the developer and those fronting the easement would handle through a private agreement.

Rappleyea said that was correct. He said the property owners could install the gate themselves if they desired.

Mayor Drake said the major issue was the number of lots and this would give the applicant time to consider reducing that number. He said if the applicant did not choose to decrease the number of lots, then the Council would make its decision based on what was presented. He said any new testimony would be limited to the number of lots.

Rappleyea said that was correct.

Wilson, (the applicant) said he agreed to extend the public hearing to March 5, 2007, with the final order to be considered on March 19, 2007.

Grillo asked that the extension be to March 20 to allow time to prepare and sign the final order after the meeting of March 19.

Wilson indicated the extension to March 20 was agreeable.

Grillo stated that any additional written material should be handed in to the City by Thursday, March 1, 2007, by 5:00 p.m. He said this applied to the applicant and any other parties and the testimony should relate specifically to the number of lots.

Wilson, Mawson and Cox indicated that was acceptable to them.

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the public hearing on APP 2007-0001 Appeal of Pointer Road PUD be continued to March 5, 2007, at 6:30 p.m., for consideration as to the number of lots only, and all new written testimony should be filed with the City by March 1, at 5:00 p.m., and the final order to be prepared by March 20, 2007. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

07033 Development Services Fee for New Sidewalk Design Modification Application (Resolution No. 3890)

Mayor Drake opened the public hearing and asked if anyone wished to testify.

There was no public testimony.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that Council approve Agenda Bill 07033, Development Services Fee for New Sidewalk Modification Application. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0) (Resolution No. 3890)

ACTION ITEM:

07034 APP 2006-0005 - Appeal of TA 2006-0007 (See Page 3)

ORDINANCES:

Coun. Doyle MOVED, SECONDED by Coun. Arnold, that the rules be suspended, and that the ordinance embodied in Agenda Bill 07025 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

First Reading:

Rappleyea read the following ordinance for the first time by title only:

07025 An Ordinance Relating to the Use and Possession of Replica Firearms in a Public Place (Ordinance 4423)

Second Reading:

Rappleyea read the following ordinances for the second time by title only:

07023 An Ordinance Annexing a Parcel Located at 12730 SW Fairfield Street to the City of Beaverton and Adding the Property to the Central Beaverton Neighborhood Association Committee: Expedited Annexation 2006-0003 (Ordinance 4421)

07024 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for 25 Properties Located in North Beaverton; CPA 2006-0016/ZMA 2006-0021 (Ordinance 4422)

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the ordinances embodied in Agenda Bills 07023 and 07024 now pass. Roll call vote. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

EXECUTIVE SESSION:

Coun. Stanton MOVED, SECONDED by Coun. Bode, that Council move into executive session in accordance with ORS 192.660(2)(h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

The executive session convened at 10:58 p.m.

The executive session adjourned at 11:36 p.m.

The regular meeting reconvened at11:36 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 11:36 p.m.

_____
Catherine Jansen, Deputy City Recorder

APPROVAL:

Approved this day ,2007,

_____
Rob Drake, Mayor

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
MARCH 5, 2007

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, March 5, 2007, at 6:35 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Bruce S. Dalrymple, Dennis Doyle and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Public Works Director Gary Brentano, Human Resources Director Nancy Bates, Police Captain Stan Newland and City Recorder Sue Nelson.

VISITOR COMMENT PERIOD:

There were none.

COUNCIL ITEMS:

Couns. Bode and Stanton spoke regarding homelessness in Washington County. It was noted there currently there were 78,000 people in Washington County who were uninsured. Last week Washington County held a Project Homeless Connect Day and those who were homeless or living in shelters were able to come in and receive help from a consortium of service providers in the County. All of the service agencies in the County participated and provided help in medical, human and veteran's services.

Coun. Bode said this was an eye opener as she realized the extent of homelessness in her city. She said many people came looking for help and behaved respectfully. She said the County was currently working on a nation-wide project to develop a ten-year plan to end homelessness and help the homeless enter the workforce so that they can take care of themselves and their families. She referred to the Council's goal for livability and she questioned the kind of livability the homeless have. She said she left there more committed to supporting Washington County's effort to get rid of homelessness.

Coun. Stanton said this was a ten year federal plan to eliminate homelessness by finding housing and services for those in need. She said the current federal poverty level was $20,000 for a family of four. She said she defied anyone to say that they lived comfortably on $20,000 a year in Washington County. She said there was a great deal of need in this county as demonstrated at Project Homeless Connect Day. She said by connecting the homeless to these services, we can help them transition out.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the Consent Agenda be approved as follows:

07047 Resolution Supporting City 2007-2009 Transportation and Growth Management Grant Application (Resolution No. 3891) (Note: There was a brief discussion on this item at the end of the meeting.)

07048 Proposed Memorandum of Understanding Relating to Extensions of Public Water and Sewer Services to Measure 37 Related Urban Developments in Rural Washington County

Contract Review Board:

07049 Ratification of Beaverton Central Plant Contract Award for Underground Piping and Mechanical Rooms to Connect Buildings E and F

07050 Exemption from Competitive Bids and Authorize a Sole Seller and Brand Name for the Purchase of Leica Survey Equipment and Transfer Resolution (Resolution No. 3892)

Coun. Stanton referred to Agenda Bill 07048 and said this project had been going on for over a year-and-a-half to address what Measure 37 (M37) means for properties inside and outside of the Urban Growth Boundary (UGB). She said due to the uncertainty of the language of M37, the cities on the edge of the UGB were concerned that someone would file a M37 claim against them to force them to provide service. She said the County and the cities developed this Memorandum of Understanding (MOU) to clarify what they could and could not do legally at this time. She said this was critical work and it took a long time to develop this MOU. She thanked County and City staff for their participation in this effort.

Question called on the motion. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

PUBLIC HEARING:

07032 APP 2007-0001 Appeal of Pointer Road PUD

Mayor Drake said this public hearing was continued from the meeting of February 12, 2007, and discussion was limited to the number of lots. He said the deadline to submit written testimony was March 1, 2007, at 5:00 p.m. He said comments were submitted by both sides and were in the Council packet.

Community Development Director Joe Grillo read a prepared statement defining the process to be followed for this hearing. He said if anyone in the audience had an issue to raise, that they should do so now.

No one raised any issues.

City Attorney Alan Rappleyea reiterated that the Council closed the record for new evidence as of March 1, 2007. He said no new evidence could be presented at this time; only closing arguments would be heard and discussion was limited to facts that were already in the record.

Mayor Drake asked if the Council needed to make a decision at this meeting.

Rappleyea replied a decision had to be made tonight to meet the City's obligations under the 120-day rule.

Coun. Bode asked if Dan Cox was representing the twenty or so citizens who signed the petition he previously submitted (in the record).

Mayor Drake said Cox was the appellant.

Coun. Arnold asked if during testimony Cox was representing himself as the appellant or was he representing the citizens.

Rappleyea said Cox had the right as the actual appellant to make his closing argument. He said the applicant, who has the final burden of proof to sustain the application, would make the final closing argument.

Mayor Drake asked for closing arguments.

Dan Cox, appellant, referred to his letter of March 1, 2007, that was co-signed by more than 20 neighbors. He said he wrote that letter as the appellant and those who co-signed were indicating their agreement with his comments in the letter. He asked for a raise of hands from the audience of those he was representing. (Approximately 40 people raised their hands.) He said he made a good-faith effort to negotiate the number of lots with the applicant. He said he told the applicant they would like to come to this meeting in support of this application; all that was required was a compromise on the number of lots. He said the applicant would not reduce the number of lots. He said that while they respected the applicant, this decision was disappointing as they had expected to negotiate in good faith and reach a compromise that the Council could support.

Cox said the applicant was willing to discuss other issues but not the issue of the number of lots. He said he told the applicant that without a discussion on reducing the number of lots, they could not discuss the subordinate issues that were up for consideration. He said he had a transcript of a voicemail from the applicant stating that if he was forced to develop fewer than ten lots, he would be unwilling to work with the neighborhood in any capacity. He said the applicant's hard line had confirmed their worst fears about his suitability to develop this site. He said nothing in the law or applicable rules entitled the applicant to ten lots. He said the Planning Commission found that this site grew more incompatible with the surrounding neighborhood as the lot sizes fell below 7,000 square feet, as required in R-7 zoning. He said the West Slope NAC had voted to reduce the number of lots to less than ten. He said they felt they have successfully made their case that for this site, ten was too many.

Cox said they all favored the development of the greenhouse site and they understood the need for infill development. He said given the applicant's unwillingness to negotiate, they were requesting the approval of eight lots plus the condition described in his March 1 letter. He requested that if the Council approved ten lots, that it clearly state why it was approving the density because they did not think the City wanted to send out a message that it favored density at any cost. He said if the Council mandated fewer than ten lots and the applicant found the ruling incompatible with his business model, they would encourage the applicant to step away from the project. He said they offered these comments in the best interest of West Slope and he thanked the Council for listening.

Karl Mawson, Compass Engineering, representing the applicant, said this development met the zoning and Comprehensive Plan standards. He said it was less than the maximum density allowed, though it was greater than the minimum density required. He said he wished to compare this site with other sites. He said when development starts on most sites, the sites are vacant. He said this site had wall-to-wall greenhouses and environmental concerns. He said most sites have impervious surface and with development the amount of pavement increases. He said in this case the amount of pavement would be decreased. He said most infill sites are located on a busy street; however, SW Pointer Road was not a busy street. He said many sites that go through a PUD have three-plexes, four-plexes or townhouses. He said in this case they proposed single-family homes that were more compatible with the neighborhood. He said most sites were very visible to adjoining neighbors. He said in this case it would be difficult for the neighbors to see this site; it was a backyard site. He said in looking at the number of lots, most of them were already set; there were only a few that could be made larger. He said these houses would not be visible to anybody but those who live in the project. He said infill development was tough but this was one of the best cases of infill development in Beaverton.

Ron Wilson, representing *R. K. Wilson* the developer, said that within a mile radius of this site there were 3500 households. He said those who opposed the development were less than one percent of the neighborhood. He noted there were letters in the Council packet from people who support the development. He said regarding the issue of 7,000 square foot lots, in this development if the open space was added in with the lot sizes it would come out to 7,154 square feet per lot. He said he went to the NAC meetings and he talked with the appellant several times. He said he offered many options to negotiate the neighborhoods support; however, they were not interested. He said he felt he was expected to just give, give and give. He said he did try to give them somethings. He said the appellant lives in a neighborhood less than one mile away that averages 3500 square feet. He asked that the Council uphold the staff recommendation and the Planning Commission's decision. He said urban infill was difficult and they were trying to live within the development requirements.

Mawson said there was concern about the street and the traffic, and he suggested some remedies in his letter (in the record). He said after a year's delay if it turned out that this was a problem, they could revisit that issue, since they do own part of that road.

Mayor Drake asked Mawson what he meant with "a year's delay."

Mawson said he did not mean a delay. He said that they were projecting a problem on that private easement; they were pretending to know what would happen. He said streets use was based on convenience and time. He said he thought by making the exit a right-turn only, so that people would be breaking the law by turning left, and then adding speed humps, he did not think this would be a problem. He said they could wait for a year to see if this is a problem and then add additional speed humps if needed.

Coun. Arnold asked who he was referring to as "we"

Mawson said that would be everyone, for they could not project how many drivers would break the law and make a left turn to go through that easement. He said he did not think many would do that; however, there were people present who disagreed. He was suggesting that they could revisit that at a later time, if it turns out to be a big issue.

Coun. Arnold said if the property was developed and the homes were sold the developer would have no responsibility there. She questioned who the "we." was

Wilson said this was one of the issues that he tried to work out with the appellant to get their support on the density. He said they were not able to agree.

Mayor Drake reminded them to keep the testimony to the lots.

Coun. Stanton confirmed with Mawson that when he said "we" he was referring to himself and Wilson. She asked Mawson if he was referring to speed humps on SW Pointer Road.

Mawson said he was referring to the lower leg of the access easement lane, south of Wilson Way, which the developer owns.

Mayor Drake said that was private property and he asked the City Attorney to comment on the City's ability to compel such a condition.

Rappleyea said one of the problems last time was requiring a gate on someone else's property (off-site improvement). He said this proposal was for speed humps on the developer's property and that would be a legitimate condition. He said if he tried to put up a gate across property where other people have easements, then there would be legal issues due to impeding access.

Coun. Stanton said that putting the speed humps on the easement lane would impact those who live on that lane.

Mawson said that was correct; if they put speed bumps on that lane to address the residents' concerns about increased traffic, it would impact the residents.

Coun. Stanton said that that lane was the only street the residents could use.

Coun. Bode asked for clarification that the discussion was to be related to the number of lots and not include any side agreement that the developer might have or anything that the developer might do on his property.

Rappleyea said the testimony should be limited to the number of lots. He said once the hearing was closed, the Council could discuss anything about the entire project.

Mawson said he thought the access was related to the amount of traffic that was related to the number of lots.

Mayor Drake closed the public hearing.

Coun. Bode said she was hopeful that the two parties would talk and she gave them credit for having the conversation. She said the developer made a good comment when he said that urban infill was tough to live with and everyone has to live with Metro's directives. She said West Slope did have certain characteristics that were its own. She said she went and looked at a neighborhood that had single-story homes in which there was infill development with multiple storied structures. She said she did not find it was compatible; rather it was disruptive. She said based on the livability issue and on the fact that someone else imposed all of these rules on everyone, and then provided wriggle room by saying it was an R-7 zone, she was going to support the appeal.

Coun. Bode MOVED, SECONDED by Coun. Stanton, that Council support APP 2007-0001, Appeal of the Pointer Road PUD, and overturn the Planning Commission's decision and deny the project.

Coun. Stanton asked staff if all the lots but one were 7,000 sq feet or better.

Planner Liz Jones said all the lots were 5,000 square feet, except for one which was close to 5,000 square feet.

Coun. Stanton asked how many units would be allowed on that site under a normal PUD.

Development Services Manager Steven Sparks said based on the gross parcel area for the site, the maximum density was 14 dwelling units. He said page 53 of the staff report showed the maximum density was 14 and the minimum was seven units. He confirmed that the development could be seven units or better.

Mayor Drake asked if the motion was to deny without prejudice.

Rappleyea explained that without prejudice meant they could reapply for a new application immediately.

Coun. Arnold said infill was difficult and people rarely liked it. She said usually PUDs were townhomes, condos or homes on lots of 3,000 to 4,000 square feet. She said 5,000 square feet might seem small, but in comparison to what was happening in other PUD developments, it was not. She said in this application they have the equivalent of 7,000 square feet of usable space with 5,000 square foot lots. She added R-7 lots were no longer being done. She said she did not feel this project was unreasonable. She said she was concerned about safety and compatibility. She said people heading west might try to access the easement lane; however, anyone heading east would not as that would be opposite of the direction they were headed. She said using the easement lane was not easy because you were almost in people's driveways; the only section where

people could speed was on the section the developer owned. She said logically, the only place where it would make sense to put speed humps was on the section of the lane that the developer already owned. She said there was concern with traffic safety on the easement lane. She said she saw that major safety issues already existed on that greenhouse property due to open buildings, broken glass panes, open barrels, transients seeking shelter in the buildings and water runoff with pesticides. She said when she weighed safety in terms of the existing hazards on site vs. the chance that someone might get hit, she leaned towards the development. She said for those reasons she would not support the motion.

Coun. Doyle referred to Coun. Bode's comment regarding a development she visited where she saw multi-storied buildings in a single-story neighborhood. He asked her if that was the basis for her motion, rather than favoring eight units over ten units on that site.

Coun. Bode said that her reasons for her motion were the moveable definition of livability, that she did not feel that ten units on that site supported livability, and the impact on the neighborhood as this was not compatible. She said that without prejudice meant that someone could return with an application. She said was not in favor of developing ten homes and she would like to see an alternate proposal. She said she found it interesting that the neighbors agreed something had to be done on that site and they would accept housing if they could agree on the number of units. She said she felt that was a good faith effort on the part of the community to work with the developer.

Coun. Doyle asked Coun. Bode if she felt eight two-story homes would be appropriate.

Coun. Bode said the motion on the table was to support the appeal. She said they were not discussing any private agreements or future proposals. She said the motion was without prejudice so that another application could be submitted.

Mayor Drake said the only issue on the table was a ten-lot PUD; the applicant did not bring in any other proposal or extend his 120-day deadline. He said the only action to take now was to approve or deny the application.

Coun. Dalrymple said he would not support the motion. He said the Code allowed a maximum of 14 units; the proposal was for eleven units and in the Planning Commission process that was reduced to ten units. He said the Code was compromised from 14 to 11 to ten, and now they were asking for less. He said this process was getting too restrictive to the rights of the developer. He said they were trying to step beyond where they should be stepping; they should think more closely about what the opportunity was in the Code for the developer. He said he understood that infill was tough, however the City was mandated and Code was Code. He said they were now seeing the repercussions of people not getting involved when Metro was putting these regulations together. He said because of that, he could not support the motion.

Coun. Bode asked staff if they looked at the total square footage of this site to determine that 14 homes could be placed on this site.

Sparks explained that the 14 dwelling units were based on the total square footage of the parcels that were subject to the application.

Coun. Bode said that out of that 14, they would have to take out land for roads. She said it would be impossible to build 14 homes because there would be no road.

Sparks said someone could come propose a 14-unit building that would meet development requirements in terms of building height and setback. He said a 14-unit apartment or condominium development could be proposed.

Coun. Dalrymple noted that on page 53 of the staff report, 96,951 square feet was the total site area of which 16,496 was taken out for the private road and 19,480 square feet was subtracted for open space. He said that left 60,975 square feet as net acreage, upon which the minimum calculation was done based on the 80% to get to the seven units. He said he did not explain that in his previous statement. He said it was important to understand this, especially after the clarification that Sparks just made. He reiterated he felt they were being too restrictive.

Coun. Stanton said she seconded the motion because while ten units was the median between seven and 14, it was too much, too close together. She said she did not buy all the points in Cox's letter of March 1 but that did not matter for she did not believe this development fit. She said compatibility as a neighbor went beyond square footage, setbacks and building heights. She said the idea of speed humps on the access road was abhorrent and they would only impact the people who should not be impacted by this development. She said she would support this motion to reverse the Planning Commission's decision and support the appeal because she did not like the speed humps and she felt that with a different configuration they could have all the houses they wanted without them being on top of each other.

Coun. Bode said her decision to support this came from her experience on the Planning Commission. She said when a project comes to Council, they were still dealing with livability, the character of the neighborhood and the density range.

Mayor Drake explained he does not vote unless there is a tie, but he wanted to voice his opinion on this project. He said West Slope was a unique neighborhood; eleven years ago this neighborhood circulated a double-majority petition to annex to Beaverton. He said he hoped the residents' experience with the City had been positive over the past eleven years. He said he has had a lot of contact with the neighborhood over the years and he has known Mawson from his previous professional life. He said it was unusual for a neighborhood to say that something bigger and newer was not compatible; usually people do not want small-unit development. He said this was a unique complaint about a project, yet it fits with the uniqueness of the neighborhood. He said if he was able to vote, he would support the motion to deny the application, because the project as currently configured was not compatible with the surrounding neighborhood.

Coun. Bode reconfirmed that voting without prejudice meant the developer or someone else could reapply within one year with a new application.

Coun. Arnold said the residents have to consider how much they like the current site. She said nothing would be built if it could not be sold for cost and a little profit. She said it was unknown how long the greenhouse might stay there. She said she knew traffic was a concern and she had hoped the two parties would have returned with an idea for a gate on the access easement road at SW Pointer Road.

Mayor Drake repeated the motion was to overturn the Planning Commission's decision and to accept the appeal without prejudice.

Question called on the motion. MOTION CARRIED with Couns. Bode, Doyle and Stanton voting AYE; and Couns. Arnold and Dalrymple voting NO. (3:2)

Rappleyea said the final order would be brought to Council at the meeting of March 19, 2007.

Coun. Stanton said for the record, that a big point in this decision for her was that the suggestions of a gate or speed bumps would impact the people who already lived in the neighborhood. She said new development has to take the impact that it creates; it cannot penalize adjoining property owners.

RECESS:

Mayor Drake called for a brief recess at 7:40 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 7:50 p.m.

WORK SESSION:

07051 TA 2006-0003 (PUD Text Amendment)

Senior Planner Colin Cooper introduced himself and Development Services Manager Steven Sparks. Cooper said TA 2006-0003, the Planned Unit Development (PUD) Text Amendment was remanded back to the Planning Commission to address the issues raised at the City Council Work Session of November 13, 2006. He said the Commission considered these issues, made revisions to the proposed text, and those changes were contained in Land Use Order No. 1941 which is in the staff report. He said staff recommended approval of these text changes and first reading of the ordinance.

Coun. Doyle asked how many PUDs the City received in a year.

Sparks said when the text was adopted in 2004, PUDs dropped from ten a year to two or three. He said feedback from developers indicated this was largely due to the 20% open space requirement.

Coun. Stanton asked if the 20% contiguous open space was still required.

Cooper said the existing standard was that 20% of the gross site area should be dedicated to open space. He said one of the concerns with the PUD applications that were received was that the 20% open space was separated into unusable parcels. He said the standard was revised in the proposed text amendment to require a minimum ratio so that the open space cannot be more than three times in length as it is in width; that ratio would create a usable buffer or play area.

Coun. Arnold referred to sloping and asked what the requirements were in terms of grade.

Cooper said the consultant originally proposed was that no more than 40% of the area being dedicated to open space would contain slopes greater than five percent (5%) to ensure that it was usable space. He said at the Council Work Session the question was raised if that was too much. He said the Commission increased the amount of area that could be dedicated in open space from 40% to 60% that could have slopes of five percent or greater. He said that would leave 40% of the open space having slopes of five percent or less to be used for more active open space uses. He said that provided more flexibility for the development community.

Coun. Arnold asked if there was a maximum on the slope.

Cooper said there was no maximum because many of the areas would be highly constrained natural areas, such as ravines.

Coun. Arnold asked for clarification on how or if the slope was included in the amount of area for open space.

Cooper said that if there was a 20,000 square foot open space dedication, with the revisions to the text 60% of that area could contain a slope of five percent or greater.

Coun. Arnold said when she was talking about area, the area on a flat surface from Point A to Point B, was different than the area of a slope going down. She asked how the 20% was calculated on that basis.

Sparks explained that area was not calculated based on a slope; area was calculated from a straight, horizontal, flat view.

Coun. Dalrymple referred to page 18, line 39, Planning Commission Draft Minutes of February 7, 2007, that stated that "the Commission came to a consensus to replace the existing language with the existing Code language that allows the Commission discretion to approve a phased PUD plan for up to five (5) years." He said rather than just saying five years, it gave the Commission discretion for five years. He asked how that discretion would be made known to an applicant and how would it be reviewed by the Planning Commission.

Cooper said the current Code would be maintained so an applicant reviewing the standards would be aware that they have up to five years and the burden of proof was on the applicant to demonstrate that there was a legitimate reason. He said in his ten years with the City, he knew of no application where the Commission had declined a reasonable phasing rational for the five years.

Sparks said a typical response in the pre-application process was that the applicant would get two years; if an applicant had planned for a five-year phased project, staff would ask that the applicant be very clear in what they are requesting of the Commission. He said most PUDs were small-scale projects, with exception of the Teufel Nursery. He said the Teufel Nursery was a two-phase project. He said the first phase was the residential section and the applicant said it would start within two years;

he then put a foundation on the site which met the vesting requirements. He said it could take the applicant ten years to build out the residential portion of the two phases but that was okay since he had vested his land use approval. He said the second phase was the commercial phase and the Preliminary PUD process was used; the applicant could propose a Final PUD for that phase at anytime. He said if he had wanted to, the applicant could have requested a longer period of time for that second phase.

Coun. Dalrymple referred to a discussion at the work session regarding density, lot dimensions and compatibility with adjoining development. He asked if adjacent parcels were not developed to the Comprehensive Plan level (when discussing compatibility with building height), would the proposed PUD that borders that area be restricted to a height less than what they would normally be allowed if the designated Comprehensive Plan level was provided on that adjacent property. He asked if that was discussed.

Cooper said that was addressed as Item 6 in the January 10, 2007, memorandum to the Planning Commission (in the record). He said the Commission discussed the issue and did not change the proposed language, for the Commission felt its interpretations have been consistent in assuming that the development adjacent to the proposed development could be redeveloped to the Development Code height so that new development would not be penalized in that regard.

Coun. Dalrymple asked staff to comment regarding Tualatin Hills Park and Recreation District's (THPRD) response to the issue of pocket parks.

Cooper said staff met with THPRD staff. He said THPRD would not accept dedications less than two acres, unless they were adjacent to existing parks or were significant linear connections between an existing and future park. He said many of the open space areas seen in PUDs would not qualify for dedication to THPRD. He said THPRD's policy was based on history and operational efficiencies associated with maintaining its parks. He said THPRD said that the City's process of contacting THPRD as part of the Facilities Review Process, was working well and THPRD would be happy to take advantage of opportunities that arise for the dedication of land to the District.

Coun. Dalrymple thanked the Planning Commission and staff for doing a good job in reviewing these issues. He said he was satisfied with the results.

Coun. Doyle noted that page 9 of the staff report, the Planning Commission Minutes of February 7, 2007, lines 23-26, referred *the possibility of crafting language that creates a graduated transfer of density*. He asked if that would happen down the road.

Cooper said they looked at a number of different possible formulas but they became too complicated. He said the current Code allowed transfer of density from slopes greater than 25%. He said it was agreed to leave this language as-is.

Coun. Stanton read from the Final Order that the Commission discussed the issue of transferring density from steep slopes "and concluded so long as the resulting development is required to go through an architectural review there is no significant issue by allowing a full transfer of density to the remaining developable portion of the site." She asked who would do the architectural review.

Cooper said architectural review for single-family residential development was included in the proposed PUD standards; for multi-family development architectural was a component of design review. He said the proposed text would require PUDs to meet architectural standards that would be reviewed by the Planning Commission.

Sparks said the City currently requires design review for single-family homes; the Code has 12 design features and single-family home development needs to incorporate two of those 12. He said this would expand that administrative review.

Coun. Stanton referred to the administrative review and that it was not always the same two design features that were incorporated into the PUD homes. She asked if there was a standard or process to ensure that a variety of design features were selected.

Cooper said this was called anti-monotony language and it was being done more often. He said the Commission discussed this but felt the language provided sufficient flexibility to let developers know if they were not happy with a proposed project.

Sparks said that the development community was very interested in design variety for i marketing purposes, so they often have three or four different housing types sprinkled throughout a development.

Coun. Arnold noted that if the City had to cleanup property in a PUD that the homeowner's association failed to maintain, the City would put a lien on the property. She asked if that lien would be put on the open space property.

Cooper said the City could only lien the property on which the work was done.

Coun. Arnold said she thought this would be a problem in the future and she hoped something could be done now to prevent that from happening.

Coun. Stanton said she remembered Thunderhead Way that was owned in common by eight homeowners who did not know they had a homeowners' association to maintain this property. She said after the City tried multiple times to get the property mowed, the City planned to put a lien on each of the property owners since they held that property in common. She questioned staff's comment that it could only lien the property on which work was done and not the people who own the property.

Rappleyea said it would depend on the language of the Homeowners' Association rules; the general principle in property law was that if the City mowed a property, it could put a lien on that property. He said homeowners' associations put liens on properties if the property owners do not pay. He said there could be language in specific homeowners' associations documents where liens could be filed on the individual property owners.

Coun. Stanton said she wanted staff to ensure that such language was in every homeowners' association document as the City processes PUDs. She said in the case of Thunderhead Way, if the City had not been able to show the property owners that they were responsible for maintaining that site and that the City could put a lien on their own property for not doing so, there would have been no way for the City to deal with this property. She said this concerned her.

Mayor Drake said Thunderhead Way involved about 60 homes and there was a condition that this small single-lot storm detention pond be operable as a condition of development. He said most of the homeowners were happy to upgrade the facility. He said the City assessed the homeowners to upgrade the facility and then ownership of the pond was transferred to the City. He said it was a bit of a nightmare.

Coun. Arnold asked if language could be included in the homeowners' association document to put onus on the homeowners to maintain common areas.

Rappleyea said that could be a condition of development and that would make each property owner responsible for the maintenance. He said that could also be included in the homeowners' association document so that it would be clear that this was their responsibility and the City could put a lien on the owners' property for not doing so.

Cooper said that the City had that ability through Chapter 10 and also in the proposed PUD language there is a review of the proposed homeowners' association rules by the City Attorney.

Coun. Stanton said she was looking forward to this new Code.

ORDINANCES:

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the rules be suspended, and that the ordinances embodied in Agenda Bills 07052, 07053 and 07054 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

Coun. Stanton said she supported Ordinance 4430, the PUD Text Amendment just discussed in work session.

Coun. Arnold abstained from voting on Agenda Bill 07054 (Ordinance No. 4432)

First Reading:

Rappleyea read the following ordinances for the first time by title only:

07052 TA 2006-0003 (PUD Text Amendment) (Ordinance No. 4430)

07053 TA 2006-0010 (Sunset Transit Center and Teufel Town Center MPR Text Amendment) (Ordinance No. 4431)

07054 TA 2006-0012 (Merlo & Tektronix MPR Text Amendment) (Ordinance No. 4432)

Second Reading:

Rappleyea read the following ordinances for the second time by title only:

07041 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Six Properties Located in Central Beaverton; CPA 2006-0017/ZMA 2006-0023 (Ordinance No. 4424)

07042 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located East of SW Hocken Avenue and West of SW Cedar Hills Boulevard on the South Side of SW Jenkins Road; CPA 2007-0002/ZMA 2007-0001 (Ordinance No. 4425)

07043 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located South of NW Walker Road and North of Baseline Road, on the East Side of SW 173rd Avenue; CPA 2007-0003/ZMA 2007-0002 (Ordinance No. 4426)

07044 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located South of NW Waterhouse Avenue, North of NW Blueridge Drive and East of NW Turnberry Terrace, on the West Side of NW 158th Avenue; CPA 2007-0004/ZMA 2007-0003 (Ordinance No. 4427)

07045 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located West of NW 167th Place, East of NW 173rd Place and South of the Sunset Highway, on the North Side of NW Cornell Road; CPA 2007-0005/ZMA 2007-0004 (Ordinance No. 4428)

07046 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located Both North and West of NW Cornell Road, East of NW Bethany Boulevard and South of the Bethany-Cornell Onramp to the Sunset Highway; CPA 2007-0006/ZMA 2007-0005 (Ordinance No. 4429)

Coun. Doyle MOVED, SECONDED by Coun. Arnold, that the ordinances embodied in Agenda Bills 07041, 07042, 07043, 07044, 07045 and 07046 now pass. Roll call vote. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

07047 Resolution Supporting City 2007-2009 Transportation and Growth Management Grant Application

Coun. Stanton referred to this agenda bill that was approved earlier under the Consent Agenda. She said Metro would make a decision regarding adoption of the Regional Transportation Plan (RTP) in December 2007; if the grant begins in 2007, there would only be one year to complete an updated City Transportation System Plan (TSP) once the grant was approved, making adoption of an updated TSP due December 2008. She said she was curious about the process as that would only leave one year for the City to come up with its own updated TSP. She said she had no problem with an extension or did staff think Metro would take longer than December to make its decision.

Grillo said the Regional Transportation Plan was supposed to be done at the end of this year. He said normally he thought they were given approximately a year. He said he did not know what the conditions would be behind that decision. He said he could get further clarification from the transportation staff and report back to the Council. He said to the extent that they were applying for TGM grants to update the City's Transportation System Plan to 2035, if a decision was made this year and there was only a year to come into compliance, the City would indicate that it was making significant progress towards compliance.

Coun. Stanton said her concern was that 2007-2009 might be the grant cycle, but the City would need to work faster than that to meet Metro's requirements.

EXECUTIVE SESSION:

Coun. Bode MOVED, SECONDED by Coun. Stanton, that Council move into executive session in accordance with ORS 192.660(2)(d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

RECESS:

Mayor Drake called for a brief recess at 8:30 p.m. to setup for the executive session.

RECONVENED:

Mayor Drake reconvened the meeting at 8:35 p.m.

The executive session convened at 8:35 p.m.

The executive session adjourned at 9:10 p.m.

The regular meeting reconvened at 9:10 p.m.

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:10 p.m.

_____
Sue Nelson, City Recorder

APPROVAL:

Approved this day ,2007,

_____
Rob Drake, Mayor

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: A Resolution Forming the Murray Boulevard Extension Local Improvement District

FOR AGENDA OF: 03-19-07 **BILL NO:** 07055

Mayor's Approval:

DEPARTMENT OF ORIGIN: City Engineer

DATE SUBMITTED: 03-13-07

CLEARANCES: City Attorney
Finance

PROCEEDING: Consent

EXHIBITS: Resolution with Exhibits A - D

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0.00	BUDGETED $0.00	REQUIRED $0.00

HISTORICAL PERSPECTIVE:

The Progress Ridge fka Progress Quarry property development lying generally north of SW Barrows Road has included the construction of many public streets to serve the property and the public generally. A public project to complete that street network so as to extend Murray Boulevard between Scholls Ferry Road and Barrows Road is about to commence, with tentative construction contract award scheduled for April 2007. To assure adequate funding for this project, the present owners of two planned condominium development sites have petitioned for and waived their right to remonstrate against the formation of a local improvement district that will include their properties and that will result in the levying of assessments against those properties to pay part of the cost to complete the Murray Boulevard extension.

INFORMATION FOR CONSIDERATION:

The City Engineer finds that the maximum amount of $411,000 to be assessed against the two condominium development sites in proportion to the number of condominium units to be developed on each site is a fair allocation of the partial costs to construct this road project given the special benefit the project will lend to these properties. If the properties are developed as now proposed, this would make for, and the City Engineer recommends, a uniform and maximum assessment of $3000 against each condominium unit. The assessment lies against the real property, not just the improvements, but on these two properties the proposed condominium owners also will own an undivided fractional interest in the real estate underlying the condominium units. As of this date the condominium units are not yet fully, legally established, thus this recommended per-unit assessment is only an estimate. The present owners have executed both the petition and waiver which will bind the future condominium owners to share in the costs. The actual construction costs will not be known until the construction contract is let and the work is underway, which again should occur in the next calendar quarter.

RECOMMENDED ACTION:

Pass Resolution

RESOLUTION NO. 3893

A RESOLUTION FORMING THE MURRAY BOULEVARD EXTENSION LOCAL IMPROVEMENT DISTRICT

WHEREAS, the extension of Murray Boulevard from Scholls Ferry Road to Barrows Road ("the Project") is part of the City's duly adopted transportation plan and is described on Exhibit "A" hereto; and

WHEREAS, the Council finds that certain private properties that will specially benefit from construction of the Project thus should share in the cost to construct the Project in an amount not to exceed $411,000; and

WHEREAS, Progress Ridge Townhomes G. L.L.C., and Progress Ridge Carriage H. L.L.C., both Washington limited liability companies ("Progress Ridge") own property known as Lots 53 and 54 of Progress Ridge, City of Beaverton, Washington County, described in Exhibit "B" that would benefit from the Project and have petitioned for formation of an LID (Exhibit C) by which those properties would share the cost of construction up to that amount; and

WHEREAS, Progress Ridge as the sole owner of the properties proposed to be benefited by the LID has submitted and recorded a waiver of remonstrance against formation of the LID, attached as Exhibit "D"; and

WHEREAS, as all the benefited property owners consent to the formation of the LID, the notice and hearing provisions of BC 3.02 do not apply and the City may proceed under BC 3.02.035 which provides an "alternative procedure for initiating local improvements"; and

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERTON, OREGON:

1. The City hereby forms the Murray Boulevard Extension Local Improvement District that encompasses the properties described in Exhibit "B" to this Resolution.

2. The Murray Boulevard Extension LID includes the construction of 700 feet of roadway and associated bike lanes, sidewalks and a bridge across Summer Creek to connect Murray Boulevard from Scholls Ferry Road to Barrows Road.

3. The Council accepts the City Engineer's estimate of the total cost of the Project to be $3,313,536.00.

4. The Council accepts the City Engineer's recommendation, and the petitioner agrees that a fair apportionment and assessment of the cost of the project to the benefited properties is an amount not to exceed $411,000. The petitioner and the City have agreed to a fair division of the costs among the two parcels based on a proposed development of 137 condominium units. Lot 53, with 61 proposed units, shall be allocated up to $183,000 which is a 44.5% share. Lot 54, with 76 proposed units, shall be allocated up to $228,000, a 55.5% share, for a total not to exceed $411,000.

5. This Resolution and Petitioner's Petition and Waiver of Remonstrance is notice of the proposed assessment to the Petitioner.

6. Pursuant to BC 3.02.095 the assessments to be levied against the benefited properties may, upon application therefore and City's approval, be paid in installments over a period of ten (10) years with interest as provided for in BC 3.02.095.

7. The Council directs that a certified copy of this Resolution be recorded in the deed records of Washington County with references to the properties included in the boundaries of the LID.

ADOPTED by the Council this _____ day of _____, 2007

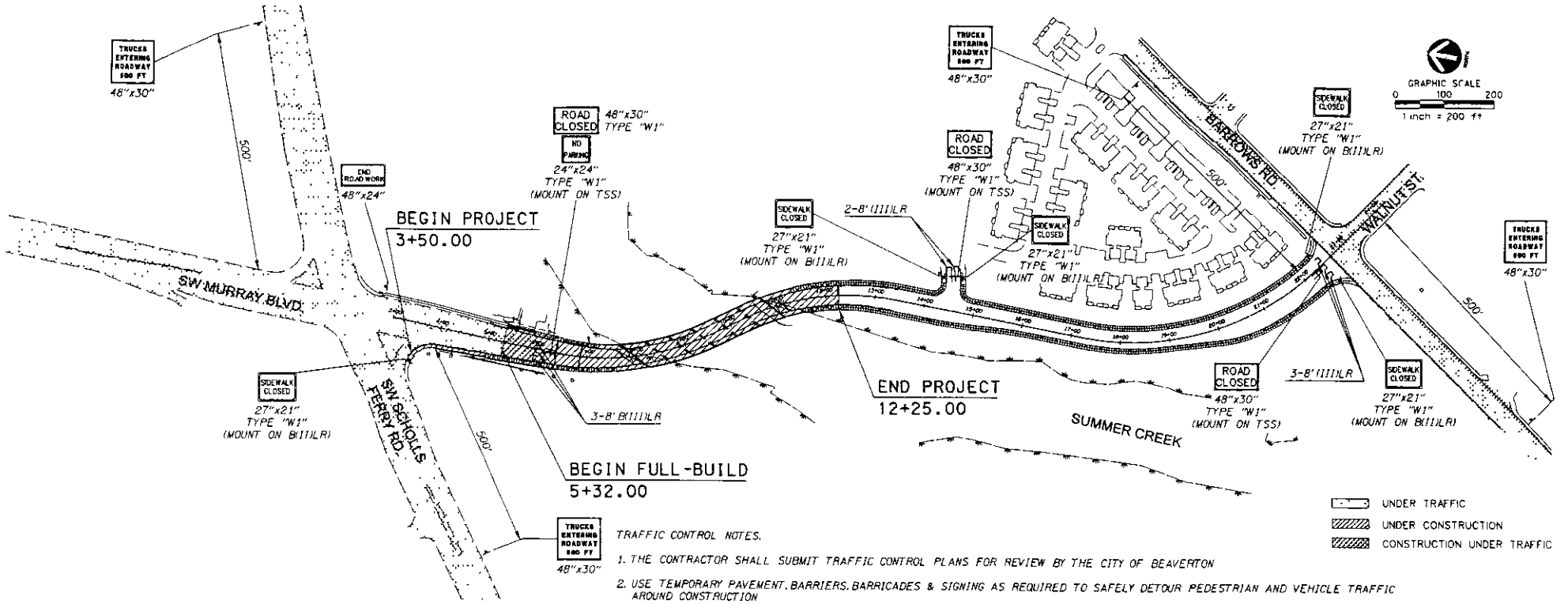
APPROVED by the Mayor this _____ day of _____, 2007.

AYES: NAYS:

ATTEST: APPROVED:

_____ _____

SUE NELSON, CITY RECORDER ROB DRAKE, MAYOR



UNDER TRAFFIC
UNDER CONSTRUCTION
CONSTRUCTION UNDER TRAFFIC

TRAFFIC CONTROL NOTES.

1. THE CONTRACTOR SHALL SUBMIT TRAFFIC CONTROL PLANS FOR REVIEW BY THE CITY OF BEAVERTON
2. USE TEMPORARY PAVEMENT, BARRIERS, BARRICADES & SIGNING AS REQUIRED TO SAFELY DETOUR PEDESTRIAN AND VEHICLE TRAFFIC AROUND CONSTRUCTION
3. SIGNS, BARRICADES AND OTHER METHODS OF PEDESTRIAN AND VEHICULAR TRAFFIC CONTROL, INCLUDING FLAGGERS, SHALL BE EMPLOYED BY THE CONTRACTOR TO THE EXTENT DEEMED NECESSARY BY THE AGENCY OR AS SHOULD APPEAR REASONABLY NECESSARY TO THE CONTRACTOR TO PROTECT WORKERS OR THIRD PARTIES IN WHICH CASE, EXCEPT FOR EMERGENCY SITUATIONS, THE AGENCY'S APPROVAL SHALL BE OBTAINED IN COMPLIANCE WITH THIS SECTION UTILIZE STANDARD ODOT DRAWINGS RD900, RD908, RD911 RD950, TM100, TM105 & TM239 FOR TRAFFIC CONTROL REQUIRED ON STREETS WORK SHOWN IS THE MINIMUM REQUIRED AND SHALL BE SUPPLEMENTED WITH ADDITIONAL TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC MEASURES AS REQUIRED DURING THE COURSE OF WORK.
4. COVER OPEN TRENCHES WITH STEEL TRAFFIC PLATE AT NIGHT OR AS DIRECTED
5. ACCESS TO DRIVEWAYS AND ROADWAY APPROACHES WITHIN THE PROJECT LIMITS SHALL BE MAINTAINED AT ALL TIMES. TRAFFIC PLATES SHALL BE USED ACROSS ALL TRENCHES BLOCKING DRIVEWAY TO PRIVATE ACCESS AT ALL TIMES. WHILE THE ACTUAL WORK IS BEING PERFORMED. FLAGGERS SHALL BE USED EMERGENCY VEHICLES SHALL NOT BE DETAINED BY CONTRACTORS
6. EXISTING SIGNS THAT CONFLICT WITH CONSTRUCTION SIGNING ARE TO BE COVERED OR REMOVED & REINSTALLED DURING & AFTER CONSTRUCTION.
7. ALL SIGNS ARE TYPE "00" UNLESS OTHERWISE NOTED

REGISTERED PROFESSIONAL ENGINEER
8068
OREGON
JULY 22, 1974
FRED A. WILLER
EXPIRES: 06/30/08

Traffic Control Plan

SCALE 1"=200'

OBEC CONSULTING ENGINEERS
Corporate Office: 920 COUNTRY CLUB ROAD, SUITE 1008 EUGENE, OREGON 97401-8006
3225 MISSION STREET SE, SUITE 100 SALEM, OREGON 97302-1295
1235 POPLAR DRIVE MEDFORD, OREGON 97504-3207

CITY OF BEAVERTON
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

		NO	DATE	REVISION	BY
DESIGNED BY	MCB				
DRAWN BY	SGF				
CHECKED BY					
APPROVED BY					

Summer Creek (SW Murray Blvd.) Bridge
Design Engineering (Phase 2)

TRAFFIC CONTROL PLAN

DATE: 1/12/07
PROJECT NO: 272-8
SHEET NO: 7 OF 41

File No. 17983

EXHIBIT A
RESOLUTION NO. 3893

EXHIBIT B

Lots 53 and 54, PROGRESS RIDGE, in the City of Beaverton, Washington County, Oregon
See also detail map, EXHIBIT B.1

RESOLUTION NO. 3893

PROGRESS RIDGE

LOCATED IN THE NORTHEAST QUARTER OF SECTION 5,
TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
CITY OF BEAVERTON, WASHINGTON COUNTY, OREGON

JULY 15, 2004

RECORDED AS DOCUMENT NO. 2004091210

LEGEND

- ⊙ DENOTES FOUND MONUMENT AS NOTED (SEE MONUMENT TABLE, SHEET 20)
- ⌀ DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "TETSUKA ASSOC. INC." (HELD) PER WASHINGTON COUNTY SURVEY NO. 29334
- ▲ DENOTES FOUND 5/8" IRON ROD WITH ALUMINUM CAP INSCRIBED "TETSUKA ASSOC. INC." (HELD) PER SURVEY NO. 29334
- □ DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "ALPHA ENG. INC." (HELD) PER PLAT OF "DAVID'S WINDSOR PARK NO 2"
- (1) DENOTES MONUMENT NUMBER (SEE MONUMENT TABLE, SHEET 15)

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JAN. 18, 1994
KEVIN WILLIAMS
2850
RENEWAL DATE 6-30-06

SHEET INDEX

NARRATIVE

THE PURPOSE OF THIS PLAT IS TO SUBDIVIDE THAT TRACT OF LAND DEFINED IN SURVEY NUMBER 29334 WASHINGTON COUNTY SURVEY RECORDS.

NOTES AND PLAT RESTRICTIONS

1) THE BASIS OF BEARINGS AND BOUNDARY DETERMINATION ARE PER SURVEY NUMBER 29334, WASHINGTON COUNTY SURVEY RECORDS.

2) TRACT A, AN OPEN SPACE, SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS

3) TRACT B, A STORM DETENTION FACILITY, SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS. AND TRACT SHALL BE SUBJECT TO A STORM DRAIN EASEMENT TO THE CITY OF BEAVERTON OVER ITS ENTIRETY.

4) TRACT C SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

5) TRACT D SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

6) TRACT E SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

7) TRACT F SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

8) TRACT G SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS, AND IS SUBJECT TO A PUBLIC ACCESS EASEMENT OVER ITS ENTIRETY

9) TRACT H SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS, AND IS SUBJECT TO A PUBLIC ACCESS EASEMENT OVER ITS ENTIRETY

10) TRACT I SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

11) TRACT J SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS.

12) TRACTS C, D, E, F, I, AND DD ARE SUBJECT TO A STORM SEWER, SURFACE WATER, DRAINAGE AND DETENTION EASEMENT OVER THEIR ENTIRETY TO THE CITY OF BEAVERTON.

13) TRACTS K-Z AND AA-CC, LANDSCAPE AREAS, SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C. AND ARE SUBJECT TO UTILITY AND DRAINAGE EASEMENTS OVER THEIR ENTIRETY TO THE CITY OF BEAVERTON.

14) TRACTS DD-FF SHALL BE OWNED AND MAINTAINED BY PROGRESS RIDGE, L.L.C., ITS SUCCESSORS OR ASSIGNS

15) THIS SUBDIVISION IS SUBJECT TO THE CONDITIONS OF APPROVAL PER CITY OF BEAVERTON FILE NO. SB2002-0018/LA 2002-0018.

16) THIS SUBDIVISION IS SUBJECT TO INGRESS, EGRESS AND UTILITIES EASEMENTS CONTAINED IN DOCUMENT NUMBERS 2003-208809, 2003-208810 AND 2003-208811. THE WIDTH AND LOCATION OF SAID EASEMENTS ARE INDETERMINATE.

SHEET 1 OF 22

JOB NO MGH1021

TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING
9900 SW WILSHIRE ST #110
PORTLAND, OR 97225
503 517 0682 FAX 503 445 1300

Lot 54

Lot 53

4

EXHIBIT B.1

RESOLUTION NO. 3893

PROGRESS RIDGE

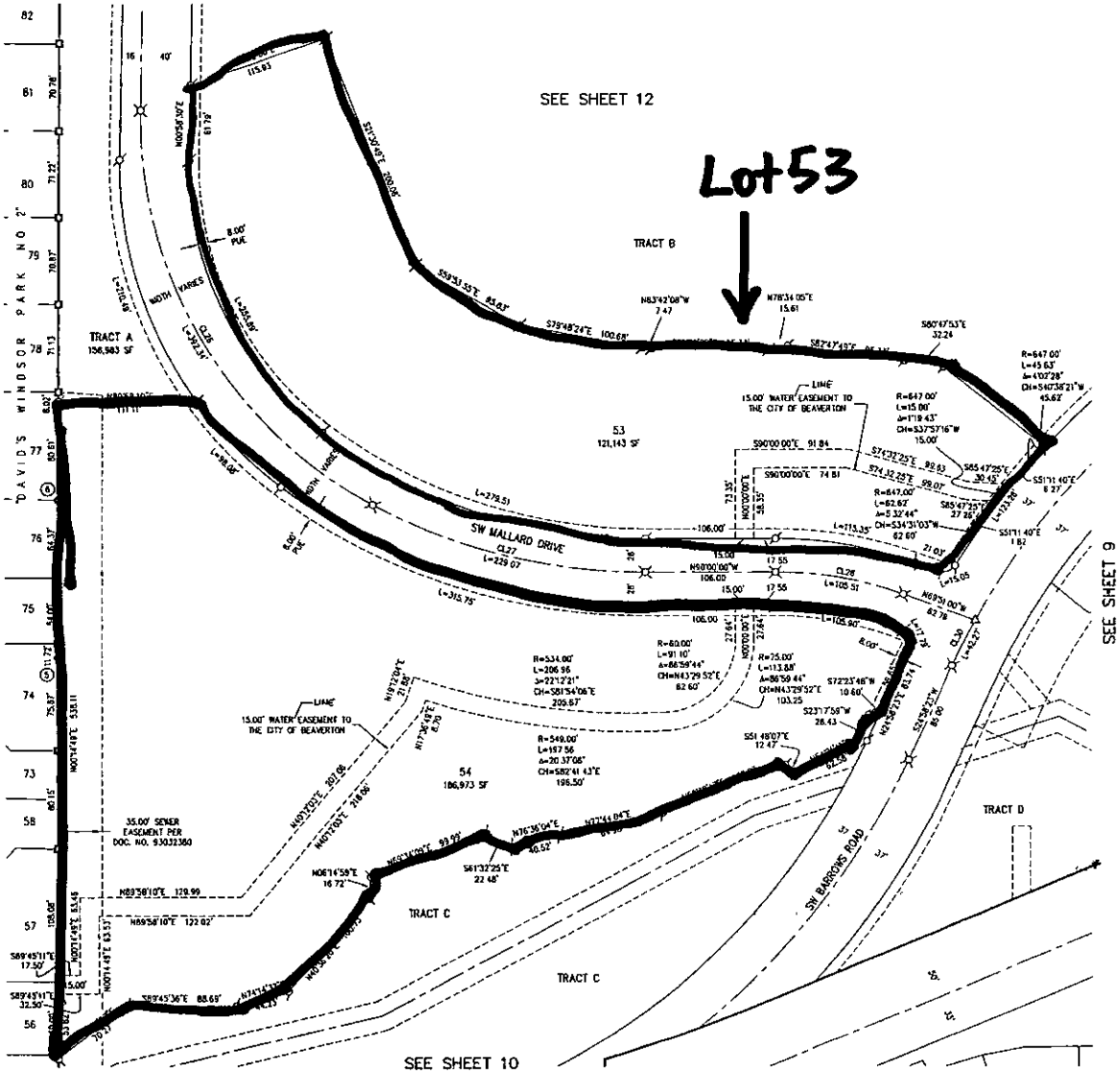
LOCATED IN THE NORTHEAST QUARTER OF SECTION 5,
TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
CITY OF BEAVERTON, WASHINGTON COUNTY, OREGON
JULY 15 2004

RECORDED AS DOCUMENT NO. 2004091210

5

Lot 53

Lot 54 →



LEGEND

- ● DENOTES FOUND MONUMENT AS NOTED (SEE MONUMENT TABLE, SHEET 15)
- ⊘ DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "TETSUKA ASSOC. INC." (HELD) PER SURVEY NO 29334
- ⊗ DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "NRG DESIGN, INC.", (HELD) PER PLAT OF "HAMILTON HEIGHTS", UNLESS NOTED OTHERWISE
- ■ DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "ALPHA ENG. INC.", (HELD) PER PLAT OF "DAVID'S WINDSOR PARK NO 2", UNLESS NOTED OTHERWISE
- ○ DENOTES 1-1/4" BRASS CAP INSCRIBED "TETSUKA ASSOC. INC." TO BE POST MONUMENTED
  SET ON _____
- ⊘ DENOTES 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "TETSUKA ASSOC. INC." TO BE POST MONUMENTED
  SET ON _____
- □ DENOTES BRASS TACK WITH 3/4" BRASS WASHER INSCRIBED "TETSUKA ASSOC. INC." TO BE POST MONUMENTED
  SET ON _____
- ⊗ DENOTES 5/8" X 30" IRON ROD WITH ALUMINUM CAP INSCRIBED "TETSUKA ASSOC. INC." TO BE POST MONUMENTED
  SET ON _____
- △ DENOTES 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "TETSUKA ASSOC. INC." IN MONUMENT BOX TO BE POST MONUMENTED
  SET ON _____

SF DENOTES SQUARE FEET

(#) DENOTES MONUMENT NUMBER (SEE MONUMENT TABLE, SHEET 15)

PUE DENOTES PUBLIC UTILITY EASEMENT

North

SCALE: 1"=60'

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JAN. 18, 1994
KEVIN WILLIAMS
2850
RENEWAL DATE: 6-30-06

SHEET 11 OF 22

JOB NO. MGH1021

TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING
9900 SW WILSHIRE ST #110
PORTLAND, OR 97225
503.517.0682 FAX 503.445.1300

EXHIBIT C - RESOLUTION NO. 3893

PETITION
FOR LOCAL IMPROVEMENT DISTRICT
TO THE CITY COUNCIL FOR BEAVERTON, OREGON

In the Matter of the Establishment of a Local Improvement District for Construction of a Portion of the Murray Boulevard Extension Project.	)))	PETITION) Murray Boulevard Extension Local Improvement District

Come now the undersigned record owners of one-hundred (100) percent of the benefited property (hereinafter referred to as petitioners) located within the boundaries of the proposed Local Improvement District to petition the Beaverton City Council pursuant to Beaverton Development Code (BDC) Chapter 3 and allege and request as follows:

I.

That the City Council establish a Local Improvement District to contribute to the portion of the construction of the Murray Boulevard Extension depicted on attached Exhibit A, generally inclusive of the wetlands bridging structure, bridge approaches, bridge supports and associated engineering and design, all in accordance with the design approved by the U.S. Army Corps of Engineers.

II.

That all properties contained within the boundaries of the Local Improvement District will be specially benefited by completion of the Murray Boulevard Extension improvements depicted on attached Exhibit A.

III.

That a report on the proposed construction be prepared and be filed with the Council. The report shall provide the following information:

1. A map or plat showing the general nature, location and extent of the improvements to be constructed and of the proposed Local Improvement District; and

2. A description of the construction to be done; and

3. An estimate of the probable total cost of the construction and a statement that no more than $411,000 of the total cost is to be paid by special assessment on benefited properties; and

4. A statement that the apportionment of said portion of the cost of the improvement to the properties specially benefited, as identified in attached Exhibit B, shall be allocated initially among Progress Ridge Townhomes G, L.L.C., and Progress Ridge Carriage H, L.L.C., and then assessed equally among all of the one hundred and thirty-seven (137) condominium units to be platted with the area of special benefit, in an amount not to exceed $3,000 per unit.

5. The description of each lot, parcel of land, or portion thereof to be specially benefited by the construction, with the names of the owners or reputed owners thereof and the estimated assessment or assessments against each such lot or parcel, found on attached Exhibit B.

IV.

This Petition is submitted on the express condition that the City of Beaverton will provide funding necessary to complete all the improvements depicted in attached Exhibit A, to the extent such funding is not provided through this Local Improvement District.

V.

That the Council, upon receipt of the report, enact an order creating and describing the Local Improvement District and directing that it be processed in accordance with provisions of BDC Chapter 3, unless provisions thereof have been waived, and the terms of this Petition, including that assessments may be paid in installments over a period of ten (10) years, subject to computation of interest as provided in BDC 3.02.095.

WHEREFORE, the undersigned petitioners request that BDC Chapter 3 be used to facilitate the above-requested contribution to completion of the extension of Murray Boulevard.

PROGRESS RIDGE TOWNHOMES G, L.L.C., a Washington limited liability company

By: PNW Home Builders South, L.L.C., a Washington limited liability company
Its Managing Member

By: PNW Home Builders, L.L.C., a Washington limited liability company
Its Sole Member

By: PNW Home Builders Group, Inc., a Washington corporation
Its Manager

By: _____
Fred Gast
Its Assistant Vice President

PROGRESS RIDGE CARRIAGE H, L.L.C., a Washington limited liability company

By: PNW Home Builders South, L.L.C., a Washington limited liability company
Its Managing Member

By: PNW Home Builders, L.L.C., a Washington limited liability company
Its Sole Member

By: PNW Home Builders Group, Inc., a Washington corporation
Its Manager

By: _____
Fred Gast
Its Assistant Vice President

EXHIBIT D

RESOLUTION NO. 3893

RESTRICTIVE COVENANT WAIVING RIGHT OF REMONSTRANCE FOR CREATION OF A LOCAL IMPROVEMENT DISTRICT FOR A PORTION OF THE COST OF EXTENDING MURRAY BOULEVARD

We the undersigned, being the authorized officers of **PROGRESS RIDGE TOWNHOMES G, L.L.C.** and **PROGRESS RIDGE CARRIAGE H, L.L.C.**, the legal owners of real property hereinafter described, do hereby consent to creation of a Local Improvement District to contribute to a portion of the cost of construction of the Murray Boulevard extension, not to exceed $411,000, an amount equivalent to $3,000 for each of the one hundred and thirty-seven (137) condominium units to be platted within the area of special benefit. We hereby expressly waive any and all right to remonstrance against the formation of such Local Improvement District by the City of Beaverton, in accordance with the attached Petition, Exhibit A hereto, and the said assessment of the above-stated portion of the costs thereof against said property.

This consent, and waiver to remonstrate, shall expire ten years from the date hereof. This restrictive covenant shall in no way limit the City or County government authority in regard to the subject property.

The property subject to this consent and waiver of remonstrance for a Local Improvement District for Construction of a Portion of the Murray Boulevard Extension is described as follows:

Lots 53 and 54, PROGRESS RIDGE, in the City of Beaverton, Washington County, Oregon.

It is hereby intended that this consent to, and waiver of right of remonstrance against, the said Local Improvement District by the City of Beaverton shall benefit the citizens of the City and all property owners within said property and shall be binding on ourselves and all subsequent owners of the property described above, including all owners of condominium units to be platted within the property described above, and shall be a burden running with the land. This restrictive covenant may only be removed with the written authorization of the Beaverton City Council.

(Remainder of Page Intentionally Left Blank;
Signatures on Following Page)

IN WITNESS WHEREOF, the Grantors below named, by and through their assistant vice president, Fred Gast, have caused this instrument to be duly signed hereto this _____ day of _____, 20____.

PROGRESS RIDGE TOWNHOMES G, L.L.C., a Washington limited liability company

By: PNW Home Builders South, L.L.C., a Washington limited liability company
Its Managing Member

By: PNW Home Builders, L.L.C., a Washington limited liability company
Its Sole Member

By: PNW Home Builders Group, Inc., a Washington corporation
Its Manager

By: _____
Fred Gast
Its Assistant Vice President

PROGRESS RIDGE CARRIAGE H, L.L.C., a Washington limited liability company

By: PNW Home Builders South, L.L.C., a Washington limited liability company
Its Managing Member

By: PNW Home Builders, L.L.C., a Washington limited liability company
Its Sole Member

By: PNW Home Builders Group, Inc., a Washington corporation
Its Manager

By: _____
Fred Gast
Its Assistant Vice President

(Acknowledgements on Following Page)

STATE OF WASHINGTON)
) ss.
County of Clark)

BE IT REMEMBERED that on this 26 day of JANUARY, 2007, personally appeared Fred Gast, who, being duly sworn, did say that he is the Assistant Vice President of PNW Home Builders Group, Inc., the Manager of PNW Home Builders, L.L.C., the Sole Member of PNW Home Builders South, L.L.C., the Managing Member of Progress Ridge Townhomes G, L.L.C., a Washington limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its authorized officer and he acknowledged said instrument to be his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

CARI S TAVERNIER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JUNE 26, 2010

Cari S. Tavernier
Notary Public for Washington
My commission expires: 6/26/10

STATE OF WASHINGTON)
) ss.
County of Clark)

BE IT REMEMBERED that on this 26 day of January, 2007, personally appeared Fred Gast, who, being duly sworn, did say that he is the Assistant Vice President of PNW Home Builders Group, Inc., the Manager of PNW Home Builders, L.L.C., the Sole Member of PNW Home Builders South, L.L.C., the Managing Member of Progress Ridge Carriage H, L.L.C., a Washington limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its authorized officer and he acknowledged said instrument to be his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

CARI S TAVERNIER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JUNE 26, 2010

Cari S. Tavernier
Notary Public for Washington
My commission expires: 6/26/10

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Authorize the City Attorney to Enter into a Professional Services Contract with Outside Counsel to Provide Municipal Court Prosecution.

FOR AGENDA OF: 03-19-07 **BILL NO:** 07056

Mayor's Approval: Linda C. Adland Mayor Pro Tempore

DEPARTMENT OF ORIGIN: City Attorney

DATE SUBMITTED: 03-09-07

CLEARANCES: Finance

PROCEEDING: Consent Agenda (Contract Review Board)

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $5,000	BUDGETED $9,000*	REQUIRED $5,000

*Account No. 001-50-0581-511. The FY 2006-2007 budget included $9,000 for various professional services. To date, $5,700 has been expended and $3,300 is committed for future expenditures. Funding for the additional appropriation is available from the General Fund's Contingency Account and is recommended to be included in the next Supplemental Budget.

HISTORICAL PERSPECTIVE:

The City Attorney occasionally seeks legal advice from experts in their various fields and in situations which may present an ethical conflict for the office, hires outside counsel.

INFORMATION FOR CONSIDERATION:

The City Attorney is seeking a lawyer to prosecute a Municipal Court violation (photo radar citation) issued to a City of Beaverton police officer. Funding for the additional appropriation is available from the General Fund's Contingency Account and is recommended to be included in the next Supplemental Budget.

RECOMMENDED ACTION:

Authorize the City Attorney to enter into a Professional Services Contract with Benjamin Grandy, Attorney at Law, in an amount not to exceed $5,000 and direct the Finance Director to include $5,000 in the next Supplemental Budget.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Bid Award – South Central "A" Utility Improvements Project

FOR AGENDA OF: 03/19/2007 **BILL NO:** 07057

Mayor's Approval:

DEPARTMENT OF ORIGIN: Public Works

DATE SUBMITTED: 03/05/2007

CLEARANCES: Purchasing
Finance
City Attorney
Capital Proj

PROCEEDING: Consent Agenda (Contract Review Board)

EXHIBITS:
1. CIP Project Data Sheet/Map
2. Bid Summary
3. Funding Plan

BUDGET IMPACT

EXPENDITURE REQUIRED *	AMOUNT BUDGETED *	APPROPRIATION REQUIRED *

- See attached Funding Plan (Exhibit 3).

HISTORICAL PERSPECTIVE:

The South Central "A" Utility Improvement project is included in the FY 2006/07 Capital Improvements Plan (CIP) under CIP Project Number 6038 (Exhibit 1).

The South Central "A" Area consists of approximately 110 homes and apartments located on 9th Street, 12th Street, 13th Street, 14th Street, Franklin Street, and Tucker Avenue between Lombard Avenue and Hall Boulevard. The homes in the area were constructed in the mid to late 1950's and the public utilities, particularly sanitary sewer, are in need of replacement or rehabilitation.

The South Central "A" Utility Improvement project was called out as a high priority project on page 5-6 of the January 2004 Sanitary Sewer Master Plan Update.

The capital improvement work in the South Central "A" area will be done in two phases. Phase 1 is sanitary sewer, water and storm drainage improvements and consists of the contract work being awarded. The project includes the rehabilitation of 4,495 feet of 8-inch sanitary sewer main line and 6,084 feet of 4-inch and 6-inch sanitary sewer laterals. Also included is the replacement of 1,347 feet of 2-inch and 6-inch waterlines with an 8-inch waterline and the replacement or rehabilitation of 1,427 feet of storm pipe and associated structures on 9th Street. Clean Water Services (CWS) will pay half of the sanitary sewer replacement costs as part of a CWS program to reduce inflow and infiltration (the entry of ground water into the sanitary sewer pipes) in aging sections of the sanitary sewer system. The intergovernmental agreement with CWS for South Central "A" was signed on September 28, 2006. The CWS reimbursement will

occur after Phase 1 is complete. Phase 1 is scheduled to begin on April 2, 2007 and be complete by August 31, 2007.

Phase 2 is street rehabilitation on 9th Street and 12th Street that will be completed by City forces in September 2007 after the underground work is complete. Street rehabilitation by City forces is listed in the Street Rehabilitation Section of the FY2006/07 CIP and is separate from the contract work contained in this agenda bill.

INFORMATION FOR CONSIDERATION:

The invitation for bid was advertised in the *Daily Journal of Commerce* on February 6, 2007. A mandatory pre-bid meeting was held on February 15, 2007. Seven contractors attended the pre-bid meeting. Four (4) bids were received and opened on March 1, 2007 at 2:00 p.m. in the Finance Department conference room (Exhibit 2). The project was bid using two alternatives for rehabilitating the existing sanitary sewer main line. Alternative 1 was Cured In Place Pipe (CIPP) such as was used in the Sandberg Subdivision Sanitary Sewer Improvement project. Alternative 2 was pipe bursting the existing concrete pipe with a high density polyethylene (HDPE) pipe. The contract documents state the City shall award the bid to the lowest bidder for either Alternative 1 or Alternative 2. Landis & Landis of Marylhurst, Oregon, submitted the lowest responsive bid in the amount of $937,611.25. The overall bid amount is $100,992.15 or 9.7% less than the Engineer's Estimate (Exhibit 3).

Staff reviewed the qualifications of Landis & Landis and investigated their performance with three previous customers from 2006. They received high marks from all customers. In addition, Landis & Landis completed Cedar Hills Boulevard Utility Improvement in 2004 and was recently awarded the installation of the Beaverton Central Plant hot and cold water pipes for Buildings E and F at the Round. Staff finds Landis & Landis has satisfied the bid requirements to construct utility improvements in a built-up, urban environment.

With City Council approval of the bid award, a Notice to Proceed (NTP) would be issued to the Contractor on or about April 2, 2007. The project contract requires substantial completion, which includes all work other than punch-list corrections and final cleanup, within 150 days of the NTP. This means the project's estimated substantial completion date is August 31, 2007.

RECOMMENDED ACTION:

Council, acting as Contract Review Board, award the bid to Landis & Landis in the amount of $937,611.25, in a form approved by the City Attorney, as the lowest responsive bid received for the South Central "A" Utility Improvement Project.

EXHIBIT 1

City of Beaverton
2006-2007 CIP

Updated Project Data

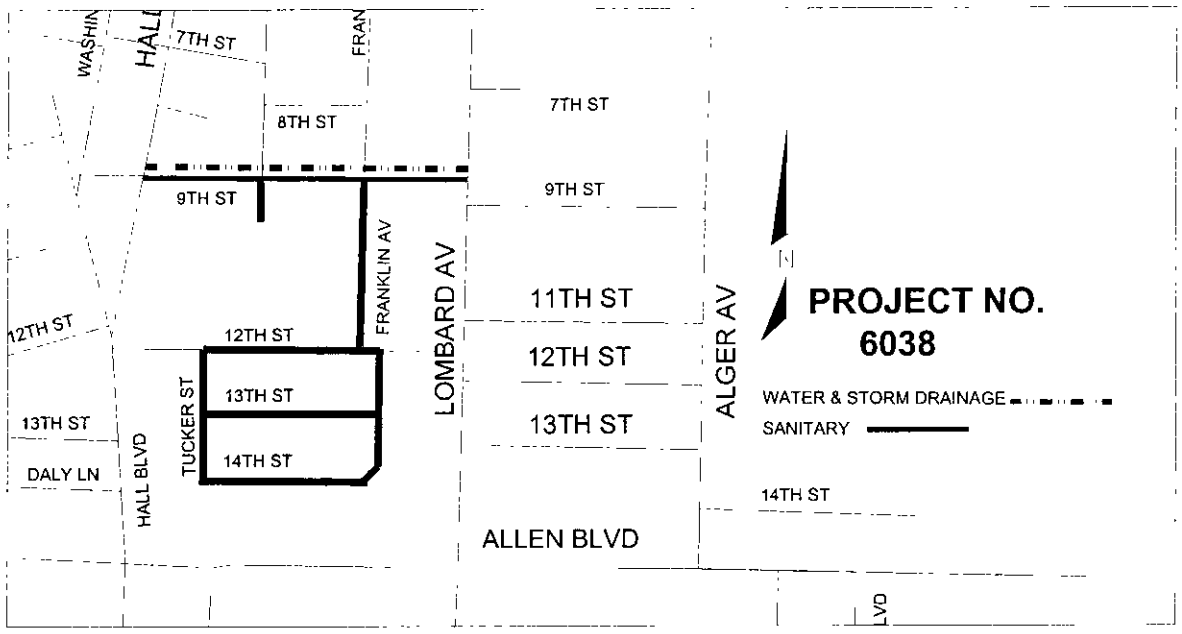
Sanitary

Project Number: 6038

Project Name: South Central Area "A" Sanitary Sewer and Waterline Improvements

Project Description: Within the Parkhaven Subdivision, rehabilitation of 3,116 feet of 8-inch sanitary pipe, replacement of 1,379 feet of 6-inch or 8-inch sanitary pipe, replacement of 6,084 feet of 4-inch and 6-inch sanitary laterals, replacement of 1347 feet of 2-inch and 6-inch water line on 9th St (Hall Blvd - Lombard Av), and replacement or rehabilitation of 1,427 feet of 10-inch and 12-inch storm drain pipe on 9th St (Hall Blvd - Lombard Av). Pavement overlays by City forces will occur on 9th St (Lombard - Hall) and 12th St (Lombard - Hall) in the Summer of 2007 after the utility work is complete.

Map:



Project Justification: The sanitary pipes in the project area are 60 to 80 years old and have a very high level of infiltration/inflow. The pipes also have severe root intrusion problems in areas and require a high level of maintenance. The existing cast iron water lines on 9th St are undersized and have experienced recent and numerous main breaks. The storm drain pipes on 9th St have numerous sags and cracks as well as pipe penetrations by sanitary sewer laterals.

Project Status: Design was completed in January 2007 and advertised for bid in Feb 2007. Bids were opened on 3-1-2007 and the low bid was from Landis & Landis Construction. The project is scheduled to be awarded in Mar 2007 and be under construction in Apr 2007. The contract allows 150 calendar days for completion (end of Aug 2007). Clean Water Services is to pay for half of the sanitary improvements as part of the CWS program to reduce inflow and infiltration.

Estimated Date of Completion: 09/30/2007

Estimated Project Cost: $1,200,000

First Year Budgeted: FY04/05

Funding Data:

Project No.	Fund No.	Fund Name	Amount	FY
6038	3620	Water Extra Capacity Supply	$340,000	FY2006/07
	3701	Water Improvements	$230,000	FY2006/07
	3850	Sewer Maint/Replacement	$670,000	FY2006/07

3950	Storm Maint/Replacement		$80,000	FY2006/07
CWS	Clean Water Services		($450,000)	FY2006/07
		Total for FY:	$870,000	

BID SUMMARY

CITY OF BEAVERTON

TO: Mayor & City Council

FROM: Purchasing Division **SUBJECT:** Bid Opening

Bids were opened on **MARCH 1, 2007** at **2:00** in the **FINANCE DEPARTMENT**

For: **"SO CENTRAL AREA "A" SANITARY SEWER AND WATERLINE IMPROVEMENTS"** **FY 06-07**

Witnessed by: **JIM BRINK**

VENDOR NAME AND CITY, STATE	FIRST TIER	PRE-QUAL	BID BOND	ADDEN # 1	GRAND TTL AMT ALT #1	GRAND TTL AMT ALT #2
K & R PLUMBING CLACKAMAS OR	X	X	X	X		$1,027,923.40
MOORE EXCAVATION PORTLAND OR	X	X	X	X		$1,326,917.00
LANDIS AND LANDIS MARYLHURST OR	X	X	X	X		$937,611.25
EMERY & SONS STAYTON OR	X	X	X	X	$1,071,698.61	

The Purchasing process has been confirmed.

Signed: H L Marolt
Purchasing Division-Finance Dept.

The above amounts have been checked: (YES) NO

Date: 3-1-07

EXHIBIT 2

Funding Plan - South Central "A" Utility Improvement Project
Project No. 6038

Fund Number and Name	FY2006-07 Fund Budget	FY2006-07 Project Budget	Engineer's Estimate	Project Cost As Bid	
502-75-3850-682 Sanitary Maintenance & Replacement	$2,040,000	$670,000	$744,695	$654,590	(1)
501-75-3701-682 Water System Improvements	$1,185,000	$230,000	$105,456	$94,505	
505-75-3620-682 Water Extra Capacity Supply System	$1,320,000	$340,000	$93,517	$83,806	
513-75-3950-682 Storm Maintenance & Replacement	$760,000	$120,000	$94,936	$104,710	(2)
Totals		$1,360,000	$1,038,604	$937,611	

(1) CWS will reimburse City 50% of sanitary sewer cost

(2) Storm drain improvements were added to the project after the FY06/07 CIP was approved to address problems that need to be resolved prior to the pavement overlay. The $120,000 can be absorbed within the existing $760,000 appropriation for FY 2006-07.

EXHIBIT 3

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Verizon Cable TV Franchise

FOR AGENDA OF: 3-19-07 **BILL NO:** 07058

Mayor's Approval:

DEPARTMENT OF ORIGIN: City Attorney

DATE SUBMITTED: 3-13-07

CLEARANCES:

PROCEEDING: Work Session

EXHIBITS:
- Ex. A: Staff Report
- Ex. B: Resolution 2007-01
- Ex. C: Cable Franchise Agreement
- Ex. D: Comcast/Verizon Comparison
- Ex. E: Questions & Answers
- Ex. F: Letter from Comcast, dated 2/12/07
- Ex. G: Letter from MACC, dated 2/26/07
- Ex. H: Letter from Nancy Marston, dated 3/2/07

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0	BUDGETED $0	REQUIRED $0

HISTORICAL PERSPECTIVE:

Verizon Northwest Inc, a Washington corporation, is proceeding to upgrade its copper wire telephone service in Beaverton and elsewhere in the United States to a service using fiber optic cable. The new service makes for greater capacity and higher speed transmission, allowing Verizon to transmit "cable television" and other video content using the same cable that will transmit telephone services. Federal law allows local governments to require separate agreements for use of public right of way for telephone service and cable television service notwithstanding that both services are transmitted over the same cable. Verizon has worked with MACC staff in the past year to negotiate this proposed cable television franchise and MACC staff has regularly briefed this office on their progress and the contents of the franchise. The MACC Board, including City Councilor Cathy Stanton, now has enacted a resolution that endorses the attached franchise and recommends that each member city enact it. The MACC Board acted by majority vote as Verizon will not presently offer the cable television service to a few of the smaller member cities, for reasons that will be explained in the work session.

INFORMATION FOR CONSIDERATION:

MACC's bylaws require that all member cities as to whom Verizon seeks a franchise must enact the very same franchise or if not, the franchise must be renegotiated. MACC staff will inform the Council of actions taken by other member cities to date; none of them have rejected the franchise nor have sought different terms. We have reviewed the terms of the franchise and find it acceptable as to legal form. After the work session concludes, the Council under a separate agenda bill and by separate action will consider a first reading of an ordinance granting this cable television franchise to Verizon NW Inc.

RECOMMENDED ACTION:

Conduct work session, consider the information attached to this agenda bill as exhibits and hear other public comment as the Council deems appropriate.

Exhibit A

Staff Report

MACC Metropolitan Area Communications Commission
REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY
Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN) • Tualatin Valley Community TV

MACC STAFF REPORT

VERIZON CABLE TV FRANCHISE RECOMMENDATION TO THE CITY OF BEAVERTON

Prepared by the Metropolitan Area Communications Commission
February 2007

The Board of Commissioners of the Metropolitan Area Communications Commission (MACC) have recommended that your City, and other affected MACC members, grant Verizon Northwest Inc. (Verizon) a 15-year cable television franchise (Exhibit A, MACC Recommending Resolution).

Verizon is currently upgrading its "copper" telephone system into an all Fiber-To-The-Premise (FTTP) network, which allows them to offer high-speed Internet service, cable service, and improved telephone services. This service, which Verizon calls FiOS, would compete directly with Comcast's cable services, as well as with their Internet and telephone service, "Comcast Digital Voice."

Verizon proposes to initially offer these services to eleven of the fourteen MACC jurisdictions in the areas where Verizon has Oregon PUC authority to operate their current telephone service. (See "Service Area" under "The Proposed Agreement" below.) A copy of the proposed franchise agreement is enclosed with this report (Exhibit B).

When you consider these issues, MACC staff and representatives of Verizon will be available to present this recommendation and answer your questions.

How will your decision affect your jurisdiction and citizens? If your City and the other affected MACC members grant Verizon a cable franchise, the company plans to construct a Video Hub Office (VHO) in the next 12 months in the Hillsboro area. This will enable Verizon to begin offering cable services – estimated to begin in Spring 2008. The entire franchised service area will have cable service available within four years of the date when Verizon first offers service. Once operating, Verizon's FiOS system will offer your citizens their first wire-based competitive choice for cable television services. Currently only Comcast Cable is franchised to provide cable service in the MACC area. We expect that Verizon's entry into this market should result in more stable prices. However, the two greatest benefits of this new competition should be: 1) choice among three (including satellite) providers, and 2) better customer service.

Background -- Verizon began upgrading their telephone plant in 2004 in those portions of the MACC area where they are authorized by the Oregon Public Utility Commission to provide telephone services. At this time, Verizon has upgraded most of its network to FTTP

in Hillsboro, Beaverton, Aloha/West Union (unincorporated Washington County), Durham, King City, and Tigard, and is beginning work in the Tualatin area. They expect to complete this upgrade in 2008 to most of their Tualatin Valley service area.

At the urging of MACC in early December 2005, Verizon formally requested a franchise to use the FTTP network for cable television. On December 15, 2005, the Commission directed staff to enter into negotiations with Verizon. Those negotiations began a month later, in January 2006. MACC's negotiation team consistently received guidance from the MACC Commissioners throughout the negotiations. Negotiations successfully concluded on January 18, 2007. On February 8, 2007, the Commission, after a public hearing, voted to recommend this proposed franchise agreement to the affected MACC member jurisdictions.

Now, all affected jurisdictions will consider adoption of that franchise. By the terms of the MACC Intergovernmental Agreement, to which your jurisdiction is a party, every affected MACC jurisdiction must adopt the franchise, as recommended, to give Verizon the authority to provide cable service in any of the jurisdictions – if one jurisdiction votes no, it vetoes the franchise for the others.

The Proposed Agreement – The proposed fifteen-year Verizon franchise agreement is modeled on agreements Verizon has been awarded in over 650 other jurisdictions around the country now serving approximately 253,000 cable television subscribers. That said, specific requirements are very similar to the Comcast franchise. The Comcast franchise requires that other franchises granted in the MACC territory must be "reasonably comparable" as to their material terms. The enclosed Comparison Chart (Exhibit C) compares the material terms of the Verizon and Comcast agreements.

Highlights of the Verizon Agreement

Service Area/Build out – Verizon will provide cable services to eleven of the fourteen MACC jurisdictions – the Initial Service Area. That area includes all of Verizon's current telephone service area except for Banks, Gaston, and some rural areas of Washington County. However, MACC and Verizon will meet at least every two years to review whether technology changes or increases in population density will allow service to be extended into these areas. North Plains, most of Lake Oswego, and portions of Beaverton and unincorporated Washington County will not be served under this agreement because Verizon has no authorization from the PUC to provide service in those areas (Qwest is the authorized telephone provider in those areas – Qwest has yet to request a cable franchise).

We are confident that the combination of the proposed franchise's density requirements, the Urban Growth Boundary, the way Verizon constructs its facilities, and the economic incentives to provide service to every serviceable location, will ensure there is aggressive and widely-deployed availability.

Areas inside the Initial Service Area (including new developments) will have Verizon service available as long as the area meets the franchise density requirement (generally the same density requirement as Comcast). The choice of where to provide service is based in this

case, not on income levels of particular areas (often referred to as "cherry-picking" and prohibited by Federal Law) but rather is based on the physical characteristics of potential service areas and on the existing telephone service areas of Verizon. Federal Law requires that local governments not unreasonably refuse to grant a competitive franchise such as this one, and do not require build-out of entire jurisdictions beyond Verizon's telephone service area.

Customer Service – We are pleased that, following guidance from the Commission, Verizon agreed to meet substantially the same customer service standards required of Comcast. We expect that competition, if Verizon is awarded a franchise, would result in both companies working to maintain the best customer service possible. MACC will closely monitor both companys' customer service performance for compliance.

The MACC office will play an important role during Verizon's deployment of cable services, working closely with them to eliminate or reduce problems. We will also be working closely with our jurisdictions and citizens to redress any problems they may experience before, during, and after the deployment.

Fines – Fines that could be levied against Verizon for failure to meet performance requirements in the franchise are proportionate to the company's projected subscriber base. Along with the competitive pressure to satisfy customers, these fines are adequate to give Verizon incentive to meet franchise standards. Even at this level, the agreement's fines are substantially higher than those found in other Verizon franchises, and in most Comcast franchises nationwide.

The high level of fines in the 1999 Comcast franchise resulted from the prior cable operators' (TCI and AT&T) violation of the telephone answering standards of the agreements for the three years prior to the 1999 renewal. Fines under the renewed franchise continued to be applied to AT&T until Comcast took over the operation of the cable system in 2003 and finally cured the telephone answering problem.

Institutional Network – MACC's institutional network, constructed by Comcast's predecessor and called the Public Communications Network (PCN), is a unique requirement of the original 1982 Storer Cable franchise. AT&T agreed to upgrade the PCN to an all-fiber network in 1999. As part of AT&T's upgrade agreement, PCN User fees will repay the cable operator over the 15 year term of the Comcast agreement for the upgrade, operation, and maintenance of the PCN. Comcast's monthly PCN service fees are designed to recover all of Comcast's costs to provide the network. Since all area schools and most local governments are PCN Users, there is no market for another institutional network offered by Verizon. Therefore, in consultation with the Commission, we did not require Verizon to duplicate the PCN.

PEG/PCN Financial Support – Verizon will support Public, Education, and Government (PEG) programming and the PCN by paying $1.00 per subscriber per month for that support. Comcast's franchise provides an identical amount.

Incidental Payment – Verizon has also agreed to pay MACC an Incidental Payment of $149,600 over four years. Comcast's Incidental Payment was significantly higher due to the unique circumstances that existed during the 1999 renewal of its franchise agreement. Some of those circumstances were:

1) The significant reduction of cable operator PEG funding support from the old franchise to the new agreement.
2) The upgrade of the PCN to all fiber and the increased service costs to PCN Users.
3) In 1999, Comcast had almost 120,000 cable subscribers - Verizon starts at zero subscribers and only projects acquiring about 20% of Comcast's current market share.

Early Termination – The proposed franchise has a clause whereby Verizon could terminate this agreement within four (4) years of the effective date with notice to MACC and subscribers. Verizon cable franchises typically contain this (usually 3 year) provision. MACC staff believes it is very unlikely this provision will ever be exercised due to Verizon's success in obtaining franchises and its growing number of subscribers (currently over 253,000). However, we recognize the many issues involved in beginning a new venture, and agree this is prudent for both Verizon and the jurisdictions.

What specific action does MACC recommend? MACC recommends that your City grant Verizon the proposed cable television franchise. MACC provided a model ordinance for use by your jurisdiction to adopt the franchise and has worked with your staff to prepare it for your consideration.

Comcast is, of course, very interested in the terms and conditions of Verizon's franchise. In a recent letter they sent to City Councilors, Comcast detailed some concerns. While the issues raised in that letter are largely dealt with in this Report and elsewhere in the materials, a direct MACC response has been attached. We would be happy to answer questions. However, MACC staff and legal counsel remain confident that the franchise agreements are, as required, "reasonably comparable" as to their material terms.

Thank you for considering this important and ground-breaking franchise agreement. We look forward to meeting with you to discuss it and to answer any questions you may have. We have also attached a Verizon Questions and Answers memorandum that addresses typical questions (Exhibit D). In the meantime, please contact your MACC representative, Cathy Stanton, or Bruce Crest, MACC Administrator, if you have any questions.

Enclosures: Exhibit A – MACC Recommending Resolution
Exhibit B – Proposed Verizon Cable Television Franchise
Exhibit C – Comcast/Verizon Franchise Comparison Chart
Exhibit D – MACC Verizon Cable Questions and Answers
MACC Response to Comcast's 2/12/2007 letter to Jurisdictions

Exhibit B

Resolution 2007-01

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 2007-01

A RESOLUTION RECOMMENDING TO THE AFFECTED MEMBER JURISDICTIONS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT THEY GRANT VERIZON NORTHWEST, INC. A CABLE SERVICES FRANCHISE

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter MACC) was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to work cooperatively and jointly on communications issues, in particular the franchising of cable services and the common administration and regulation of such franchises; and,

WHEREAS, today the member jurisdictions of MACC consist of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin; and,

WHEREAS, the IGA authorizes MACC and its jurisdictions to grant one or more nonexclusive franchises to construct, operate, and maintain a cable service system within the combined boundaries of the member jurisdictions; and,

WHEREAS, the IGA requires that each member jurisdiction in which cable service will be provided under the franchise must formally approve any requested franchise; and,

WHEREAS, MACC and its member jurisdictions have previously granted a cable franchise to TCI Cablevision of the Tualatin Valley, Inc., in 1999, and that franchise is now held by Comcast Corporation, the grantee's lawful successor in interest; and,

WHEREAS, Verizon Northwest, Inc. (hereinafter Verizon), formally requested a franchise authorizing the provision of cable services to several MACC member jurisdictions; and,

WHEREAS, the MACC Board of Commissioners adopted Resolution #2005-15 on December 15, 2005, authorizing the MACC staff to negotiate a cable services franchise with Verizon, and to investigate Verizon's legal, financial, and technical qualifications to own and operate a cable system as authorized by federal law; and,

WHEREAS, MACC, on behalf of its member jurisdictions, has considered the qualifications of Verizon to own and operate a cable system under a new franchise and after concluding such consideration, analysis, and deliberation as are required by law, has determined it should recommend approval of Verizon's request for a franchise; and,

WHEREAS, MACC, on behalf of its member jurisdictions, has negotiated a cable services franchise based on the community needs of the affected MACC member jurisdictions, and the

material provisions of the proposed franchise are "reasonably comparable" to the franchise currently held by Comcast Corporation as required by that franchise; and,

WHEREAS, MACC has provided adequate notice and opportunities for public comment on the proposed new cable services franchise including a public hearing held on February 8, 2007; and,

WHEREAS, after careful consideration, the MACC Board of Commissioners is prepared to recommend to the affected member jurisdictions where Verizon seeks a cable services franchise that they grant Verizon such a franchise.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THAT:

1. MACC and Verizon have negotiated a cable services franchise to serve the MACC member jurisdictions of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, Tualatin, and Washington County.

2. The proposed franchise reflects the community needs of these member jurisdictions.

3. Verizon has the legal, technical, and financial qualifications to own and operate the proposed cable services system.

4. MACC recommends to these member jurisdictions that they concur with its findings and grant Verizon a cable services franchise based on the terms and conditions contained in the proposed franchise attached hereto as Exhibit A.

5. The affected member jurisdictions' grant of a franchise shall be contingent on the affirmative vote of each affected jurisdiction's governing body.

6. The grant of a cable services franchise to Verizon by the member jurisdictions shall become effective upon Verizon's fulfillment of the franchise acceptance provisions contained in the franchise and upon the formal determination by the MACC staff that the jurisdictions have approved the franchise.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 8TH DAY OF FEBRUARY, 2007.

/Herbert L. Hirst

Herb Hirst, Chair

Attachment: Exhibit A - Verizon Cable Services Franchise

Exhibit C

Cable Franchise Agreement

CABLE FRANCHISE AGREEMENT

Between

THE CITY OF BEAVERTON
AND
VERIZON NORTHWEST INC.

CABLE FRANCHISE AGREEMENT

between

WASHINGTON COUNTY,

the cities of
BEAVERTON,
CORNELIUS,
DURHAM,
FOREST GROVE,
HILLSBORO,
KING CITY,
LAKE OSWEGO,
RIVERGROVE,
TIGARD, and
TUALATIN

AS PARTICIPATING MEMBERS OF THE

METROPOLITAN AREA COMMUNICATIONS COMMISSION

AND

VERIZON NORTHWEST INC.

2007

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Metropolitan Area Communications Commission (the "Commission"), Member Jurisdictions, and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, Grantor and Member Jurisdictions wish to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, Grantor and Member Jurisdictions are "franchising authorities" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and are authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Oregon;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the jurisdictional boundaries of the Commission's Member Jurisdictions, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, Grantor has identified the future cable-related needs and interests of the Commission, its Member Jurisdictions and their citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate in a full public proceeding affording due process to all parties;

WHEREAS, Grantor and Member Jurisdictions have found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, Grantor and Member Jurisdictions have determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, Grantor and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of Grantor and Member Jurisdictions' grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise Area pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein the following definitions shall apply:

1.1. *Access Channel*: A video channel, which Franchisee shall make available to Grantor without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by Grantor.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3. *Affiliate:* Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4. *Basic Service:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522, which currently states, "any service tier which includes the retransmission of local television broadcast signals."

1.5. *Cable Operator:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), which currently states, "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system."

1.6. *Cable Service* or *Cable Services:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states, "the one-way transmission to subscribers of (i) video programming, or (ii) 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* or *System:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, "a facility, consisting of a set of closed 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 (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that 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 services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." Subject to Section 2.10, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.8. *Channel:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation)."

1.9. *Commission:* The Metropolitan Area Communications Commission, its officers, agents and employees, and, for purposes of this Agreement, its affected Member Jurisdictions which are the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, together with Washington County. The Commission was created and exercises its powers pursuant to an Intergovernmental Cooperation Agreement, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by its members and although it may exercise those powers as an entity, it remains a composite of its members.

1.10. *Communications Act*: The Communications Act of 1934, as amended.

1.11. *Control:* The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.12. *Days*: Calendar days unless otherwise noted.

1.13. *Designated Access Provider*: The entity or entities designated by the Grantor to manage or co-manage the Public, Education, and Government Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.14. *Educational Access Channel*: An Access Channel available solely for the use of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

1.15. *Effective Date*: The effective date of this Agreement shall be upon the Grantor's written certification of approval of all its Member Jurisdictions and Franchisee's unconditional written acceptance of this Agreement. If either event fails to occur, this Agreement shall be null and void, and any and all rights of Franchisee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

1.16. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.17. *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which

Franchisee's FTTP Network is attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Franchisee to foresee or control.

1.18. *Franchise Area*: Those portions of the unincorporated area of Washington County and the incorporated areas (entire existing territorial limits) of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin as shown in Exhibit A, and such additional areas as may be included in the corporate (territorial) limits of Member Jurisdictions during the term of this Agreement or are added pursuant to Section 3.1.2.

1.19. *Franchisee:* Verizon Northwest Inc., and its lawful and permitted successors, assigns, and transferees.

1.20. *Government Access Channel*: An Access Channel available solely for the use of Grantor and other local governmental entities located in the Franchise Area.

1.21. *Grantor:* The Metropolitan Area Communications Commission (MACC) created in 1980 which is the local franchising authority for the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, and Washington County, or the lawful successor, transferee, or assignee thereof.

1.22. *Gross Revenue:* All revenue, including any and all cash, credits, property, or consideration of any kind, as determined in accordance with generally accepted accounting principles which is earned or derived by Franchisee and/or its Affiliates received from Franchisee's provision of Cable Service over the Cable System in the Franchise Area. Gross Revenue shall be reported to Grantor using the "accrual method" of accounting. Gross Revenue shall include the following items so long as all other cable providers in the Service Area include the same in Gross Revenues for purposes of calculating franchise fees:

(a) fees charged for Basic Service;
(b) fees charged to Subscribers for any service tier other than Basic Service;
(c) fees charged for premium Channel(s), *e.g.* HBO, Cinemax, or Showtime;
(d) fees charged to Subscribers for any optional, per-channel, or per-program services;
(e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;
(f) fees for downgrading any level of Cable Service programming;
(g) fees for service calls;
(h) fees for leasing of Channels;
(i) rental of customer equipment, including converters (*e.g.* set top boxes, high definition converters, and digital video recorders) and remote control devices;
(j) advertising revenue as set forth herein;
(k) revenue from the sale or lease of access Channel(s) or Channel capacity;
(l) revenue from the sale or rental of Subscriber lists;

(m) revenues or commissions received from the carriage of home shopping channels;
(n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;
(o) revenue from the sale of program guides;
(p) late payment fees;
(q) forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value;
(r) revenue from NSF check charges;
(s) revenue received from programmers as payment for programming content cablecast on the Cable System; and
(t) Franchise fees.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, *e.g.*, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Oregon. Franchisee has 100 Subscribers in the Franchise Area, 500 Subscribers in Oregon, and 1,000 Subscribers nationwide. Gross Revenue as to the Grantor from Ad "A" is 10% of Franchisee's revenue therefrom. Gross Revenue as to the Grantor from Ad "B" is 20% of Franchisee's revenue therefrom.

Gross Revenue shall not include:

1.22.1. Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System in the Franchise Area;

1.22.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.22.3. Refunds, rebates, or discounts made to Subscribers or other third parties;

1.22.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from: Telecommunications Services; Information Services, including without limitation Internet Access services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed to Non-Cable Services in accordance with applicable federal and state laws or regulations;

1.22.5. Any revenue of Franchisee or any Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.22.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.22.7. The imputed value of the provision of Cable Services to customers on a complimentary basis including, without limitation, the provision of Cable Services to public buildings as required or permitted herein;

1.22.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal, or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and non-cable franchise fees and revenue);

1.22.9. Any forgone revenue that Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Agreement; provided, however, that such forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value in place of cash consideration shall be included in Gross Revenue;

1.22.10. Sales of capital assets or sales of surplus equipment;

1.22.11. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement; or

1.22.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

1.23. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), which currently states, "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

1.24. *Initial Service Area*: The area depicted as the Initial Service Area in Exhibit A.

1.25. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.26. *Member Jurisdictions*: Washington County and the member cities of the Commission that are within the Initial Service Area, specifically the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin.

1.27. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services consistent with FCC rules and orders by courts of competent jurisdiction following all appeals.

1.28. *Normal Business Hours:* Those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.29. *Origination Points*: Locations from which PEG programming is delivered to the PEG Access Headend for transmission as set forth in Exhibit B.

1.30. *PEG*: Public, educational, and governmental.

1.31. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.32. *Public Access Channel*: An Access Channel available solely for use by the residents and others in the Franchise Area, as authorized by Grantor.

1.33. *Public Communications Network ("PCN") / Institutional Network*: The separate communications network provided by Comcast Inc. or its successor in interest, designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other non-profit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include, but is not limited to, two-way video, audio, or digital signals among institutions.

1.34. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Member Jurisdictions, to the full extent of the Member Jurisdictions' right, title, interest, and/or authority to grant a franchise to occupy and use such streets and easements for Telecommunications Facilities and Cable Service. Public Rights-of-Way shall also include any easement granted or owned by the Grantor or Member Jurisdictions and acquired, established, dedicated or devoted for public utility purposes. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.35. *School*: Any educational institution, public or private, registered by the State of Oregon pursuant to ORS 345.505-.525, excluding home schools, including but not limited to primary and secondary schools, colleges and universities.

1.36. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.37. *Service Date*: The date that Franchisee first provides Cable Service on a commercial basis directly to more than one Subscriber in the Franchise Area. Franchisee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise.

1.38. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.39. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.40. *Telecommunication Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), which currently states, "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

1.41. *Title II*: Title II of the Communications Act.

1.42. *Title VI*: Title VI of the Communications Act.

1.43. *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states, "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

2 GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, Grantor and Member Jurisdictions hereby grant Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. This Agreement is intended to convey limited rights and interests only as to those streets and Public Rights-of-Way in which the Member Jurisdictions have an actual interest. It is not a warranty of title or interest in any Public Right-of-Way, it does not provide the Franchisee any interest in any particular location within the Public Right-of-Way, and it does not confer rights other than as expressly provided in the grant hereof. Except as set forth in this Agreement, this Agreement does not deprive Grantor or Member Jurisdictions of any powers, rights, or privileges they now have or may acquire in the future under applicable law, to use, perform work on, or regulate the use and control of the Member Jurisdictions' streets covered by this Agreement, including without limitation, the right to perform work on their roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. This Agreement authorizes Franchisee to engage in providing Cable Service. Nothing herein shall be interpreted to prevent Grantor or Franchisee from challenging the lawfulness or enforceability of any provisions of applicable law.

2.1.3. To the extent Franchisee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Franchisee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Regulatory Authority Over the FTTP Network*: The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. Jurisdiction over such Telecommunications Facilities is governed by federal and state law, and Grantor and Member Jurisdictions do not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, Grantor and Member Jurisdictions' regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect the Grantor or Member Jurisdictions' authority, if any, to adopt and enforce lawful regulations with respect to the Public Rights-of-Way, subject to 2.9 below.

2.3. *Term:* The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through the fifteenth (15^{th}) anniversary thereof, unless extended or terminated sooner as hereinafter provided.

2.4. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor or Member Jurisdictions to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the Member Jurisdictions to use same for any purpose they deem fit, including the same or similar purposes allowed Franchisee hereunder. Member Jurisdictions may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Franchisee's authority under this Agreement, and for such additional franchises for cable systems as the Grantor deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Effect of Acceptance*: By accepting the Agreement, the Franchisee: (1) acknowledges and accepts the Grantor's and Member Jurisdiction's legal right to issue the Agreement; (2) acknowledges and accepts the Grantor's legal right to enforce the Agreement on behalf of its Member Jurisdictions; (3) agrees that it will not oppose the Grantor intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of this Agreement; and (5) 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.

2.6. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise and its exhibits are subject to and shall be governed by all

applicable provisions of federal law and regulation as they may be amended, including but not limited to the Communications Act.

2.7. *No Waiver*:

2.7.1. The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.7.2. The failure of Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse Grantor from performance, unless such right or performance has been specifically waived in writing.

2.8. *Construction of Agreement:*

2.8.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.8.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8.3. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as they may be amended, including but not limited to the Communications Act. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or more parties, then the parties shall modify this Franchise to ameliorate such adverse effects on, and preserve the affected benefits of, the Franchisee and/or the Grantor to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at Franchisee or Grantor's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at Franchisee or Grantor's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the Franchise Area, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose as set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse effects of the change in law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this Section 2.8.3 shall have no further force or effect. To the extent permitted by law,

if there is a change in federal law or state law that permits Franchisee to opt out of or terminate this Agreement, then Franchisee agrees not to exercise such option.

2.9. *Police Powers*: In executing this Franchise Agreement, the Franchisee acknowledges that its rights hereunder are subject to the lawful police powers of Grantor or Member Jurisdictions to adopt and enforce general ordinances necessary to the safety and welfare of the public and Franchisee agrees to comply with all lawful and applicable general laws and ordinances enacted by Grantor or Member Jurisdictions pursuant to such power. Nothing in this Agreement shall be construed to prohibit the reasonable, necessary, and lawful exercise of Grantor or Member Jurisdictions' police powers. However, if the reasonable, necessary and lawful exercise of Grantor or Member Jurisdictions' police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the satisfaction of all parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to Grantor or Member Jurisdictions or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.10. *Termination of Telecommunications Services.* Notwithstanding any other provision of this Agreement, if Franchisee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, Grantor may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3. PROVISION OF CABLE SERVICE

3.1. *Service Area*:

3.1.1. *Initial Service Area*: Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within four (4) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by Grantor or Member Jurisdictions; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Subsection 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than ten (10) occupied residential dwelling units per quarter mile as

measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should new construction in an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within ninety (90) days of the date that the Franchisee's Franchise Service Manager is notified of a request from a potential Subscriber and verification that the density requirement is satisfied. Franchisee has an ongoing obligation to notify Grantor of any changes to the name and contact information for the Franchise Service Manager.

3.1.2. *Additional Service Areas*: Aside from the Initial Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof. If Franchisee desires to add Additional Service Areas within the unincorporated areas of Washington County or the territorial limits of the Member Jurisdictions, Franchisee shall notify Grantor in writing and provide a map of such Additional Service Area at least thirty (30) days prior to providing Cable Services to such Additional Service Area which shall then become part of the Franchise Area. Notwithstanding the foregoing, the parties acknowledge that the addition of the cities of Banks, Gaston, or North Plains as an Additional Service Area shall be subject to reasonable approval by Grantor and the affected jurisdiction. Franchisee shall meet with Grantor at least once every two years, beginning with the Effective Date, to discuss whether technology and development warrant extending the service area to include Banks, Gaston, North Plains and additional areas within Member Jurisdiction boundaries not included in the Initial Service Area. As a result of each of these meetings, Franchisee will either (a) negotiate in good faith an amendment to the Agreement to expand service to one or more of these areas, if an amendment is necessary, or (b) explain why, in Franchisee's sole discretion, expansion of service is not yet justified. Franchisee shall not be required to disclose confidential information in conjunction with these discussions.

3.2. *Availability of Cable Service*: Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense (other than a standard installation charge) all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings*: Subject to 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each unserved (by any cable operator) fire station, School, police station, and public library as may be designated by Grantor; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such School or public building, Grantor shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing

Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. No more than 150 complimentary service outlets shall be required to be served under this provision. In addition, Franchisee shall provide without charge one service outlet activated for Enhanced Basic Service and one set-top box as necessary to receive digital signals to each of the following locations: the Commission's offices and the Commission's PEG Access Headend.

4. SYSTEM OPERATION

As provided in Section 2.2, the parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of Grantor or Member Jurisdictions over such Telecommunications Facilities is restricted by federal and state law, and neither Grantor nor the Member Jurisdictions asserts jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. SYSTEM FACILITIES

5.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Franchisee's Cable System shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry standards.

5.1.1. The System shall be designed with an initial analog and digital carrier passband of between 50 MHz and 860 MHz. The System shall be capable of analog, standard digital, HDTV, VOD, as well as other future services.

5.1.2. The System shall have a modern design, when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term.

5.1.3. The System shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site.

5.1.4. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. The Franchisee 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 Franchisee must comply with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

5.2. *Inspection of Facilities:* The Grantor may inspect upon request any of Franchisee's facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice. In all instances, a qualified representative of Franchisee must be available to accompany the tour to insure that no privacy requirements are violated.

5.3. *Emergency Alert System*:

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the State and Local EAS Plans. Member Jurisdictions shall permit only appropriately trained and authorized Persons to activate the EAS equipment through the EAS Local Primary Stations (LP1 or LP2) and remotely override the audio and video on all channels on the Cable System.. Each Member Jurisdiction shall take reasonable precautions to prevent any inappropriate use of the EAS or Cable System, or any loss or damage to the Cable System, and, except to the extent prohibited by law, shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS by that Member Jurisdiction, including but not limited to, reasonable attorneys' fees and costs.

6. PEG SERVICES

6.1. *PEG Access Channels:*

6.1.1. All PEG Access Channels provided for herein shall be administered by the Grantor or its designee. Grantor or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531. Franchisee shall cooperate with Grantor or its designee in the use of the Cable System for the provision of PEG Access Channels.

6.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide Grantor, within thirty (30) days of the Service Date of this Agreement, six (6) dedicated Public, Educational, and Government Access Channels ("PEG Access Channels"). All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Franchisee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Franchisee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Franchisee. Franchisee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels and from the Origination Points provided for herein.

6.1.3. Within ten (10) days after the Effective Date of this Agreement, Grantor shall inform Franchisee of the general nature of the programming to be carried on the initial PEG Access Channels set aside by Franchisee. Grantor and Member Jurisdictions authorize Franchisee to transmit such programming within and outside the Franchise Area. Franchisee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Franchisee's existing or planned channel line-up. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Franchisee with at least ninety (90) days notice of the change(s).

6.1.3.1. If a PEG Access Channel provided under this Article is not being utilized by Grantor, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Access Channel for its intended purpose.

6.1.3.2. Grantor shall require all local producers and users of any of the PEG facilities or Channels to agree to authorize Franchisee to transmit programming consistent with this agreement in writing and to defend and hold harmless Franchisee and Grantor from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Access Channel.

6.1.4. If all of Franchisee's video programming is delivered in a digital format, then, Franchisee shall reserve six (6) additional PEG Access Channels, for a total of twelve (12) PEG Access Channels. Franchisee shall activate the reserved PEG Access Channels following a written request from Grantor when the following criteria have been met for each additional PEG Access Channel:

6.1.4.1. Grantor must have a documented need for additional programming capacity that cannot be fulfilled by existing PEG Access Channels;

6.1.4.2. the existing PEG Access Channels must be utilized for PEG programming within the Franchise Area as follows:

6.1.4.2.1. Public Access Channels: During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

6.1.4.2.2. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; or

6.1.4.2.3. Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.;

6.1.4.3. all cable providers within the Franchise Area similarly provide such additional PEG Access Channels; and

6.1.4.4. as long as the signal source location is the PEG Access Headend, any additional PEG Access Channel shall be made available within one hundred twenty (120) days following Grantor's request (which shall constitute Grantor's authorization to transmit the PEG Access Channel within and outside the Franchise Area) and verification of compliance with each of the foregoing conditions. If the signal source location is not the PEG Access Headend, the timing of the availability and other conditions will be by mutual agreement of Grantor and Franchisee. In no event shall the origination point be located outside the Franchise Area.

6.1.5. For the purpose of Section 6.1.4:

6.1.5.1. "Locally Produced" means programming produced in Clackamas, Multnomah, or Washington Counties, or the Vancouver/Clark County, Washington metropolitan area; and

6.1.5.2. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

6.1.5.3. "Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any PEG Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its Basic or expanded Basic Cable Services shall not be considered "Locally Scheduled."

6.2. *Connection of PEG Access Headend:*

6.2.1. Grantor shall provide suitable video signals for the PEG Access Channels to Franchisee at Grantor's PEG Access Headend located at 11375 SW Center Street, Suite B, Beaverton, Oregon 97005. Upon receipt of a suitable video signal, Franchisee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Franchisee to fulfill such obligations.

6.2.2. Grantor shall have the right to relocate the PEG Access Headend one time during the term of this Franchise as follows: Grantor may relocate the PEG Access Headend to a new location within the Service Area and within five hundred (500) feet of one of Franchisee's active, video-enabled FTTP trunk or feeder lines; provided that Grantor shall provide to Franchisee at the new location: (1) suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and cooperation of Grantor as is reasonably necessary; (2) access to such space at least ninety (90) days prior to anticipated use of the new PEG Access Headend; and (3) reimbursement of up to Fifteen Thousand Dollars ($15,000) for costs associated with the relocation of the equipment necessary for transmitting the PEG signal.

6.3. *Origination Points:* To facilitate the Grantor's transmission of live video/audio and other PEG programming from certain remote sites, the Franchisee, at its own expense, will provide and maintain fiber connections and the related analog to digital (ADC) transmission/receive equipment necessary between the Grantor's PEG Access Headend and the Origination Points listed in Exhibit B of this Agreement. Grantor agrees it will not use these fiber connections for other purposes.

6.4. *PEG/PCN Grant:*

6.4.1. Franchisee shall provide an annual grant (the "PEG/PCN Grant") to Grantor to be used in support of the production of local PEG programming and in support of the PCN. Such grant shall be used by Grantor for capital costs for public, educational, or governmental access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, and to support the capital and operating needs of PCN users.

6.4.2. The PEG/PCN Grant provided by Franchisee hereunder shall be the sum of $1.00, per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier. Franchisee shall deliver the PEG/PCN Grant payment, along with a brief summary of the Subscriber information upon which it is based, to Grantor concurrent with the Franchise fee payment. Calculation of the PEG/PCN Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area. Franchisee may retain up to twenty-five percent (25%) of PEG/PCN Grant payments until the full amount of the Incidental Payment required in Section 14.5 of this Agreement is recovered.

6.4.3. Grantor shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section.

6.4.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG/PCN Grant or any other costs arising from the provision of PEG and PCN services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

7. FRANCHISE FEES

7.1. *Payment to the Grantor:* Franchisee shall pay to the Grantor a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of annual Gross Revenues required herein, Franchisee 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 Franchisee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a written report prepared by a representative of Franchisee showing the basis for the computation in the form attached hereto as Exhibit C. Grantor shall have the right to reasonably request further supporting documentation and information for each Franchise fee payment, subject to the confidentiality provisions in this Agreement; provided that Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Agreement.

7.3. *Acceptance of Payments:* Subject to Section 7.4 below, no acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Franchisee.

7.4. *Audit of Franchise Fee Payments:*

7.4.1. Grantor, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every two (2) years during the Term. As a part of the audit process, Grantor or Grantor's designee may inspect Franchisee's books of accounts relative to Grantor at any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2. All records deemed by Grantor or Grantor's designee to be reasonably necessary for such audit, which shall include, but not be limited to, all records subject to inspection by Grantor pursuant to Section 9.2 herein, shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee makes a good faith effort to procure any such tardy response.

7.4.2.1. During any audit period when Franchisee has less than 10,000 Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by five percent (5%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than five percent (5%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Ten Thousand Dollars ($10,000) per audit.

7.4.2.2. During any period when Franchisee has 10,000 or more Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by three percent (3%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than three percent (3%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Fifteen Thousand Dollars ($15,000) per audit.

7.4.2.3. Grantor agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the Franchise fee of any amount, Franchisee shall pay Grantor the amount of the underpayment, together with interest as provided in Section 7.7 below. Any auditor employed by Grantor shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

7.5. *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 Franchisee is due.

7.6. *Bundled Services*: In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of Franchisee's revenue attributable to such other services, capabilities, or applications shall be included in Gross Revenue unless Franchisee's books and records that are kept in the regular course of business identify the revenue as being attributable to the other services, capabilities or applications.

7.7. *Annual Franchise Fee Report:* Franchisee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor an annual summary of Franchise fee calculations, substantially in the form attached hereto as Exhibit C but showing annual rather than quarterly amounts.

7.8. *Interest on Late Payments:* In the event that a Franchise fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

7.9. *Payment on Termination:* If this Agreement terminates for any reason, Franchisee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Franchisee since the end of the previous calendar quarter for which Franchise fees were paid. If, within sixty (60) days of

providing such financial statement, Franchisee has not satisfied all remaining financial obligations to Grantor, Grantor reserves the right to satisfy any remaining financial obligations of the Franchisee to Grantor by utilizing the funds available in the Letter of Credit provided by the Franchisee under Section 13.6 of this Agreement.

7.10. *Costs of Publication:* Franchisee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor under applicable law.

8. CUSTOMER SERVICE

8.1. Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

8.2. If, at any time during the term of this Franchise, "Effective Competition," as defined by the Communications Act, as the term may be reasonably applied to Franchisee, ceases to exist in the Service Area, Grantor and Franchisee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. Grantor and Franchisee shall enter into such negotiations within forty-five (45) days following a request for negotiations by Franchisee after the cessation of "Effective Competition" as described above.

9. REPORTS AND RECORDS

9.1. *Open Books and Records*: Upon reasonable written notice to Franchisee and with no less than thirty (30) days written notice to Franchisee, Grantor shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during weekday business hours and on a nondisruptive basis at a mutually agreed location within Franchisee's Title II service territory in Oregon and Washington, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by Grantor. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Franchisee's Title II service territory in Oregon and Washington, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by Grantor and the Franchisee, provided that the Franchisee must pay all travel expenses incurred by Grantor in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in Franchisee's Title II service territory in the Portland metropolitan area.

9.2. *Proprietary Books and Records*: If the Franchisee believes that the requested information is confidential and proprietary, the Franchisee must provide the following documentation to Grantor: (i) specific identification of the information; and (ii) statement

attesting to the reason(s) Franchisee believes the information is confidential. The Grantor shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents requested by Grantor that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee, consistent with the Oregon Public Records Law. Should Grantor be required under state law to disclose information derived from Franchisee's books and records, Grantor agrees that it shall provide Franchisee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area, or any confidential information relating to such Cable Service where the Grantor and Member Jurisdictions cannot lawfully protect the confidentiality of the information.

9.3. *Records Required*: Franchisee shall maintain:

9.3.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.4. *Additional Requests*: The Grantor shall have the right to request in writing such information as is appropriate and reasonable to determine whether Franchisee is in compliance with applicable Customer Service Standards, as referenced in Exhibit D. Franchisee shall provide Grantor with such information in such format as Franchisee customarily prepares reports. Franchisee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for the Grantor to evaluate compliance, subject to Section 9.6.

9.5. *Copies of Federal and State Documents*: Franchisee shall submit to the Grantor a list, or copies of actual documents, of all pleadings, applications, notifications,

communications and documents of any kind, submitted by Franchisee 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 Franchisee's Cable System within the Franchise Area. Franchisee shall submit such list or documents to the Grantor no later than thirty (30) days after filing, mailing or publication thereof. Franchisee 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 a federal or state agency or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the Grantor and its duly authorized agents and shall not be made available for public inspection.

9.6. *Report Expense*: All reports and records required under this or any other Section shall be furnished, without cost, to Grantor. Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Section 9 in order to meet the requirements of this Section 9.

10. INSURANCE AND INDEMNIFICATION

10.1. Insurance:

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of Three Million Dollars ($3,000,000) combined single limit for property damage and bodily injury; one million dollar ($1,000,000) limit for broadcaster's liability. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the Franchise Area.

10.1.1.2. Automobile Liability Insurance in the amount of Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: $100,000; and (B) Bodily Injury by Disease: $100,000 employee limit; $2,000,000 policy limit.

10.1.2. Grantor and Member Jurisdictions shall be designated as additional insureds under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Franchisee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification*:

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend Grantor, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that Grantor shall give Franchisee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access Channels, use of the PCN, or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against Grantor by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of Grantor, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent Grantor from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with Grantor, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of Grantor and Grantor does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify Grantor shall in no event exceed the amount of such settlement.

10.2.3. Grantor shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of Grantor.

10.2.4. Grantor shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by Grantor for which Grantor is legally responsible, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify Grantor for acts of Grantor which constitute willful misconduct or negligence, on the part of Grantor, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of Member Jurisdictions, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Article 11.

11.2. A "Transfer of the Franchise" shall mean any transaction in which:

11.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

11.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Subsections 11.2.1 and 11.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee. The parent of Franchisee is shown in Exhibit E.

11.3. Franchisee shall make a written request ("Request") to Grantor and Member Jurisdictions for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by Grantor and Member Jurisdictions in respect to its consideration of a proposed Transfer of the Franchise. Member Jurisdictions shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all requested information. Subject to the foregoing, if the Member Jurisdictions fail to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and Member Jurisdictions agree to an extension of time.

11.4. In reviewing a Request related to a Transfer of the Franchise, Grantor and Member Jurisdictions may inquire into the legal, technical and financial qualifications of the prospective transferee, and Franchisee shall assist Grantor and Member Jurisdictions in so inquiring. Member Jurisdictions may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective or transferee and to the resolution of outstanding and unresolved issues of Franchisee's noncompliance with the terms and conditions of this Agreement.

11.5. The consent or approval of Member Jurisdictions to any Request by the Franchisee shall not constitute a waiver or release of any rights of Member Jurisdictions, and any transferee shall be expressly subordinate to the terms and conditions of this Agreement.

11.6. Notwithstanding the foregoing, the parties agree that the Member Jurisdictions' consent and/or approval to any transfer or assignment of any rights, title, or interest of Franchisee to any Person shall not be required where Verizon Northwest Inc. or its lawful successor which is not a third party transferee remains the Franchisee following any such transfer or assignment.

12. RENEWAL OF FRANCHISE

12.1. The parties agree that any proceedings undertaken by Grantor and Member Jurisdictions that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, Grantor agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Grantor further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Notice of Violation*: In the event Grantor believes that Franchisee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, Grantor shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged violation.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to Grantor, contesting (in whole or in part) Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.3 below; (ii) cure the violation; or (iii) notify Grantor that Franchisee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps Franchisee shall take to cure the violation including Franchisee's projected completion date for such cure. The procedures provided in Section 13.4 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Franchisee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Franchisee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Franchisee the notice of the violation.

13.2.1. In the event that the Franchisee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing.

13.2.2. In the event that the Franchisee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection 13.2(iii), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

13.2.3. In the event that the Franchisee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection 13.2(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

13.3. *Public Hearing*: In the case of any hearing pursuant to section 3.2 above, Grantor shall provide reasonable notice to Franchisee of the hearing in writing. At the hearing Franchisee shall be provided an opportunity to be heard, to examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

13.3.1. If, after the hearing, Grantor determines that a violation exists, Grantor may use one of the following remedies:

13.3.1.1. Order Franchisee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

13.3.1.2. Establish the amount of fine set forth in Section 13.5, taking into consideration the criteria provided for in subsection 13.4 of this Agreement as appropriate in Grantor's discretion; or

13.3.1.3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law; or

13.3.1.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.7.

13.4. *Reduction of Fines:* The fines set forth in Section 13.5 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

13.4.1. Whether the violation was unintentional;

13.4.2. The nature of the harm which resulted;

13.4.3. Whether there is a history of prior violations of the same or other requirements;

13.4.4. Whether there is a history of overall compliance, and/or;

13.4.5. Whether the violation was voluntarily disclosed, admitted or cured.

13.5. *Fine Schedule*:

13.5.1. For violating telephone answering standards set forth in Exhibit D, Section 2.D for a quarterly measurement period, unless the violation has been cured, fines shall be as set forth below. A cure is defined as meeting the telephone answering standards for two consecutive quarterly measurement periods.

Quarterly Telephone Answer Time Fines

	1st Violation	2nd Violation	3rd Violation
Quarterly Fine	$ 2,000*	$ 4,000*	$ 6,000*

* If after forty-two (42) months, no fines have been assessed for violations of call answer time standards, these fines shall be reduced by fifty percent (50%).

13.5.2. For all other violations of this Agreement, the fine shall be $250 per day.

13.5.3. Total fines shall not exceed Twenty-Five Thousand Dollars ($25,000) in any twelve-month period.

13.5.4. If Grantor elects to assess a fine pursuant to this Section, such election shall constitute Grantor's exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, 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 Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

13.6. *Letter of Credit*: Franchisee shall provide a letter of credit in the amount of Twenty Thousand Dollars ($20,000) as security for the faithful performance by Franchisee of all material provisions of this Agreement.

13.7. *Revocation*: Should Grantor seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.5 above, Grantor shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.7.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.7.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the Grantor.

13.7.3. Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.8. *Limitation on Grantor Liability*: The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. §555a is applicable to this Agreement.

13.9. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of four (4) years from the Service Date of this Franchise, if at the end of such four (4) year period, Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.9 shall be given to the Grantor in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then-current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties*: In any action by Grantor or Franchisee 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, delayed or conditioned.

14.2. *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees,

successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Grantor.

14.4. *Force Majeure*: Franchisee 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 a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by Grantor and/or Subscribers.

14.5. *Incidental Payment:* The Franchisee shall pay the Grantor an Incidental Payment of $149,600 as set forth below as a condition of the Franchise granted by this Agreement. The Incidental Payment will be made to Grantor in four annual payment installments as follows: Commencing on the Service Date, and on the same date in the three (3) following years, the Franchisee shall provide the amounts shown below to the Grantor as an advance of a portion of the Annual PEG/PCN Grant required in Section 6.4 of the Agreement.

Incidental Payment Schedule	
Year 1	$17,600
Year 2	$35,200
Year 3	$44,000
Year 4	$52,800

These payments shall not be regarded as franchise fees, nor payments in lieu of franchise fees, nor as an offset against franchise fees, and they shall be used by Grantor at the Grantor's sole discretion consistent with applicable law. To recover the Incidental Payment, the Franchisee may retain up to twenty-five percent (25%) of the $1.00 per month collected from Subscribers under Section 6.4 of this Agreement until such time as the total amount of $149,600 is recovered. Once the total amount of the Incidental Payment is recovered, the Franchisee shall pay the Grantor the full $1.00 per month, per Subscriber PEG/PCN Grant. The Grantor may assure the accuracy of these payments by inspecting Franchisee's records under Section 9 of this Agreement or by an audit under Section 7.4 of this Agreement.

14.6. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.6.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel -- Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.6.2. Notices to the Grantor shall be mailed to:

Mr. Bruce Crest, MACC Administrator
Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006-4886

14.7. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and Grantor, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.8. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.10. *Severability*: If any section, subsection, 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, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.11. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

14.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the cable system and any capacity used for cable service or otherwise, to Grantor or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.14. *Independent Legal Advice:* Grantor and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.15. *Grantor Authority:* Grantor represents and warrants that it is authorized to enter into this Agreement on behalf of its Member Jurisdictions pursuant an Intergovernmental Cooperation Agreement originating in 1980 and in effect in its current form since February 13, 2003, and that the party signing below is authorized to execute this Agreement on behalf of the Member Jurisdictions following certification that the governing bodies of each of the affected Member Jurisdictions have approved this Agreement as required by Section 4.E of the Intergovernmental Cooperation Agreement.

14.16. *Franchisee Authority:* Franchisee represents and warrants that it is authorized to enter into this Agreement and that the party signing below is authorized to execute this Agreement.

AGREED TO THIS _____ DAY OF _____, 2007.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

By: _____
[Title]

VERIZON NORTHWEST INC.

By: _____
[Title]

EXHIBITS

Exhibit A: Initial Service Area/Franchise Area

Exhibit B: Origination Points

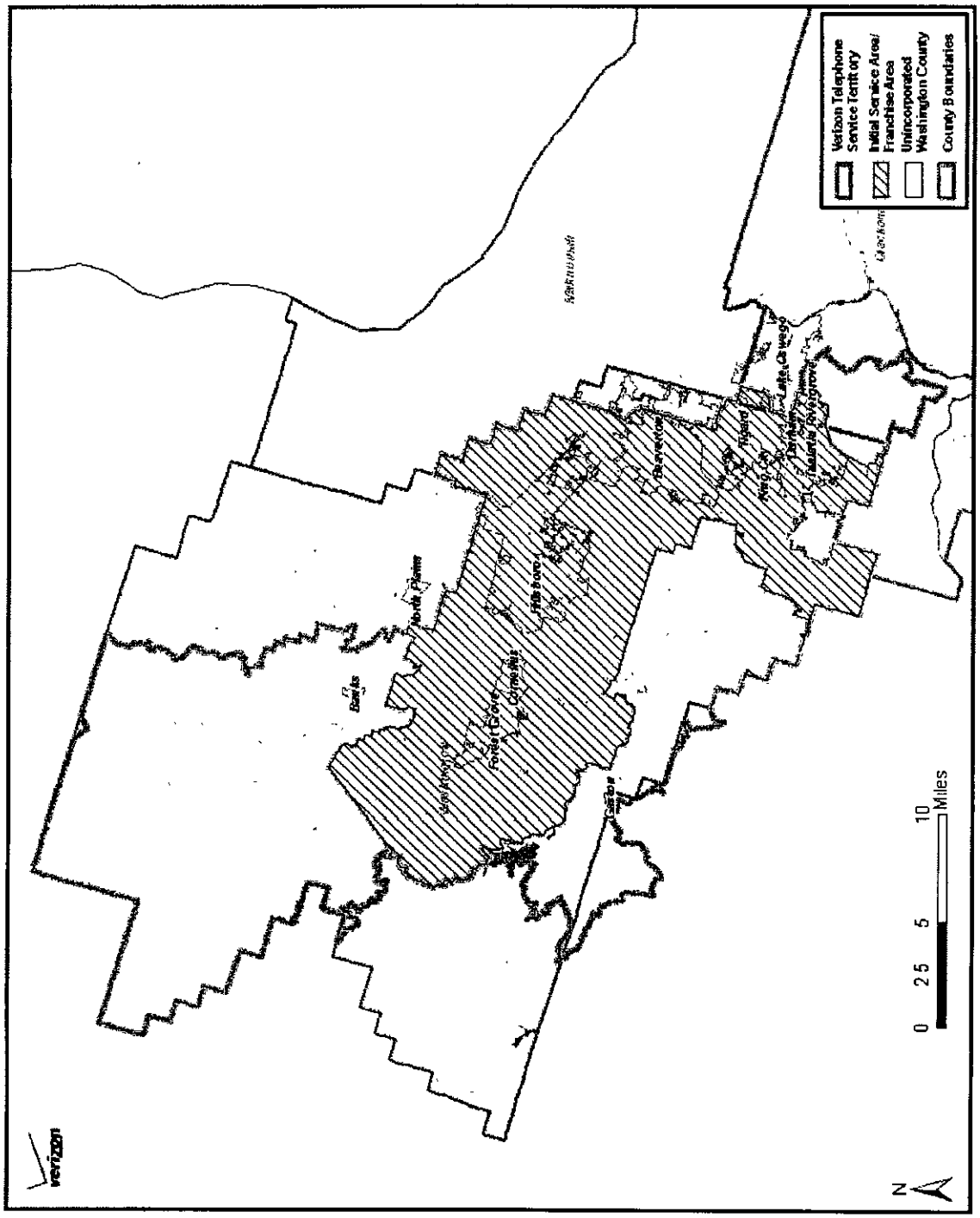
Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Customer Service Standards

Exhibit E: Franchise Parent Structure as of January 24, 2007

Exhibit F: Quarterly Customer Service Standards Performance Report

EXHIBIT A - INITIAL SERVICE AREA/FRANCHISE AREA



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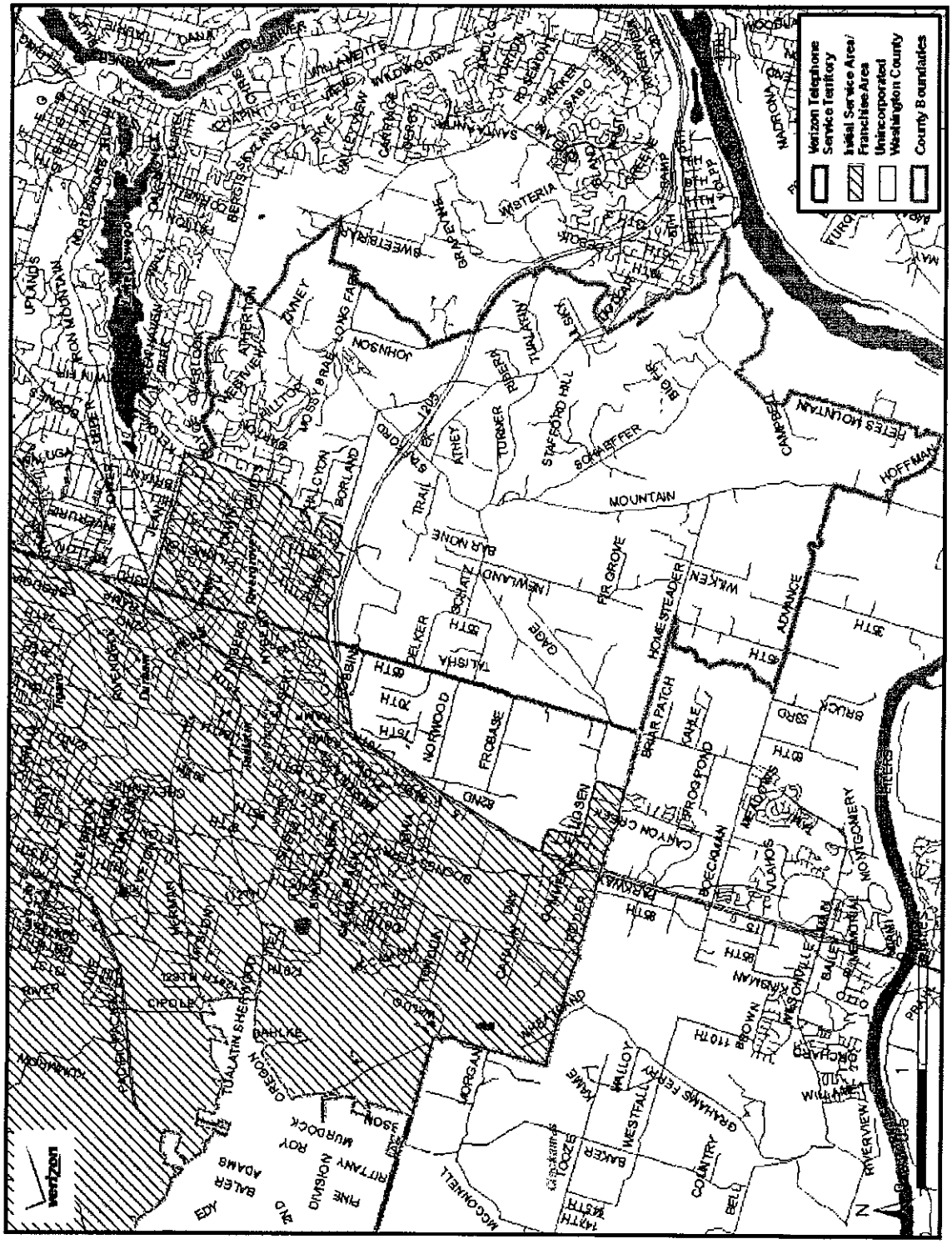

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EXHIBIT B

ORIGINATION POINTS

Alternate City Council "Live" Meeting Sites:

Beaverton Library, 12375 SW 5th St., Beaverton, Oregon 97005

Tigard Library, 13500 SW Hall Blvd., Tigard, Oregon 97223

Area Emergency Management Centers:

Tualatin Valley Fire & Rescue (TVF&R) Administration, EMC, 20665 SW Blanton St., Aloha, Oregon 97007

WCCCA Emergency Management Center, EMC 17911 NW Evergreen Parkway, Beaverton, Oregon 97006

Washington County EMC, Washington County Sheriff's Office, 215 SW Adams Ave., Hillsboro, Oregon 97123

EXHIBIT C

QUARTERLY FRANCHISE FEE REMITTANCE FORM

MACC
FRANCHISE FEE SCHEDULE/REPORT

For the Quarter Ending _____

		Month 1	Month 2	Month 3
1	Monthly Recurring Cable Service Charges (e.g., Basic, Enhanced Basic, Premium and Equipment Rental)			
2	Usage Based Charges (e.g., Pay Per View, Installation)			
3	Other Misc. (e.g., Late Charges, Advertising, Leased Access)			
4	Franchise Fees Collected			
Less:				
1	Sales Tax Collected	$	$	$
2	Uncollectibles			
Total Receipts Subject to Franchise Fee Calculation				
Franchise Fee Rate 5%				
Franchise Fee Due				
		Quarter Franchise Fee _____		

Monthly PEG Grant Collection
Quarterly PEG Grant Remission $_____

EXHIBIT D

CUSTOMER SERVICE STANDARDS

These standards shall apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area. However, for the first three (3) months after the Service Date, Franchisee shall not be required to provide reports under this Agreement and, for the first six (6) months after the Service Date, Grantor will not impose fines if Franchisee fails to meet the customer service standards set forth in this Agreement. This Section sets forth the minimum customer service standards that the Franchisee must satisfy.

SECTION 1: DEFINITIONS

A. Normal Operating Conditions: Those service conditions which are within the control of Franchisee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

B. Respond: The start of Franchisee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.

C. Service Call: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Service Interruption: The loss of picture or sound on one or more cable channels.

E. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

F. Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Franchisee representatives shall identify themselves by name when answering this number.

B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Forty-five (45) days following the end of each quarter, the Franchisee shall report to Grantor, using the form shown in Exhibit F, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D; and

(2) Percentage of time customers received a busy signal when calling the Franchisee's service center as set forth in Subsection 2.E.

G. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change not less than thirty (30) days in advance.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the

provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the customer's premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises. Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the customer outside of the seven (7) day period.

C. Franchisee shall provide Grantor with a report forty-five (45) days following the end of the quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.

D. At Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change not less than thirty (30) days in advance.

E. Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Franchisee's discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.

(1) Franchisee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.

(2) If Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

F. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at Subscriber's address or by a satisfactory equivalent.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall promptly notify Grantor of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.

E. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Franchisee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting

quarters one time during the term of this Agreement. The Franchisee shall notify the Grantor of such a change at least thirty (30) days in advance.

H. At Franchisee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change at least thirty (30) day in advance.

I. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

J. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS REFERRED BY GRANTOR

Under Normal Operating Conditions, Franchisee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Franchisee shall notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Franchisee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Franchisee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Franchisee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, "resolve" means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items,

Franchise fees, taxes and/or other governmental-imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. Franchisee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Franchisee.

G. Franchisee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.

H. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

I. Franchisee shall provide Grantor with a sample Cable Services bill, and shall provide an updated sample bill at least 30 days before any material change is sent to Subscribers.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. Franchisee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.

C. All of Franchisee's rates and charges shall comply with applicable law. Franchisee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Franchise.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may by applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to Grantor. A copy of the annual notice required under this Subsection 9.C will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.

D. Franchisee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).

E. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

F. Franchisee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee. If the change is not within Franchisee's control, Franchisee shall provide an explanation to Grantor of the reason and expected length of delay. Franchisee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.

G. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with the control of Franchisee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

J. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Franchisee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

EXHIBIT E
FRANCHISEE PARENT STRUCTURE AS OF JANUARY 24, 2007

Verizon Northwest parent: GTE Corporation 100%

GTE Corporation Parents:

Verizon Communications Inc. 92.88%

NYNEX Corporation 5.93% (which is 100% owned by Verizon Communications Inc.)

Bell Atlantic Global Wireless, Inc. 1.19% (which is 100% owned by Verizon Investments Inc., which is 100% owned by Verizon Communications Inc.)

EXHIBIT F
CUSTOMER SERVICE STANDARD REPORT METRICS

THE FOLLOWING INFORMATION IS PROPRIETARY AND CONFIDENTIAL AND IS CONDITIONALLY EXEMPT FROM THE OREGON PUBLIC RECORDS LAW. THE FOLLOWING INFORMATION QUALIFIES AS PROPRIETARY AND CONFIDENTIAL BUSINESS INFORMATION PURSUANT TO, WITHOUT LIMITATION, OREGON REVISED STATUTE § 192.501(2) AND ANY OTHER APPLICABLE LAW AND SHOULD NOT BE DISCLOSED.

Verizon Video Franchise Report:

Contract Requirements	Jan	Feb	Mar	1st Qtr	April	May	June	2nd Qtr	July	Aug	Sept	3rd Qtr	Oct	Nov	Dec	4th Qtr
VCC-1 Customer Contact Availability																
90% Calls Answered within 30 Seconds																
3% Calls Receiving a Busy																
VMR-2 Trouble Completion and Call %																
90% Completed Service Interruption Troubles <72 hours																
VPR-1 Completed Within Specified # of Days** %																
95% Standard Installs Completed within seven (7) business days after ONT Placement Date, or if ONT exists on Order Creation Date, within seven (7) business days of Order Creation Date (125 FT)																

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Exhibit D

Comcast/Verizon Comparison

COMCAST/VERIZON FRANCHISE COMPARISON
Metropolitan Area Communications Commission
February 13, 2007

FRANCHISE PROVISION	COMCAST	§	VERIZON	§
SERVICE AREA				
Build-out/Density Requirement	All MACC jurisdictions in areas that meet Density requirement of 10 homes/quarter mile. Timeline: system upgrade within three years of franchise date	13.2 11.1	All of Verizon's MACC jurisdictions meeting the Density requirement of 10 homes/quarter miles *except* Banks, Gaston, (due to construction cost) and North Plains because it is not served by Verizon. Timeline: System built in initial service area within four years of franchise date. Additional areas to be reviewed every two years.	3.1-3.2
FINANCE				
Franchise fees	5% of gross revenues	3.1	5% of gross revenues	7.1
Gross Revenue Definition	Comparable Net Effect	1.18	Comparable Net Effect	1.23
Audit authority	Authority to audit once each 12 months; If franchise fees are underpaid by 3% or more, Comcast pays the total cost of the audit	3.6	Authority to audit once every two years; Until Verizon has more than 10,000 subscribers, if franchise fees are underpaid by 5% or less, Verizon pays the total costs of the audit up to $10,000; When Verizon has 10,000 subscribers or more, if franchise fees are underpaid by 3% of less, Verizon pays the total costs of the audit up to $15,000.	7.4

Letter of Credit	$100,000	5.4	$20,000 (approx. 20% of Comcast amount due to difference in number of potential subscribers)	13.6
Incidental PEG / PCN Payments	$800,000	5 6	$149,600 (see MACC Staff Report -- "Verizon Cable TV Franchise Recommendation")	14 5
Insurance Limits	General Liability: $2 million Broadcasters Liab: $1 million Auto BI/PD $2 million Employers Liab: $2 million	5.1	General Liability: $3 million Broadcasters Liab: $1 million Auto BI/PD: $2 million Employers Liab: $2 million	10.1
PEG PROGRAMMING				
PEG Channels	6 channels, trigger for additional channels	9.3-9.8	6 channels, trigger for additional channels	6.1
PEG/PCN Fee	$1.00 per subscriber /month	9.7	$1.00 per subscriber/month	6.4.2
PEG Origination Points	Seven Activated Origination Points	9.5	Five Activated Origination Points	Exh B
CUSTOMER SERVICE				
Telephone Answering	90% of the calls answered within 30 seconds	6.3	90% of the calls answered within 30 seconds	Exh D(2)
Local office	One center conveniently located in the franchise area to provide pick up/drop off equipment, bill payment, and complaints	6.2	No local office requirement. Verizon must pick up or drop off equipment free of charge (using representative visit, prepaid mailer, or establishing a local business office)	Exh D(3)

Reporting	Required quarterly for: • Franchise Fees • Complaints • Construction Activities • Subscriber Information • Service Call Statistics • Telephone Activity • Other Information "as appropriate and reasonable."	3.4 7.1 7.4	Required quarterly for: • Franchise Fees • Installations • Service Call Statistics • Telephone Activity On an on-going basis: • Complaints • Other Information "as reasonably necessary."	7.2 9.4 Exh. D
Fines	Telephone answering: Failure to meet standard – $10,000 first violation; $20,000 2nd violation; $30,000 3rd violation Other Violations: $250/day No cap on total fines.	15.2	Telephone answering: Failure to meet standard – $2,000 first violation; $4,000 2nd violation; $6,000 3rd violation (Fine amounts reflect differences in number of potential subscribers.) May be reduced by 50% if no fines levied in first 42 months. Other Violations: $250/day $25,000/year cap on total fines	13 5
OTHER FRANCHISE REQUIREMENTS				
Term	15 years	2.3	15 years	2 3
Franchise termination	Comcast may abandon the system during the franchise term except that Grantors may operate system temporarily, pursue legal remedies to maintain service and/or re-grant the franchise as applicable.	16.1-16.2	At the end of 4 years, if video services are not commercially viable, Verizon must provide Grantor and subscribers advance notice to terminate services	3.9

Emergency Alert	*Must comply with* FCC requirements, and local/state EAS Plans and remotely override audio and video on all channels	6.9	Must comply with FCC requirements, and local/state EAS Plans and remotely override audio and video on all channels	5 3
Technical Standards	• 550 MHz System Required •12-hour Main backup power, 2-hour Remote backup power. • FCC technical performance standards apply. • NECA, NESC, OSHA Standards apply. • Grantor may inspect facilities.	11.1 14 12 10.1 3 10.1	• 860 MHz System Required. • 24-hour Main backup power, 4-hour Remote backup power. • FCC technical performance standards apply. • NECA, NESC, OSHA Standards apply • Grantor may inspect facilities.	5
Institutional Network (PCN)	Upgrade of existing network (PCN subscriber service rates reimburse Comcast for PCN investment over 15 yr. term.)	11.2	No requirement. There is no MACC–area market for a second I-Net like the PCN.	n/a
Public Building Connections	Complimentary "Standard" cable service to public use buildings.	13.3	Complimentary "Basic" service to unserved public buildings.	3.3

Exhibit E

Questions & Answers

MACC Metropolitan Area Communications Commission
REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY
Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN)

Verizon Cable Franchise
Questions and Answers
Prepared by MACC
February 2007

Q1: Do MACC jurisdictions have to grant additional franchises?

A: Yes, if the proposed company has the legal, financial, and technical qualifications to own and operate a cable system, and if their proposed franchise meets the needs of the jurisdictions they seek to serve. The MACC/Comcast Franchise Section 2.5 (and Federal Law) requires that all franchises be nonexclusive. It also requires that any competitive franchises must be "reasonably comparable" to the MACC/Comcast agreement.

Q2: Why are these new providers coming here at this time?

A: This new cable competition is a result of advances in telecommunications technology. This allows traditional telephone companies to install updated fiber optic networks that can also carry high-speed Internet and cable television signals. Traditional telephone companies need to diversify their systems to offer advanced services since cable companies, like Comcast, are now offering telephone services and are taking customers from traditional telephone companies.

Q3: Is Verizon seeking franchises in other areas of the country besides MACC?

A: Yes. Verizon has been awarded over 650 cable franchises, mostly on the east coast, in Texas, and in Southern California. However, MACC is the first area in the Pacific Northwest that Verizon has approached for a franchise. The MACC area also represents the largest concentration of Verizon telephone subscribers upgraded to Fiber to the Premise (FTTP) in Oregon with approximately 123,000 of Verizon's statewide 159,000 upgraded subscribers – Verizon has a total of 350,000 telephone customers (traditional and FTTP) in Oregon.

Q4: Does Comcast have any influence as to whether you grant additional franchises?

A: Not directly. Comcast has, however, provided elected officials with a letter detailing parts of the Verizon franchise that the company believes puts them "at a competitive disadvantage." As they note, the Comcast franchise requires any additional franchises granted be "reasonably comparable" as to the material terms. The MACC Board of Commissioners determined that the Verizon franchise is reasonably comparable to the Comcast franchise. After a review of the Comcast letter, MACC staff remains confident the franchises are, taken as a whole, and recognizing that Verizon starts with no customers, "reasonable comparable."

Comcast is, of course, very interested in this process and in the terms granted Verizon. Elected officials in the MACC jurisdictions may also receive personal contacts from Comcast or Verizon during the franchise review process. Because all decisions on the granting of a franchise should be on the record, contacts with interested parties should be avoided, publicly disclosed, and reported to MACC.

Q5: Will our cable franchise fee revenues increase with Verizon's entry into our area?

A: Not significantly, since many of Verizon's cable customers will come from existing Comcast customers (Comcast has about 120,000 in the MACC area). Verizon projects acquiring about 20% of Comcast's market share. Verizon should also attract a number of satellite television subscribers and non-cable subscribers to their cable service. This should result in a total increase in the number of all cable subscribers for both companies and potentially some modest increase in franchise fee revenues to MACC jurisdictions. One unknown factor is the affect on franchise fees resulting from reductions in both operators' pricing due to competition (see Q6).

Q6: Won't the Verizon Franchise result in significantly lower prices for cable service from both companies?

A: Rates for services generally do not drop dramatically with cable competition. However, all franchised operators will probably be more careful in setting rates and charges so, over time, subscribers should benefit from competition. We hope this competition also results in smaller increases in cable rates. Comcast's most recent annual rate adjustment raised rates 7.9% for its most popular service. Customers should also find that competition means more services for their dollar and a choice of different packages or bundles of services.

Q7: Will customers receive better service due to cable competition?

A: The most significant improvement we expect to see from competition is better customer service from both companies since subscribers will now have a choice in providers. Customers can "take their business elsewhere" if they become dissatisfied with the service offered by one company. Satellite service will remain an option for some subscribers.

Q8: Will Verizon build-out their cable system to everyone within their franchise area?

A: Yes, because Verizon needs to pay off costs to upgrade their new FTTP network by serving every home that meets the Franchise density requirement. Our Metro Urban Growth Boundary (UGB) also makes MACC's service area very attractive to them since it increases the density inside the Boundary. We don't anticipate any build-out issues, nor do we expect the "cherry picking" practiced by AT&T in many areas where they offer cable-like services in California and elsewhere. Within the franchise area and in new development areas, the Franchise's density requirement (like Comcast's) requires service to any home that meets it.

Q9: Why aren't all parts of all MACC communities included in the Verizon agreement?

A: Unlike a traditional cable television provider, Verizon's cable service has no cable equipment in the public rights of way. It is simply an electronic signal that is carried on their FTTP telephone network. Because Verizon cannot legally provide service to areas currently served by Qwest (all of North Plains, most of Lake Oswego and portions of Beaverton and unincorporated Washington County), the franchise is limited to existing Verizon telephone areas. Qwest has yet to develop a viable cable service to offer its telephone customers and has not requested a franchise to do so.

The Cities of Banks and Gaston, which Verizon is not upgrading to FTTP at this time, are also not included in this franchise, but there are provisions to include them as soon as population growth, economics, and technology make service there practical.

Exhibit F

Letter from Comcast, dated 2/12/07

Comcast.

Comcast Cable
9605 SW Nimbus Avenue
Beaverton, OR 97008

February 12, 2007

Re: Proposed Franchise between MACC and Verizon

We understand that the proposed franchise agreement between the Metropolitan Area Cable Commission ("MACC") and Verizon will be considered for approval by [the city council or county supervisors] within the next several weeks. As the incumbent cable operator under franchises with MACC, we believe that an equitable playing field between competitive companies such as Comcast, as the incumbent, and Verizon, as the new entrant, is essential to ensure that the incumbent operator is treated equally with respect to franchise obligations and requirements of the new entrant.

A level playing provision is required in our current franchise with MACC. Section 2.6 A states:

> **GRANT OF OTHER FRANCHISES**
> A. In the event the Grantor enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Grantor'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 to under the provisions of Section 13.2 of this Agreement, ***the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.*** (Emphasis added.)

Although we have not yet completed our full review of the proposed franchise between MACC and Verizon, we believe there appears to be some significant differences regarding franchise obligations and requirements. We would like to take this opportunity to share a few of our concerns at this time and supplement it with additional information after our review has been completed.

1. Equitable build-out of facilities and activation of services.

Under our current franchises, Comcast is required to provide cable services within the members' jurisdictional boundaries subject to density requirement of at least ten (10) residences within one-quarter cable mile of our trunk or distribution cable. [Section 13.2 B] This requirement provides for equitable build-out of facilities and provision of services to all areas subject only to the density requirement – no cherry picking of communities. For those areas not meeting the density requirement, Comcast is required to partially subsidize the cost of extending service for those who want service in that particular location. [Section 13.2 C]

Under the proposed Verizon franchise, there is no similar requirement. Instead, the franchise provides that Verizon "shall offer Cable Services to a significant number of Subscribers in residential areas of the Initial Service Area ...., within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within four (4) years of the Service Date of this Franchise, ..." [Section 3.1.1.] This is subject to certain specified exceptions. It appears that Verizon may pick and choose neighborhoods and communities that may be more profitable over other neighborhoods and communities thereby creating a situation of have and have nots among residents within the MACC jurisdictional areas.

In addition, although there is a density requirement which appears to be similar to that required of Comcast, Verizon will be required to make available Cable Services where the "average density is equal to or greater than ten (10) occupied residential dwelling units per quarter mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network Trunk or feeder line." [Section 3.1.1.1.] Again, the terms "average density" and "nearest technically feasible point" on the active trunk or feeder line, does not provide the same level of certainty as that required of Comcast. Moreover, while Comcast is required to extend service to those who do not meet the density requirement and subsidize a portion of the cost to extend the cable plant, there is no similar requirement for Verizon. In fact, Verizon is not required to extend its cable system or to provide Cable Services to any areas within the Franchise Area that are outside of the Initial Service Area during the term of the franchise or any renewals thereof – since the franchise will be for a term of 15 years Verizon will not be required to extend its service to other areas for 15 years or longer. [Section 3.1.2.]

2. Termination of Franchise by Verizon.

Verizon has the right to terminate the franchise and all obligations at the end of four (4) years from the Service Date, if Verizon "does not in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System." Verizon may also consider in its determination penetration levels outside the Franchise Area. Verizon need only to provide written notice to MACC and customers of its decision to terminate the franchise and cease operations.

This is not an equitable service requirement and could again very well allow Verizon to cherry pick affluent neighborhoods and homes. There is little recourse, if any, in the franchise for residents who may not fit Verizon's desired profile within the first four years of the agreement.

Comcast does not have a similar provision.

3. Other Examples of Verizon's Lesser Obligations

A. Incidental Payments

Under our franchises, Comcast was required and has paid $200,000 in each of the first four (4) years of the renewed franchise term, for a total amount of $800,000. Of that amount, $50,000 per year was used to support PCN. [Section 5.6] In addition, Comcast was required to pay a monthly per subscriber fee initially at $.75 for the first four (4) years and from the fifth (5th) year onward a $1.00 monthly per subscriber fee as capital support for PEG and PCN. MACC agreed that for each dollar spent on PEG capital support for Access (not PCN), an equivalent amount will be spent in the aggregate by MACC and/or designated Access Provider on operating support for PEG access. [Section 9.7]

On the other hand, Verizon will be required to contribute a total of $149,600 for the first four (4) years of the franchise. Verizon will also be permitted to recover the $149,600 from subscribers by retaining twenty-five percent (25%) or 25 cents of each $1.00 collected per month from subscribers until the total amount is recovered. [Section 14.5] There is no similar requirement that MACC will match the amount spent on PEG capital support on operating support for PEG access.

Thus, Comcast was required to pay $650,400 more as incidental payment than Verizon will be required to pay. Furthermore, unlike Verizon, Comcast was not allowed to recover the incidental payments.

B. Letter of Credit

Comcast is required to provide to MACC a letter of credit in the amount of $100,000 throughout the term of the franchise. [Section 5.4]

Verizon will be required to provide to MACC a letter of credit in the amount of $20,000. There is no similar requirement it be maintained throughout the term of the franchise. [Section 13.6]

C. Service to Public Facilities.

Comcast is required to provide, at no cost, one (1) outlet of Basic and expanded services to public use buildings, as designated by the member jurisdictions, and all libraries and schools. For all future public buildings, Comcast is required to provide, at no cost, one (1) outlet of Basic and expanded services if the drop line to any such building does not exceed 125 feet. [Section 13.3]

Verizon will be required to provide, at no cost, one (1) service outlet for Basic Service to each unserved (by any cable operator) fire station, school, police station, and public library as may be designated by MACC. [Section 3.3]

Verizon's obligation to provide Basic Service to public buildings will be limited to buildings not currently receiving service from Comcast. Thus, those that receive Comcast's services will not be able to receive Verizon's cable services. Moreover, given

the extent to which Comcast provides cable services to public buildings, schools, libraries, etc., throughout the franchise area, there appears to be very limited exposure for Verizon to provide its Basic Service to member jurisdictions' public facilities, schools, etc.

D. Customer Service Requirements.

Comcast is required to maintain at least one (1) customer service center conveniently located in the franchise area. [Section 6.2] Verizon will not be required to maintain a local customer service center.

Comcast is required to meet telephone answering requirements such as answer time by a customer representative including wait time, shall not exceed thirty (30) seconds from when the connection is made, no less than ninety percent (90%) of all calls received, measured quarterly. [Section 6.3]

Verizon will not be held to the same standard even though it has experience dealing with customer service issues. Verizon will be required to answer calls received within 30 seconds, no less than ninety percent (90%) of the calls received at call centers, measured on a cumulative quarterly basis. Unlike Comcast, Verizon will be allowed to use Automated Response Unit ("ARU") or Voice Response Unit ("VRU") in answering calls from customers. Because Comcast is not allowed to use ARU or VRU, Comcast is disadvantaged operationally with respect to telephone answering standards.

Both Comcast and Verizon are subject to fines for not meeting the telephone answering standard. However, as mentioned above, Verizon will be allowed to use ARU or VRU, while Comcast cannot. In addition to the lower amount of fines that Verizon would be subject to in missing the telephone answering standards as compared to Comcast, the Verizon franchise provides for a cap on total fines that may be imposed at $25,000 per year, while again Comcast has no cap on the amount of fines that may be imposed.

The above examples clearly show inequities between franchise requirements and obligations of Comcast and Verizon, where the proposed Verizon franchise has less burdensome or more favorable provisions than our current franchises. Moreover, unlike our obligation to provide cable services throughout the franchise area, the proposed Verizon franchise does not appear to require the same, which is not a benefit to residents of member jurisdictions.

As we stated previously, Comcast supports competition and believes all competitors should be required to compete on equivalent terms and conditions, especially in a regulated environment. MACC's primary role is to regulate providers to protect the interests of citizens in Washington County and a number of its incorporated cities. We believe that the proposed Verizon franchise will result in placing Comcast at a competitive disadvantage.

Accordingly, we respectfully request that in determining whether to approve and grant to Verizon the proposed franchise, that you adhere to the level playing field obligation under our current franchises. In order to ensure that Verizon is not given an

unfair competitive advantage, our franchise requirements and obligations should be modified to be reasonably comparable to those of the proposed Verizon franchise.

Thank your for your attention to this matter. As always, please do not hesitate to contact me at 503-605-6352, should you have any questions.

Sincerely,

Sanford Inouye, Vice-President
Government Affairs
Comcast Cable

Cc: Bruce Crest

Exhibit G

Letter from MACC, dated 2/26/07

MACC Metropolitan Area Communications Commission

REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY

Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN) • Tualatin Valley Community TV

FEBRUARY 26, 2007

TO: **MACC JURISDICTION ELECTED OFFICIALS**

FROM: **BRUCE CREST, ADMINISTRATOR**

RE: **MACC RESPONSE – COMCAST 2-12-07 LETTER REGARDING THE PROPOSED VERIZON FRANCHISE**

We want to provide you a response to issues raised in a letter sent to you from Comcast's Vice President of Government Affairs, Sanford Inouye, on February 12, 2007. That letter (attached) is in regard to your consideration of the Verizon Cable Television Franchise recommended to your jurisdiction by the Metropolitan Area Communications Commission (MACC).

First and foremost, MACC considers the proposed Verizon Franchise to be "reasonably comparable" as to all of its material terms to the Comcast Franchise. MACC negotiated the Verizon Franchise precisely with that requirement in mind and does not believe any changes are necessary.

Also, it is important to note that Mr. Inouye does not suggest that it would be appropriate to deny approval of the Verizon Franchise. However, Comcast is clear that they will ask for modifications in their franchise with MACC. We fully expected that Comcast would take this position on the Verizon Franchise. Of course, MACC cannot act on such a request unless it is formally proposed to the Commission. Until the Verizon Franchise becomes effective, Comcast's suggestions are premature at best.

Nevertheless, we have prepared the following discussion of each of Comcast's major points. Many of these are also addressed in the staff report and other materials we prepared for your jurisdiction.

Finally, Mr. Inouye has been the area's Comcast Government Affairs representative since November 2006. He was not present during the 1999 franchise renewal negotiations between MACC and TCI/AT&T (now Comcast) that formulated the current Comcast Franchise, nor has he been involved with any of our other discussions with Comcast related to this agreement for the last 8 years. So, in fairness to him, he may not have had all the background necessary to draw some of the conclusions he made in his letter.

Comcast's "Level Playing Field" Argument – Consistently throughout negotiations with Verizon, the Commission worked hard to assure that the material provisions of the Verizon Franchise would be "reasonably comparable" to those in the Comcast Franchise, as set forth in Section 2.6A of that agreement. That is the standard that must be met. This

legal requirement should be distinguished from a "level playing field" standard. This standard is often included in state regulations governing franchises for competitive service providers, but this is not the law in Oregon. There is no basis in federal or state law to claim that competing franchise agreements must be identical – instead MACC and the member jurisdictions must determine, in our legislative discretion, that the agreements are competitively neutral when taken as a whole. Given each party's respective position in the market at present, it is entirely reasonable to have differing provisions in the agreements, so long as they are reasonably comparable as required in the Comcast Franchise.

MACC Commissioners, staff, and Legal Counsel believe the Verizon Franchise meets that standard, and stated so in their recommendation to you - see Exhibit A to the MACC staff report for the recommending resolution.

Now, to Comcast's specific points:

1. Equitable Build-out of Facilities and Activation of Services. Comcast believes the franchises are inequitable due to a perceived ability for Verizon to "cherry-pick" service areas.

We strongly disagree. As stated in the MACC staff report, the combination of the Verizon Franchise's density requirements, Metro's Urban Growth Boundary (UGB), and Verizon's need to serve every customer they can to recover their cost to build this FTTP network, will result in Verizon providing service to all neighborhoods that meet the density requirement. Verizon also pledges in their franchise that they "shall not discriminate between or among any individuals in the availability of Cable Service." We could find no area in the country where Verizon cable has engaged in so-called "cherry picking." However, we are aware that Comcast and other incumbent cable operators, when challenged by a competitive provider, have accused new competitors of "cherry-picking" wealthy neighborhoods because of the extreme negative connotation the term suggests.

In fact, this issue is specifically governed by Federal law. The Communications Act requires that the franchising authority (MACC) "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides" and sets forth related provisions which shall or may be included in a franchise. [47 U.S.C. § 541(a)(3)-(4)]. Again in this case, MACC staff and Legal Counsel were mindful of the Federal requirements that apply in this area when the franchise was negotiated. Verizon Franchise Sections 3.1.1.1 and 3.2 directly address this federal law requirement. The franchise (Section 2.6) is also specifically subject to other applicable Federal laws.

A clear look at Verizon's service maps and franchise requirements also clearly show there are no economic or cultural deficiencies in the company's service plans. We

continue to maintain that the density requirements of both franchises will produce the same result for subscribers.

2. Termination of Franchise by Verizon. Comcast believes the franchises are inequitable because Verizon would be able to abandon a growing and lucrative market segment, a public commitment, and millions of dollars of investment in the area before the end of the 15 year term of the franchise.

Verizon's local franchises (hundreds, nationally) typically contain an early termination provision (usually 3 years) such as that in the proposed agreement. Although we think it is highly unlikely Verizon will exercise that option, we have required adequate notice to MACC and subscribers of that termination. We recognize that new entrants may fail, and we do not want to impose inferior service on subscribers if that service is not economically justified – that only hurts subscribers. This provision is obviously not in the Comcast Franchise, because they are the incumbent operator and therefore never requested such a provision. One thing we do know, Comcast would be pleased if Verizon exercised this termination option and left the MACC market.

Additionally, MACC negotiated a beneficial provision countering the early termination option – assuring that any termination is only for economic reasons. And, if state or Federal law (such as is proposed currently at the Federal Communications Commission) allows cable service without a local franchise, Verizon has agreed not to abrogate this MACC Franchise. Comcast does not have a similar obligation.

3.A. Incidental Payment. Comcast believes the required payments incidental to each of the agreements are not comparable.

Typically, incidental payment provisions are included in cable franchises to account for circumstances unique to a particular situation. That is the case in both the Comcast and Verizon agreements. As we point out in the MACC staff report, the Comcast Incidental Payment was negotiated in 1999 to help cover the transition costs of two important features of the Comcast Franchise: 1) the *increased* service costs to users of the Public Communications Network (PCN) — upgraded as part of that agreement; and, 2) the significant *decrease* in PEG Access TV funding support compared to the old franchise. To help offset these two changes, Comcast agreed to pay MACC $200,000 a year for four years as transitional support to the PCN ($50,000) and PEG Access ($150,000).

Contrary to Mr. Inouye's assertion, Comcast did recover this payment. Comcast paid a reduced amount into the PEG/PCN Grant fund of 75 cents per subscriber during the first four years to cover their cost of the Incidental Payment.

Verizon's incidental payment has nothing to do with Comcast's. Verizon's payment is simply an advance payment into the PEG/PCN Grant Fund which they fully recover in a manner similar to Comcast (by reducing the PEG/PCN payment from $1 to 75 cents until

the total amount of the Incidental Payment is recovered). We also considered the fact that at the time of the 1999 renewal, Comcast had about 120,000 subscribers and Verizon will start with none.

3.B. Letter of Credit. Comcast believes the amounts of the required letters of credit for a company beginning with no local customers should equal that of their company – with 120,000 local customers.

The Letters of Credit required in both franchises are scaled to the number of potential subscribers and the amount of potential fines. Contrary to Comcast's interpretation, since the Letter of Credit is required in the Verizon Franchise, it would be a material violation of that agreement if Verizon did not provide it continuously throughout the term of the franchise.

3.C. Service to Public Facilities. Comcast believes that services to facilities its predecessor companies installed 10 or more years ago, in most instances, should be duplicated by Verizon.

Since Comcast already serves over 100 public sites, we saw no reason why we should require Verizon to provide duplicate cable service to those sites. However, the Verizon Franchise does require the provision of free cable service to any new unserved sites within their service area, thus relieving Comcast from that burden. Based on the continued need for more school buildings and local government facilities, we expect Verizon will be serving a significant number of public facilities during the 15-year term of their agreement, and is required to provide such service to up to 150 sites.

Customer Service Requirements: Comcast complains about certain elements of the customer service standards in the Verizon Franchise. Comcast, however, ignores the fact that Verizon's customer service obligations are much more detailed, specific, and complicated than Comcast's current requirements. There are certainly inconsistencies here, but all are based on the fact that we have been working with Comcast and its predecessors for twenty-five years, and Verizon's cable services operations are completely new. We want to ensure Verizon meets the same general standards as Comcast – to the extent we reasonably can – working with a specific business model and environment at different times in a negotiations setting.

Local Office - For example, Comcast makes a great deal of the local office requirement for their company. Verizon has a different model of customer service and negotiated alternatives to the local office requirement (although this doesn't mean they won't have one or more). The Verizon Franchise requires that the company choose from the following to ensure customers receive adequate service:

1. Establish a local office.
2. Mail, at no cost to the customer, the equipment needed for service.

3. Deliver, at no cost to the customer, the equipment needed for service.

In addition, Verizon must "arrange for pickup or replacement of equipment" to all mobility-limited customers. Verizon finds this mix of customer service options works well with customers who don't always have the time, or ability, to travel to a centralized business office (we see this same trend with other telephone and cable companies).

Comcast requires customers to come to their Beaverton Washington Square-area office to return equipment and does not provide the multiple options available to Verizon customers.

We believe, on the whole, and taking into consideration some of the other Verizon requirements not imposed on Comcast (e.g., rigid complaint procedures, stricter outage response times, required notices for planned outages, automatic credits for service interruptions) that the customer service obligations are at least as onerous for Verizon as Comcast.

Telephone Response – Comcast objects to Verizon not factoring their Automatic Response Unit (ARU) calls into their telephone response times. The ARU is not discussed in the Comcast Franchise, but is something we separately negotiated with Comcast's predecessor several years ago during the time when they were failing their telephone response standards. We would be willing to discuss Comcast's ARU concerns with them if a Verizon Franchise is approved by the affected jurisdictions.

Cap on Fines – Comcast notes that Verizon has a $25,000 annual cap on potential fine amounts and Comcast does not. Comcast never requested a cap at any time during negotiations in 1999. If the Verizon Franchise is adopted, we would discuss a Comcast fine cap, based on the same methodology, if Comcast requests the Commission to do so

Although Comcast tries to point out in their letter areas where they feel their franchise exceeds Verizon's requirements, Comcast does not highlight the many portions of the Verizon Franchise that clearly exceed the requirements of Comcast's agreement.

On balance, we believe these two agreements are "reasonably comparable" and that the proposed Verizon agreement will provide consumers with excellent services, and for the first time, a choice between two providers of cable services.

We would be happy to answer any questions you have.

Attachment: Comcast 2-12-07 Letter

c: Comcast, Sanford Inouye
Verizon
Pam Beery, MACC Legal Counsel

Exhibit H

Letter from Nancy Marston, dated 3/2/07

cc: Bill D.
Sue Nelson

RECEIVED
MAR 0 8 2007

Mayor Rob Drake
4755 SW Griffith Dr
Beaverton, OR 97076

March 2, 2007

Dear Mayor Drake,

First of all, I just want to tell you how much I love living in Beaverton, honestly. I visit friends that live in West Linn and they don't have access to half as many stores, parks, the best farmers market in the area, movie theaters, the best library and more. Our city is clean and in the summer, we have beautiful flowers gracing our downtown on every corner. Thank you for doing such a wonderful job to keep our city the best.

I am a Comcast employee and work at our Regional office at 9605 SW Nimbus Ave in Beaverton. I am concerned about the proposed cable franchise between the City and Verizon. I am glad to see our company have some competition, finally. Now, they cannot call us a monopoly in this area. But, I believe, in order to be fair, Verizon should be required to serve in all neighborhoods, regardless income as Comcast does. Verizon has agreed to basic protections in other communities around the country, why should it be different in Oregon? I do no think it is fair that companies offering the same services are given different requirements. Where is the free enterprise that our country was built on? You don't make one company fulfill all the rules and another company only a part of the rules. That's not fair. Companies should be able to compete in a competitively neutral manner based on the value of their product and services.

I also believe you need to look at the involvement our company has in the communities it serves. I don't want to go into a long list, but I know I have participated in more than one Comcast Cares Day to paint schools, clean up parks, etc.

As a member of the Metropolitan Area Cable Commission (MACC), the City has a voice on this matter. I am hoping you make the right choice so that competition is fair and all of our citizens get the opportunity to have the same services.

Thank you for your time.

Sincerely,

Nancy R. Marston

Nancy R. Marston
2761 SW Jasmine Pl
Beaverton, OR 97006

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: An Ordinance Granting A Non-Exclusive Cable Franchise to Verizon Northwest Inc.

FOR AGENDA OF: 3-19-07 **BILL NO:** 07059

Mayor's Approval: Linda Adlard Mayor Pro Tem

DEPARTMENT OF ORIGIN: City Attorney CES

DATE SUBMITTED: 3-13-07

CLEARANCES:

PROCEEDING: First Reading

EXHIBITS: Ordinance
Cable Franchise Agreement

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0	BUDGETED $0	REQUIRED $0

HISTORICAL PERSPECTIVE:

Verizon Northwest Inc, a Washington corporation, is proceeding to upgrade its copper wire telephone service in Beaverton and elsewhere in the United States to a service using fiber optic cable. The new service makes for greater capacity and higher speed transmission, allowing Verizon to transmit "cable television" and other video content using the same cable that will transmit telephone services. Federal law allows local governments to require separate agreements for use of public right of way for telephone service and cable television service notwithstanding that both services are transmitted over the same cable. Verizon has worked with MACC staff in the past year to negotiate this proposed cable television franchise and MACC staff has regularly briefed this office on their progress and the contents of the franchise. The MACC Board, including City Councilor Cathy Stanton, now has enacted a resolution that endorses the attached franchise and recommends that each member city enact it. The MACC Board acted by majority vote as Verizon will not presently offer the cable television service to a few of the smaller member cities, for reasons that will be explained in the work session.

INFORMATION FOR CONSIDERATION:

MACC's bylaws require that all member cities as to whom Verizon seeks a franchise must enact the very same franchise or if not, the franchise must be renegotiated. MACC staff will inform the Council of actions taken by other member cities to date; none of them have rejected the franchise nor have sought different terms. We have reviewed the terms of the franchise and find it acceptable as to legal form.

RECOMMENDED ACTION:

First Reading

ORDINANCE NO. 4433

AN ORDINANCE GRANTING
A NON-EXCLUSIVE CABLE FRANCHISE TO
VERIZON NORTHWEST INC.

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter "MACC") was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to enable its member jurisdictions to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchises, and the City of Beaverton is a member of MACC; and

WHEREAS, the IGA authorizes MACC and its member jurisdictions to grant one or more nonexclusive franchises for the construction, operation and maintenance of a cable service system within the combined boundaries of the member jurisdictions; and

WHEREAS, the IGA requires that each member jurisdiction to be served by the proposed franchisee must formally approve any cable service franchise; and

WHEREAS, Verizon Northwest Inc. has formally requested a franchise with MACC and several of its member jurisdictions, and MACC has reviewed the franchisee's qualifications in accordance with federal law; and

WHEREAS, the Board of Commissioners of MACC, by Resolution 2007-01 adopted on the 8th day of February, 2007, recommended that affected member jurisdictions grant a franchise to Verizon Northwest Inc. in the form attached hereto as Exhibit "A"; and

WHEREAS, the Council finds that approval of the recommended franchise is in the best interest of the City and its citizens, in order to provide opportunities for effective competition in the provision of these services consistent with the federal Telecommunications Act of 1996;

NOW THEREFORE,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. The City grants to Verizon Northwest Inc. a non-exclusive franchise on the terms and conditions contained in Exhibit "A". This nonexclusive grant authorizes the provision of cable services within the jurisdictional boundaries of the City as those boundaries presently exist or may be amended, commencing upon Verizon's fulfillment of the franchise acceptance provisions contained in the franchise and upon the formal determination by the MACC Administrator that all affected jurisdictions have approved the franchise, and ending fifteen years thereafter.

Section 2. The grant of franchise at Section 1 is conditioned upon each of the following events:

(a) The affirmative vote of the governing body of each MACC member jurisdiction to be served under the franchise;

(b) Verizon's fulfillment of the franchise acceptance provisions contained in the franchise; and

(c) Formal written determination by the MACC Administrator that each of the above two events has occurred.

First reading this _____ day of _____, 2007.

Passed by the Council this _____ day of _____, 2007.

Approved by the Mayor this _____ day of _____, 2007.

ATTEST:

_____
SUE NELSON, City Recorder

APPROVED:

_____
ROB DRAKE, Mayor

Exhibit A

ORDINANCE NO. 4433

CABLE FRANCHISE AGREEMENT

Between

THE CITY OF BEAVERTON AND VERIZON NORTHWEST INC.

CABLE FRANCHISE AGREEMENT

between

WASHINGTON COUNTY,

the cities of
BEAVERTON,
CORNELIUS,
DURHAM,
FOREST GROVE,
HILLSBORO,
KING CITY,
LAKE OSWEGO,
RIVERGROVE,
TIGARD, and
TUALATIN

AS PARTICIPATING MEMBERS OF THE

METROPOLITAN AREA COMMUNICATIONS COMMISSION

AND

VERIZON NORTHWEST INC.

2007

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Metropolitan Area Communications Commission (the "Commission"), Member Jurisdictions, and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, Grantor and Member Jurisdictions wish to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, Grantor and Member Jurisdictions are "franchising authorities" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and are authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Oregon;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the jurisdictional boundaries of the Commission's Member Jurisdictions, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, Grantor has identified the future cable-related needs and interests of the Commission, its Member Jurisdictions and their citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate in a full public proceeding affording due process to all parties;

WHEREAS, Grantor and Member Jurisdictions have found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, Grantor and Member Jurisdictions have determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, Grantor and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of Grantor and Member Jurisdictions' grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise Area pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein the following definitions shall apply:

1.1. *Access Channel*: A video channel, which Franchisee shall make available to Grantor without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by Grantor.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3. *Affiliate*· Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4. *Basic Service:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522, which currently states, "any service tier which includes the retransmission of local television broadcast signals."

1.5. *Cable Operator:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), which currently states, "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system."

1.6. *Cable Service* or *Cable Services:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states, "the one-way transmission to subscribers of (i) video programming, or (ii) 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* or *System:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, "a facility, consisting of a set of closed 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 (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that 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 services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." Subject to Section 2.10, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.8. *Channel:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation)."

1.9. *Commission:* The Metropolitan Area Communications Commission, its officers, agents and employees, and, for purposes of this Agreement, its affected Member Jurisdictions which are the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, together with Washington County. The Commission was created and exercises its powers pursuant to an Intergovernmental Cooperation Agreement, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by its members and although it may exercise those powers as an entity, it remains a composite of its members.

1.10. *Communications Act*: The Communications Act of 1934, as amended.

1.11. *Control:* The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.12. *Days*: Calendar days unless otherwise noted.

1.13. *Designated Access Provider*: The entity or entities designated by the Grantor to manage or co-manage the Public, Education, and Government Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.14. *Educational Access Channel*: An Access Channel available solely for the use of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

1.15. *Effective Date*: The effective date of this Agreement shall be upon the Grantor's written certification of approval of all its Member Jurisdictions and Franchisee's unconditional written acceptance of this Agreement. If either event fails to occur, this Agreement shall be null and void, and any and all rights of Franchisee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

1.16. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.17. *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which

Franchisee's FTTP Network is attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Franchisee to foresee or control.

1.18. *Franchise Area*: Those portions of the unincorporated area of Washington County and the incorporated areas (entire existing territorial limits) of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin as shown in Exhibit A, and such additional areas as may be included in the corporate (territorial) limits of Member Jurisdictions during the term of this Agreement or are added pursuant to Section 3.1.2.

1.19. *Franchisee:* Verizon Northwest Inc., and its lawful and permitted successors, assigns, and transferees.

1.20. *Government Access Channel*: An Access Channel available solely for the use of Grantor and other local governmental entities located in the Franchise Area.

1.21. *Grantor:* The Metropolitan Area Communications Commission (MACC) created in 1980 which is the local franchising authority for the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, and Washington County, or the lawful successor, transferee, or assignee thereof.

1.22. *Gross Revenue:* All revenue, including any and all cash, credits, property, or consideration of any kind, as determined in accordance with generally accepted accounting principles which is earned or derived by Franchisee and/or its Affiliates received from Franchisee's provision of Cable Service over the Cable System in the Franchise Area. Gross Revenue shall be reported to Grantor using the "accrual method" of accounting. Gross Revenue shall include the following items so long as all other cable providers in the Service Area include the same in Gross Revenues for purposes of calculating franchise fees:

(a) fees charged for Basic Service;
(b) fees charged to Subscribers for any service tier other than Basic Service;
(c) fees charged for premium Channel(s), *e.g.* HBO, Cinemax, or Showtime;
(d) fees charged to Subscribers for any optional, per-channel, or per-program services;
(e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;
(f) fees for downgrading any level of Cable Service programming;
(g) fees for service calls;
(h) fees for leasing of Channels;
(i) rental of customer equipment, including converters (*e.g.* set top boxes, high definition converters, and digital video recorders) and remote control devices;
(j) advertising revenue as set forth herein;
(k) revenue from the sale or lease of access Channel(s) or Channel capacity;
(l) revenue from the sale or rental of Subscriber lists;

(m) revenues or commissions received from the carriage of home shopping channels;
(n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;
(o) revenue from the sale of program guides;
(p) late payment fees;
(q) forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value;
(r) revenue from NSF check charges;
(s) revenue received from programmers as payment for programming content cablecast on the Cable System; and
(t) Franchise fees.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, *e.g.*, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Oregon. Franchisee has 100 Subscribers in the Franchise Area, 500 Subscribers in Oregon, and 1,000 Subscribers nationwide. Gross Revenue as to the Grantor from Ad "A" is 10% of Franchisee's revenue therefrom. Gross Revenue as to the Grantor from Ad "B" is 20% of Franchisee's revenue therefrom.

Gross Revenue shall not include:

1.22.1. Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System in the Franchise Area;

1.22.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.22.3. Refunds, rebates, or discounts made to Subscribers or other third parties;

1.22.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from: Telecommunications Services; Information Services, including without limitation Internet Access services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed to Non-Cable Services in accordance with applicable federal and state laws or regulations;

1.22.5. Any revenue of Franchisee or any Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.22.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.22.7. The imputed value of the provision of Cable Services to customers on a complimentary basis including, without limitation, the provision of Cable Services to public buildings as required or permitted herein;

1.22.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal, or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and non-cable franchise fees and revenue);

1.22.9. Any forgone revenue that Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Agreement; provided, however, that such forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value in place of cash consideration shall be included in Gross Revenue;

1.22.10. Sales of capital assets or sales of surplus equipment;

1.22.11. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement; or

1.22.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

1.23. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), which currently states, "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

1.24. *Initial Service Area*: The area depicted as the Initial Service Area in Exhibit A.

1.25. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.26. *Member Jurisdictions*: Washington County and the member cities of the Commission that are within the Initial Service Area, specifically the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin.

1.27. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services consistent with FCC rules and orders by courts of competent jurisdiction following all appeals.

1.28. *Normal Business Hours:* Those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.29. *Origination Points*: Locations from which PEG programming is delivered to the PEG Access Headend for transmission as set forth in Exhibit B.

1.30. *PEG*: Public, educational, and governmental.

1.31. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.32. *Public Access Channel*: An Access Channel available solely for use by the residents and others in the Franchise Area, as authorized by Grantor.

1.33. *Public Communications Network ("PCN") / Institutional Network*: The separate communications network provided by Comcast Inc. or its successor in interest, designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other non-profit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include, but is not limited to, two-way video, audio, or digital signals among institutions.

1.34. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Member Jurisdictions, to the full extent of the Member Jurisdictions' right, title, interest, and/or authority to grant a franchise to occupy and use such streets and easements for Telecommunications Facilities and Cable Service. Public Rights-of-Way shall also include any easement granted or owned by the Grantor or Member Jurisdictions and acquired, established, dedicated or devoted for public utility purposes. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.35. *School*: Any educational institution, public or private, registered by the State of Oregon pursuant to ORS 345.505-.525, excluding home schools, including but not limited to primary and secondary schools, colleges and universities.

1.36. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.37. *Service Date*: The date that Franchisee first provides Cable Service on a commercial basis directly to more than one Subscriber in the Franchise Area. Franchisee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise.

1.38. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.39. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.40. *Telecommunication Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), which currently states, "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

1.41. *Title II*: Title II of the Communications Act.

1.42. *Title VI*: Title VI of the Communications Act.

1.43. *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states, "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, Grantor and Member Jurisdictions hereby grant Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. This Agreement is intended to convey limited rights and interests only as to those streets and Public Rights-of-Way in which the Member Jurisdictions have an actual interest. It is not a warranty of title or interest in any Public Right-of-Way, it does not provide the Franchisee any interest in any particular location within the Public Right-of-Way, and it does not confer rights other than as expressly provided in the grant hereof. Except as set forth in this Agreement, this Agreement does not deprive Grantor or Member Jurisdictions of any powers, rights, or privileges they now have or may acquire in the future under applicable law, to use, perform work on, or regulate the use and control of the Member Jurisdictions' streets covered by this Agreement, including without limitation, the right to perform work on their roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. This Agreement authorizes Franchisee to engage in providing Cable Service. Nothing herein shall be interpreted to prevent Grantor or Franchisee from challenging the lawfulness or enforceability of any provisions of applicable law.

2.1.3. To the extent Franchisee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Franchisee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Regulatory Authority Over the FTTP Network*: The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. Jurisdiction over such Telecommunications Facilities is governed by federal and state law, and Grantor and Member Jurisdictions do not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, Grantor and Member Jurisdictions' regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect the Grantor or Member Jurisdictions' authority, if any, to adopt and enforce lawful regulations with respect to the Public Rights-of-Way, subject to 2.9 below.

2.3. *Term:* The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through the fifteenth (15^{th}) anniversary thereof, unless extended or terminated sooner as hereinafter provided.

2.4. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor or Member Jurisdictions to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the Member Jurisdictions to use same for any purpose they deem fit, including the same or similar purposes allowed Franchisee hereunder. Member Jurisdictions may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Franchisee's authority under this Agreement, and for such additional franchises for cable systems as the Grantor deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Effect of Acceptance*: By accepting the Agreement, the Franchisee: (1) acknowledges and accepts the Grantor's and Member Jurisdiction's legal right to issue the Agreement; (2) acknowledges and accepts the Grantor's legal right to enforce the Agreement on behalf of its Member Jurisdictions; (3) agrees that it will not oppose the Grantor intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of this Agreement; and (5) 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.

2.6. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise and its exhibits are subject to and shall be governed by all

applicable provisions of federal law and regulation as they may be amended, including but not limited to the Communications Act.

2.7. *No Waiver:*

2.7.1. The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.7.2. The failure of Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse Grantor from performance, unless such right or performance has been specifically waived in writing.

2.8. *Construction of Agreement:*

2.8.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.8.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8.3. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as they may be amended, including but not limited to the Communications Act. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or more parties, then the parties shall modify this Franchise to ameliorate such adverse effects on, and preserve the affected benefits of, the Franchisee and/or the Grantor to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at Franchisee or Grantor's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at Franchisee or Grantor's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the Franchise Area, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose as set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse effects of the change in law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this Section 2.8.3 shall have no further force or effect. To the extent permitted by law,

if there is a change in federal law or state law that permits Franchisee to opt out of or terminate this Agreement, then Franchisee agrees not to exercise such option.

2.9. *Police Powers*: In executing this Franchise Agreement, the Franchisee acknowledges that its rights hereunder are subject to the lawful police powers of Grantor or Member Jurisdictions to adopt and enforce general ordinances necessary to the safety and welfare of the public and Franchisee agrees to comply with all lawful and applicable general laws and ordinances enacted by Grantor or Member Jurisdictions pursuant to such power. Nothing in this Agreement shall be construed to prohibit the reasonable, necessary, and lawful exercise of Grantor or Member Jurisdictions' police powers. However, if the reasonable, necessary and lawful exercise of Grantor or Member Jurisdictions' police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the satisfaction of all parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to Grantor or Member Jurisdictions or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.10. *Termination of Telecommunications Services.* Notwithstanding any other provision of this Agreement, if Franchisee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, Grantor may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3. PROVISION OF CABLE SERVICE

3.1. *Service Area*:

3.1.1. *Initial Service Area*: Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within four (4) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by Grantor or Member Jurisdictions; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Subsection 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than ten (10) occupied residential dwelling units per quarter mile as

measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should new construction in an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within ninety (90) days of the date that the Franchisee's Franchise Service Manager is notified of a request from a potential Subscriber and verification that the density requirement is satisfied. Franchisee has an ongoing obligation to notify Grantor of any changes to the name and contact information for the Franchise Service Manager.

3.1.2. *Additional Service Areas*: Aside from the Initial Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof. If Franchisee desires to add Additional Service Areas within the unincorporated areas of Washington County or the territorial limits of the Member Jurisdictions, Franchisee shall notify Grantor in writing and provide a map of such Additional Service Area at least thirty (30) days prior to providing Cable Services to such Additional Service Area which shall then become part of the Franchise Area. Notwithstanding the foregoing, the parties acknowledge that the addition of the cities of Banks, Gaston, or North Plains as an Additional Service Area shall be subject to reasonable approval by Grantor and the affected jurisdiction. Franchisee shall meet with Grantor at least once every two years, beginning with the Effective Date, to discuss whether technology and development warrant extending the service area to include Banks, Gaston, North Plains and additional areas within Member Jurisdiction boundaries not included in the Initial Service Area. As a result of each of these meetings, Franchisee will either (a) negotiate in good faith an amendment to the Agreement to expand service to one or more of these areas, if an amendment is necessary, or (b) explain why, in Franchisee's sole discretion, expansion of service is not yet justified. Franchisee shall not be required to disclose confidential information in conjunction with these discussions.

3.2. *Availability of Cable Service*: Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense (other than a standard installation charge) all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings*: Subject to 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each unserved (by any cable operator) fire station, School, police station, and public library as may be designated by Grantor; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such School or public building, Grantor shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing

Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. No more than 150 complimentary service outlets shall be required to be served under this provision. In addition, Franchisee shall provide without charge one service outlet activated for Enhanced Basic Service and one set-top box as necessary to receive digital signals to each of the following locations: the Commission's offices and the Commission's PEG Access Headend.

4. **SYSTEM OPERATION**

As provided in Section 2.2, the parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of Grantor or Member Jurisdictions over such Telecommunications Facilities is restricted by federal and state law, and neither Grantor nor the Member Jurisdictions asserts jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. **SYSTEM FACILITIES**

5.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Franchisee's Cable System shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry standards.

5.1.1. The System shall be designed with an initial analog and digital carrier passband of between 50 MHz and 860 MHz. The System shall be capable of analog, standard digital, HDTV, VOD, as well as other future services.

5.1.2. The System shall have a modern design, when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term.

5.1.3. The System shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site.

5.1.4. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. The Franchisee 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 Franchisee must comply with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

5.2. *Inspection of Facilities:* The Grantor may inspect upon request any of Franchisee's facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice. In all instances, a qualified representative of Franchisee must be available to accompany the tour to insure that no privacy requirements are violated.

5.3. *Emergency Alert System*:

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the State and Local EAS Plans. Member Jurisdictions shall permit only appropriately trained and authorized Persons to activate the EAS equipment through the EAS Local Primary Stations (LP1 or LP2) and remotely override the audio and video on all channels on the Cable System.. Each Member Jurisdiction shall take reasonable precautions to prevent any inappropriate use of the EAS or Cable System, or any loss or damage to the Cable System, and, except to the extent prohibited by law, shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS by that Member Jurisdiction, including but not limited to, reasonable attorneys' fees and costs.

6. PEG SERVICES

6.1. *PEG Access Channels:*

6.1.1. All PEG Access Channels provided for herein shall be administered by the Grantor or its designee. Grantor or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531. Franchisee shall cooperate with Grantor or its designee in the use of the Cable System for the provision of PEG Access Channels.

6.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide Grantor, within thirty (30) days of the Service Date of this Agreement, six (6) dedicated Public, Educational, and Government Access Channels ("PEG Access Channels"). All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Franchisee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Franchisee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Franchisee. Franchisee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels and from the Origination Points provided for herein.

6.1.3. Within ten (10) days after the Effective Date of this Agreement, Grantor shall inform Franchisee of the general nature of the programming to be carried on the initial PEG Access Channels set aside by Franchisee. Grantor and Member Jurisdictions authorize Franchisee to transmit such programming within and outside the Franchise Area. Franchisee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Franchisee's existing or planned channel line-up. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Franchisee with at least ninety (90) days notice of the change(s).

6.1.3.1. If a PEG Access Channel provided under this Article is not being utilized by Grantor, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Access Channel for its intended purpose.

6.1.3.2. Grantor shall require all local producers and users of any of the PEG facilities or Channels to agree to authorize Franchisee to transmit programming consistent with this agreement in writing and to defend and hold harmless Franchisee and Grantor from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Access Channel.

6.1.4. If all of Franchisee's video programming is delivered in a digital format, then, Franchisee shall reserve six (6) additional PEG Access Channels, for a total of twelve (12) PEG Access Channels. Franchisee shall activate the reserved PEG Access Channels following a written request from Grantor when the following criteria have been met for each additional PEG Access Channel:

6.1.4.1. Grantor must have a documented need for additional programming capacity that cannot be fulfilled by existing PEG Access Channels;

6.1.4.2. the existing PEG Access Channels must be utilized for PEG programming within the Franchise Area as follows:

6.1.4.2.1. Public Access Channels: During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

6.1.4.2.2. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; or

6.1.4.2.3. Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.;

6.1.4.3. all cable providers within the Franchise Area similarly provide such additional PEG Access Channels; and

6.1.4.4. as long as the signal source location is the PEG Access Headend, any additional PEG Access Channel shall be made available within one hundred twenty (120) days following Grantor's request (which shall constitute Grantor's authorization to transmit the PEG Access Channel within and outside the Franchise Area) and verification of compliance with each of the foregoing conditions. If the signal source location is not the PEG Access Headend, the timing of the availability and other conditions will be by mutual agreement of Grantor and Franchisee. In no event shall the origination point be located outside the Franchise Area.

6.1.5. For the purpose of Section 6.1.4:

6.1.5.1. "Locally Produced" means programming produced in Clackamas, Multnomah, or Washington Counties, or the Vancouver/Clark County, Washington metropolitan area; and

6.1.5.2. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

6.1.5.3. "Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any PEG Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its Basic or expanded Basic Cable Services shall not be considered "Locally Scheduled."

6.2. *Connection of PEG Access Headend:*

6.2.1. Grantor shall provide suitable video signals for the PEG Access Channels to Franchisee at Grantor's PEG Access Headend located at 11375 SW Center Street, Suite B, Beaverton, Oregon 97005. Upon receipt of a suitable video signal, Franchisee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Franchisee to fulfill such obligations.

6.2.2. Grantor shall have the right to relocate the PEG Access Headend one time during the term of this Franchise as follows: Grantor may relocate the PEG Access Headend to a new location within the Service Area and within five hundred (500) feet of one of Franchisee's active, video-enabled FTTP trunk or feeder lines; provided that Grantor shall provide to Franchisee at the new location: (1) suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and cooperation of Grantor as is reasonably necessary; (2) access to such space at least ninety (90) days prior to anticipated use of the new PEG Access Headend; and (3) reimbursement of up to Fifteen Thousand Dollars ($15,000) for costs associated with the relocation of the equipment necessary for transmitting the PEG signal.

6.3. *Origination Points:* To facilitate the Grantor's transmission of live video/audio and other PEG programming from certain remote sites, the Franchisee, at its own expense, will provide and maintain fiber connections and the related analog to digital (ADC) transmission/receive equipment necessary between the Grantor's PEG Access Headend and the Origination Points listed in Exhibit B of this Agreement. Grantor agrees it will not use these fiber connections for other purposes.

6.4. *PEG/PCN Grant:*

6.4.1. Franchisee shall provide an annual grant (the "PEG/PCN Grant") to Grantor to be used in support of the production of local PEG programming and in support of the PCN. Such grant shall be used by Grantor for capital costs for public, educational, or governmental access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, and to support the capital and operating needs of PCN users.

6.4.2. The PEG/PCN Grant provided by Franchisee hereunder shall be the sum of $1.00, per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier. Franchisee shall deliver the PEG/PCN Grant payment, along with a brief summary of the Subscriber information upon which it is based, to Grantor concurrent with the Franchise fee payment. Calculation of the PEG/PCN Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area. Franchisee may retain up to twenty-five percent (25%) of PEG/PCN Grant payments until the full amount of the Incidental Payment required in Section 14.5 of this Agreement is recovered.

6.4.3. Grantor shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section.

6.4.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG/PCN Grant or any other costs arising from the provision of PEG and PCN services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

7. FRANCHISE FEES

7.1. *Payment to the Grantor:* Franchisee shall pay to the Grantor a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of annual Gross Revenues required herein, Franchisee 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 Franchisee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a written report prepared by a representative of Franchisee showing the basis for the computation in the form attached hereto as Exhibit C. Grantor shall have the right to reasonably request further supporting documentation and information for each Franchise fee payment, subject to the confidentiality provisions in this Agreement; provided that Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Agreement.

7.3. *Acceptance of Payments:* Subject to Section 7.4 below, no acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Franchisee.

7.4. *Audit of Franchise Fee Payments:*

7.4.1. Grantor, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every two (2) years during the Term. As a part of the audit process, Grantor or Grantor's designee may inspect Franchisee's books of accounts relative to Grantor at any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2. All records deemed by Grantor or Grantor's designee to be reasonably necessary for such audit, which shall include, but not be limited to, all records subject to inspection by Grantor pursuant to Section 9.2 herein, shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee makes a good faith effort to procure any such tardy response.

7.4.2.1. During any audit period when Franchisee has less than 10,000 Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by five percent (5%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than five percent (5%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Ten Thousand Dollars ($10,000) per audit.

7.4.2.2. During any period when Franchisee has 10,000 or more Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by three percent (3%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than three percent (3%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Fifteen Thousand Dollars ($15,000) per audit.

7.4.2.3. Grantor agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the Franchise fee of any amount, Franchisee shall pay Grantor the amount of the underpayment, together with interest as provided in Section 7.7 below. Any auditor employed by Grantor shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

7.5. *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 Franchisee is due.

7.6. *Bundled Services*: In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of Franchisee's revenue attributable to such other services, capabilities, or applications shall be included in Gross Revenue unless Franchisee's books and records that are kept in the regular course of business identify the revenue as being attributable to the other services, capabilities or applications.

7.7. *Annual Franchise Fee Report:* Franchisee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor an annual summary of Franchise fee calculations, substantially in the form attached hereto as Exhibit C but showing annual rather than quarterly amounts.

7.8. *Interest on Late Payments:* In the event that a Franchise fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

7.9. *Payment on Termination:* If this Agreement terminates for any reason, Franchisee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Franchisee since the end of the previous calendar quarter for which Franchise fees were paid. If, within sixty (60) days of

providing such financial statement, Franchisee has not satisfied all remaining financial obligations to Grantor, Grantor reserves the right to satisfy any remaining financial obligations of the Franchisee to Grantor by utilizing the funds available in the Letter of Credit provided by the Franchisee under Section 13.6 of this Agreement.

7.10. *Costs of Publication:* Franchisee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor under applicable law.

8. CUSTOMER SERVICE

8.1. Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

8.2. If, at any time during the term of this Franchise, "Effective Competition," as defined by the Communications Act, as the term may be reasonably applied to Franchisee, ceases to exist in the Service Area, Grantor and Franchisee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. Grantor and Franchisee shall enter into such negotiations within forty-five (45) days following a request for negotiations by Franchisee after the cessation of "Effective Competition" as described above.

9. REPORTS AND RECORDS

9.1. *Open Books and Records*: Upon reasonable written notice to Franchisee and with no less than thirty (30) days written notice to Franchisee, Grantor shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during weekday business hours and on a nondisruptive basis at a mutually agreed location within Franchisee's Title II service territory in Oregon and Washington, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by Grantor. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Franchisee's Title II service territory in Oregon and Washington, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by Grantor and the Franchisee, provided that the Franchisee must pay all travel expenses incurred by Grantor in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in Franchisee's Title II service territory in the Portland metropolitan area.

9.2. *Proprietary Books and Records*: If the Franchisee believes that the requested information is confidential and proprietary, the Franchisee must provide the following documentation to Grantor: (i) specific identification of the information; and (ii) statement

attesting to the reason(s) Franchisee believes the information is confidential. The Grantor shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents requested by Grantor that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee, consistent with the Oregon Public Records Law. Should Grantor be required under state law to disclose information derived from Franchisee's books and records, Grantor agrees that it shall provide Franchisee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area, or any confidential information relating to such Cable Service where the Grantor and Member Jurisdictions cannot lawfully protect the confidentiality of the information.

9.3. *Records Required*: Franchisee shall maintain:

9.3.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.4. *Additional Requests*: The Grantor shall have the right to request in writing such information as is appropriate and reasonable to determine whether Franchisee is in compliance with applicable Customer Service Standards, as referenced in Exhibit D. Franchisee shall provide Grantor with such information in such format as Franchisee customarily prepares reports. Franchisee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for the Grantor to evaluate compliance, subject to Section 9.6.

9.5. *Copies of Federal and State Documents*: Franchisee shall submit to the Grantor a list, or copies of actual documents, of all pleadings, applications, notifications,

communications and documents of any kind, submitted by Franchisee 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 Franchisee's Cable System within the Franchise Area. Franchisee shall submit such list or documents to the Grantor no later than thirty (30) days after filing, mailing or publication thereof. Franchisee 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 a federal or state agency or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the Grantor and its duly authorized agents and shall not be made available for public inspection.

9.6. *Report Expense*: All reports and records required under this or any other Section shall be furnished, without cost, to Grantor. Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Section 9 in order to meet the requirements of this Section 9.

10. INSURANCE AND INDEMNIFICATION

10.1. Insurance:

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of Three Million Dollars ($3,000,000) combined single limit for property damage and bodily injury; one million dollar ($1,000,000) limit for broadcaster's liability. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the Franchise Area.

10.1.1.2. Automobile Liability Insurance in the amount of Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: $100,000; and (B) Bodily Injury by Disease: $100,000 employee limit; $2,000,000 policy limit.

10.1.2. Grantor and Member Jurisdictions shall be designated as additional insureds under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Franchisee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification*:

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend Grantor, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that Grantor shall give Franchisee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access Channels, use of the PCN, or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against Grantor by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of Grantor, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent Grantor from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with Grantor, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of Grantor and Grantor does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify Grantor shall in no event exceed the amount of such settlement.

10.2.3. Grantor shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of Grantor.

10.2.4. Grantor shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by Grantor for which Grantor is legally responsible, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify Grantor for acts of Grantor which constitute willful misconduct or negligence, on the part of Grantor, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of Member Jurisdictions, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Article 11.

11.2. A "Transfer of the Franchise" shall mean any transaction in which:

11.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

11.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Subsections 11.2.1 and 11.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee. The parent of Franchisee is shown in Exhibit E.

11.3. Franchisee shall make a written request ("Request") to Grantor and Member Jurisdictions for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by Grantor and Member Jurisdictions in respect to its consideration of a proposed Transfer of the Franchise. Member Jurisdictions shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all requested information. Subject to the foregoing, if the Member Jurisdictions fail to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and Member Jurisdictions agree to an extension of time.

11.4. In reviewing a Request related to a Transfer of the Franchise, Grantor and Member Jurisdictions may inquire into the legal, technical and financial qualifications of the prospective transferee, and Franchisee shall assist Grantor and Member Jurisdictions in so inquiring. Member Jurisdictions may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective or transferee and to the resolution of outstanding and unresolved issues of Franchisee's noncompliance with the terms and conditions of this Agreement.

11.5. The consent or approval of Member Jurisdictions to any Request by the Franchisee shall not constitute a waiver or release of any rights of Member Jurisdictions, and any transferee shall be expressly subordinate to the terms and conditions of this Agreement.

11.6. Notwithstanding the foregoing, the parties agree that the Member Jurisdictions' consent and/or approval to any transfer or assignment of any rights, title, or interest of Franchisee to any Person shall not be required where Verizon Northwest Inc. or its lawful successor which is not a third party transferee remains the Franchisee following any such transfer or assignment.

12. RENEWAL OF FRANCHISE

12.1. The parties agree that any proceedings undertaken by Grantor and Member Jurisdictions that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, Grantor agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Grantor further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Notice of Violation*: In the event Grantor believes that Franchisee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, Grantor shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged violation.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to Grantor, contesting (in whole or in part) Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.3 below; (ii) cure the violation; or (iii) notify Grantor that Franchisee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps Franchisee shall take to cure the violation including Franchisee's projected completion date for such cure. The procedures provided in Section 13.4 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Franchisee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Franchisee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Franchisee the notice of the violation.

13.2.1. In the event that the Franchisee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing.

13.2.2. In the event that the Franchisee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection 13.2(iii), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

13.2.3. In the event that the Franchisee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection 13.2(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

13.3. *Public Hearing*: In the case of any hearing pursuant to section 3.2 above, Grantor shall provide reasonable notice to Franchisee of the hearing in writing. At the hearing Franchisee shall be provided an opportunity to be heard, to examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

13.3.1. If, after the hearing, Grantor determines that a violation exists, Grantor may use one of the following remedies:

13.3.1.1. Order Franchisee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

13.3.1.2. Establish the amount of fine set forth in Section 13.5, taking into consideration the criteria provided for in subsection 13.4 of this Agreement as appropriate in Grantor's discretion; or

13.3.1.3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law; or

13.3.1.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.7.

13.4. *Reduction of Fines:* The fines set forth in Section 13.5 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

13.4.1. Whether the violation was unintentional;

13.4.2. The nature of the harm which resulted;

13.4.3. Whether there is a history of prior violations of the same or other requirements;

13.4.4. Whether there is a history of overall compliance, and/or;

13.4.5. Whether the violation was voluntarily disclosed, admitted or cured.

13.5. *Fine Schedule*:

13.5.1. For violating telephone answering standards set forth in Exhibit D, Section 2.D for a quarterly measurement period, unless the violation has been cured, fines shall be as set forth below. A cure is defined as meeting the telephone answering standards for two consecutive quarterly measurement periods.

Quarterly Telephone Answer Time Fines

	1st Violation	2nd Violation	3rd Violation
Quarterly Fine	$ 2,000*	$ 4,000*	$ 6,000*

* If after forty-two (42) months, no fines have been assessed for violations of call answer time standards, these fines shall be reduced by fifty percent (50%).

13.5.2. For all other violations of this Agreement, the fine shall be $250 per day.

13.5.3. Total fines shall not exceed Twenty-Five Thousand Dollars ($25,000) in any twelve-month period.

13.5.4. If Grantor elects to assess a fine pursuant to this Section, such election shall constitute Grantor's exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, 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 Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

13.6. *Letter of Credit*: Franchisee shall provide a letter of credit in the amount of Twenty Thousand Dollars ($20,000) as security for the faithful performance by Franchisee of all material provisions of this Agreement.

13.7. *Revocation*: Should Grantor seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.5 above, Grantor shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.7.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.7.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the Grantor.

13.7.3. Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.8. *Limitation on Grantor Liability*: The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. §555a is applicable to this Agreement.

13.9. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of four (4) years from the Service Date of this Franchise, if at the end of such four (4) year period, Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.9 shall be given to the Grantor in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then-current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties*: In any action by Grantor or Franchisee 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, delayed or conditioned.

14.2. *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees,

successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Grantor.

14.4. *Force Majeure*: Franchisee 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 a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by Grantor and/or Subscribers.

14.5. *Incidental Payment:* The Franchisee shall pay the Grantor an Incidental Payment of $149,600 as set forth below as a condition of the Franchise granted by this Agreement. The Incidental Payment will be made to Grantor in four annual payment installments as follows: Commencing on the Service Date, and on the same date in the three (3) following years, the Franchisee shall provide the amounts shown below to the Grantor as an advance of a portion of the Annual PEG/PCN Grant required in Section 6.4 of the Agreement.

Incidental Payment Schedule	
Year 1	$17,600
Year 2	$35,200
Year 3	$44,000
Year 4	$52,800

These payments shall not be regarded as franchise fees, nor payments in lieu of franchise fees, nor as an offset against franchise fees, and they shall be used by Grantor at the Grantor's sole discretion consistent with applicable law. To recover the Incidental Payment, the Franchisee may retain up to twenty-five percent (25%) of the $1.00 per month collected from Subscribers under Section 6.4 of this Agreement until such time as the total amount of $149,600 is recovered. Once the total amount of the Incidental Payment is recovered, the Franchisee shall pay the Grantor the full $1.00 per month, per Subscriber PEG/PCN Grant. The Grantor may assure the accuracy of these payments by inspecting Franchisee's records under Section 9 of this Agreement or by an audit under Section 7.4 of this Agreement.

14.6. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.6.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.6.2. Notices to the Grantor shall be mailed to:

Mr. Bruce Crest, MACC Administrator
Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006-4886

14.7. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and Grantor, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.8. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.10. *Severability*: If any section, subsection, 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, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.11. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

14.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the cable system and any capacity used for cable service or otherwise, to Grantor or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.14. *Independent Legal Advice:* Grantor and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.15. *Grantor Authority:* Grantor represents and warrants that it is authorized to enter into this Agreement on behalf of its Member Jurisdictions pursuant an Intergovernmental Cooperation Agreement originating in 1980 and in effect in its current form since February 13, 2003, and that the party signing below is authorized to execute this Agreement on behalf of the Member Jurisdictions following certification that the governing bodies of each of the affected Member Jurisdictions have approved this Agreement as required by Section 4.E of the Intergovernmental Cooperation Agreement.

14.16. *Franchisee Authority:* Franchisee represents and warrants that it is authorized to enter into this Agreement and that the party signing below is authorized to execute this Agreement.

AGREED TO THIS _____ DAY OF _____, 2007.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

By: _____
[Title]

VERIZON NORTHWEST INC.

By: _____
[Title]

EXHIBITS

Exhibit A: Initial Service Area/Franchise Area

Exhibit B: Origination Points

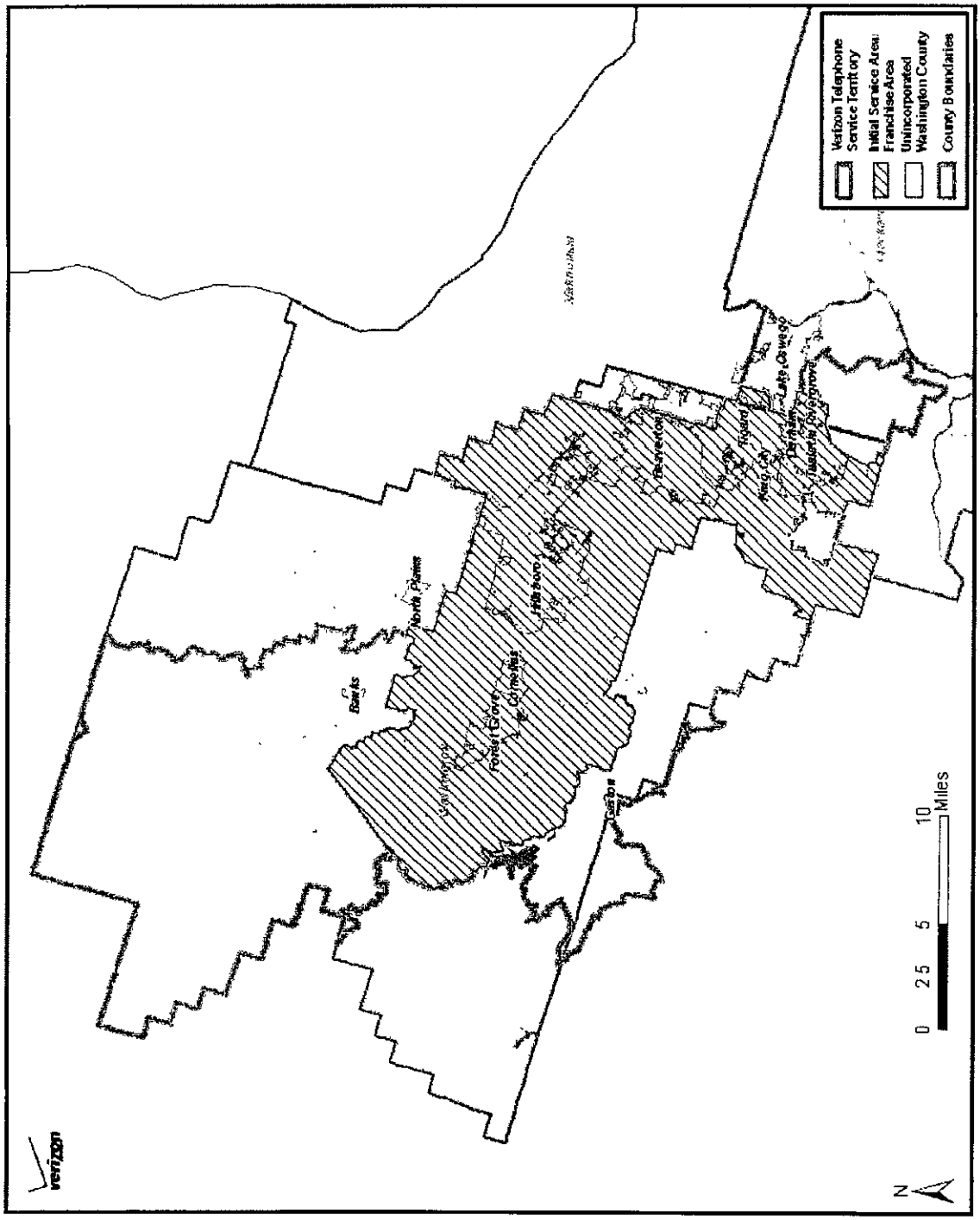
Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Customer Service Standards

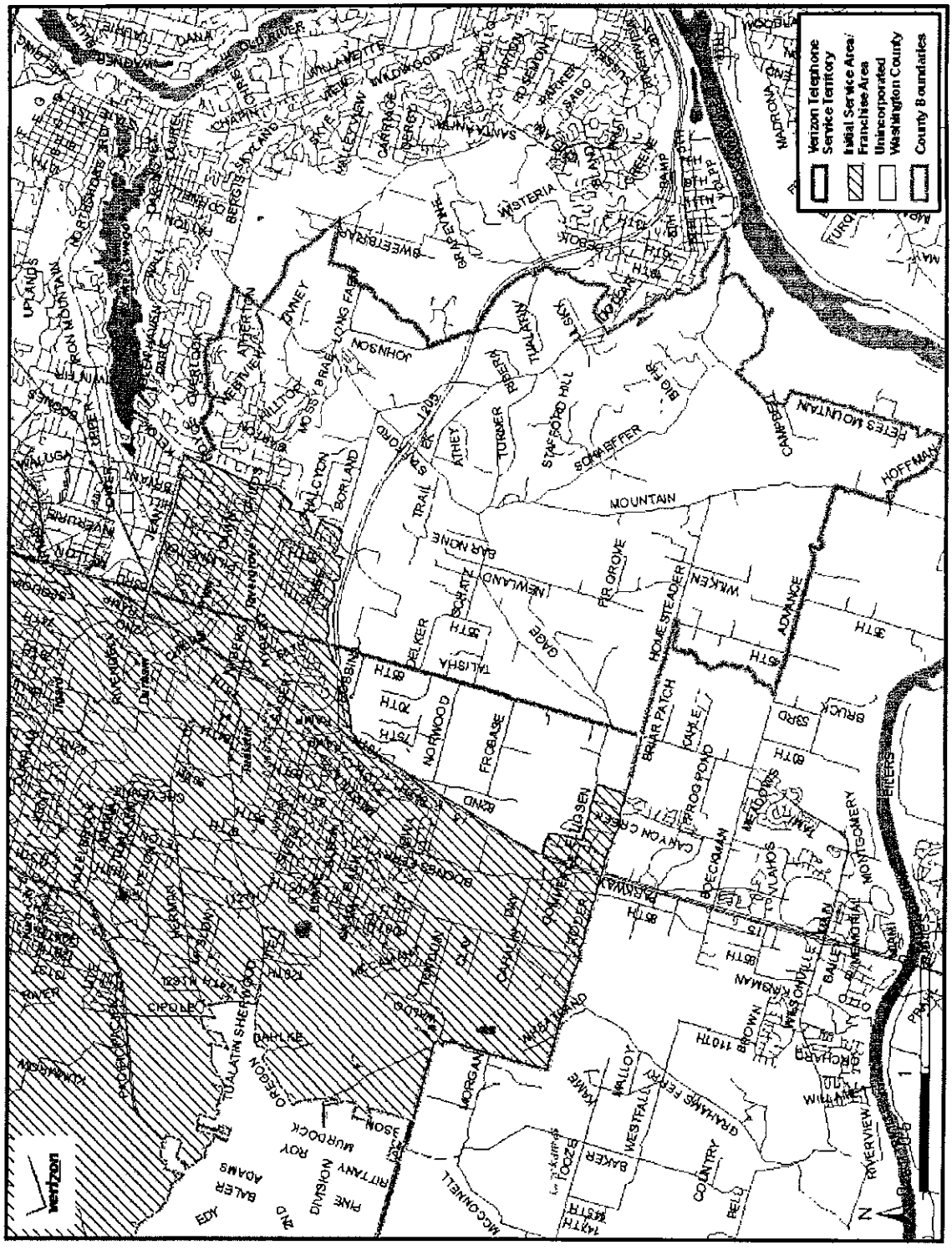
Exhibit E: Franchise Parent Structure as of January 24, 2007

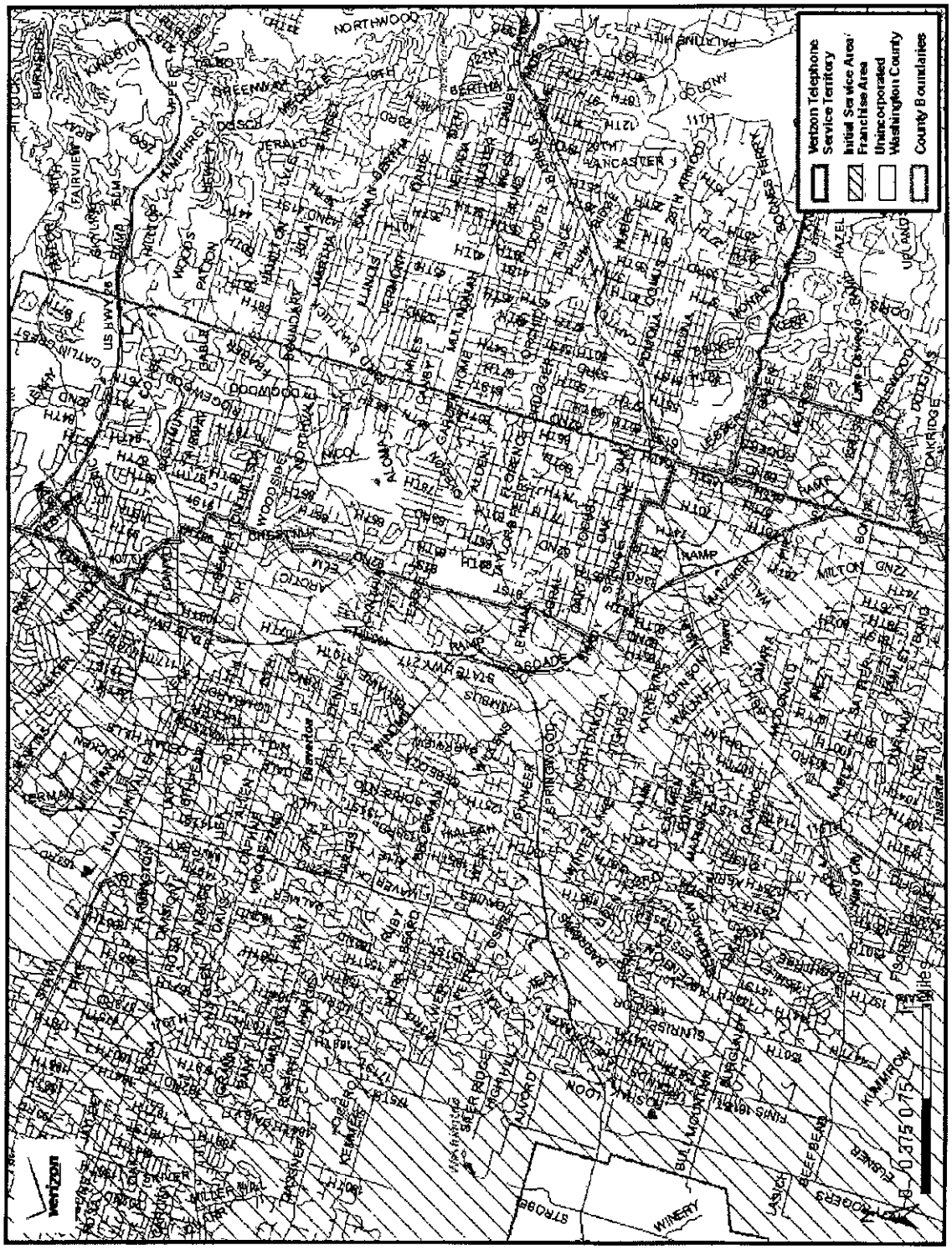
Exhibit F: Quarterly Customer Service Standards Performance Report

EXHIBIT A - INITIAL SERVICE AREA/FRANCHISE AREA



MACC
Seattle-3338555.9 0010932-00100


Verizon Telephone Service Territory
Initial Service Area/ Franchisee Area
Unincorporated Washington County
County Boundaries
verizon



MACC
Seattle-3338555 9 0010932-00100

EXHIBIT B

ORIGINATION POINTS

Alternate City Council "Live" Meeting Sites:

Beaverton Library, 12375 SW 5th St., Beaverton, Oregon 97005

Tigard Library, 13500 SW Hall Blvd., Tigard, Oregon 97223

Area Emergency Management Centers:

Tualatin Valley Fire & Rescue (TVF&R) Administration, EMC, 20665 SW Blanton St., Aloha, Oregon 97007

WCCCA Emergency Management Center, EMC 17911 NW Evergreen Parkway, Beaverton, Oregon 97006

Washington County EMC, Washington County Sheriff's Office, 215 SW Adams Ave., Hillsboro, Oregon 97123

EXHIBIT C

QUARTERLY FRANCHISE FEE REMITTANCE FORM

MACC
FRANCHISE FEE SCHEDULE/REPORT

For the Quarter Ending _____

		Month 1	Month 2	Month 3
1	Monthly Recurring Cable Service Charges (e.g., Basic, Enhanced Basic, Premium and Equipment Rental)			
2	Usage Based Charges (e.g., Pay Per View, Installation)			
3	Other Misc. (e.g., Late Charges, Advertising, Leased Access)			
4	Franchise Fees Collected			
Less:				
1	Sales Tax Collected	$	$	$
2	Uncollectibles			
Total Receipts Subject to Franchise Fee Calculation				
Franchise Fee Rate 5%				
Franchise Fee Due				
		Quarter Franchise Fee _____		

Monthly PEG Grant Collection
Quarterly PEG Grant Remission $_____

EXHIBIT D

CUSTOMER SERVICE STANDARDS

These standards shall apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area. However, for the first three (3) months after the Service Date, Franchisee shall not be required to provide reports under this Agreement and, for the first six (6) months after the Service Date, Grantor will not impose fines if Franchisee fails to meet the customer service standards set forth in this Agreement. This Section sets forth the minimum customer service standards that the Franchisee must satisfy.

SECTION 1: DEFINITIONS

A. Normal Operating Conditions: Those service conditions which are within the control of Franchisee, as defined under 47 C.F.R. § 76.309(c)(4)(ii). Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

B. Respond: The start of Franchisee's investigation of a Service Interruption by receiving a Subscriber call, and opening a trouble ticket, and begin working, if required.

C. Service Call: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Service Interruption: The loss of picture or sound on one or more cable channels.

E. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

F. Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and such representatives shall be available to receive all other inquiries at least forty-five (45) hours per week including at least one night per week and/or some weekend hours. Franchisee representatives shall identify themselves by name when answering this number.

B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Forty-five (45) days following the end of each quarter, the Franchisee shall report to Grantor, using the form shown in Exhibit F, the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D; and

(2) Percentage of time customers received a busy signal when calling the Franchisee's service center as set forth in Subsection 2.E.

G. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change not less than thirty (30) days in advance.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the

provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the customer's premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises. Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding those requested by the customer outside of the seven (7) day period.

C. Franchisee shall provide Grantor with a report forty-five (45) days following the end of the quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request.

D. At Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change not less than thirty (30) days in advance.

E. Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Franchisee's discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.

(1) Franchisee may not cancel an appointment window with a customer after the close of business on the business day prior to the scheduled appointment.

(2) If Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

F. Franchisee must provide for the pick up or drop off of equipment free of charge in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office within the Franchise Area. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at Subscriber's address or by a satisfactory equivalent.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall promptly notify Grantor of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after Grantor and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls about Service Interruptions in the Service Area.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or Grantor of a Cable Service problem.

E. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Franchisee shall provide Grantor with a report within forty-five (45) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to Grantor for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting

quarters one time during the term of this Agreement. The Franchisee shall notify the Grantor of such a change at least thirty (30) days in advance.

H. At Franchisee's option, the above measurements may be changed for calendar quarters to billing or accounting quarters one time during the term of this Agreement. Franchisee shall notify Grantor of such a change at least thirty (30) day in advance.

I. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber experience the loss of picture or sound for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

J. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS REFERRED BY GRANTOR

Under Normal Operating Conditions, Franchisee shall begin investigating Subscriber complaints referred by Grantor within twenty-four (24) hours. Franchisee shall notify Grantor of those matters that require more than seventy-two (72) hours to resolve, but Franchisee must make all necessary efforts to resolve those complaints within ten (10) business days of the initial complaint. Grantor may require Franchisee to provide reasonable documentation to substantiate the request for additional time to resolve the problem. Franchisee shall inform Grantor in writing, which may be by an electronic mail message, of how and when referred complaints have been resolved within a reasonable time after resolution. For purposes of this Section, "resolve" means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items,

Franchise fees, taxes and/or other governmental-imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved, provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. Franchisee shall provide a telephone number and address clearly and prominently on the bill for Subscribers to contact Franchisee.

G. Franchisee shall forward a copy of any rate-related or customer service-related billing inserts or other mailings related to Cable Service, but not promotional materials, sent to Subscribers, to Grantor.

H. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

I. Franchisee shall provide Grantor with a sample Cable Services bill, and shall provide an updated sample bill at least 30 days before any material change is sent to Subscribers.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. Franchisee shall not, except to the extent expressly permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice. Such late fees are subject to ORS 646.649.

C. All of Franchisee's rates and charges shall comply with applicable law. Franchisee shall maintain a complete current schedule of rates and charges for Cable Services on file with the Grantor throughout the term of this Franchise.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the Subscriber, except equipment charges may by applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to Grantor. A copy of the annual notice required under this Subsection 9.C will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers.

D. Franchisee shall provide the name, mailing address, and phone number of Grantor on all Cable Service bills in accordance with 47 C.F.R. §76.952(a).

E. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

F. Franchisee shall provide reasonable notice to Subscribers and Grantor of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee. If the change is not within Franchisee's control, Franchisee shall provide an explanation to Grantor of the reason and expected length of delay. Franchisee shall provide a copy of the notice to Grantor including how and where the notice was given to Subscribers.

G. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of Grantor, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to Grantor at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with the control of Franchisee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the Channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

J. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Franchisee will comply with privacy rights of Subscribers in accordance with federal, state, and local law, including 47 U.S.C. §551.

EXHIBIT E
FRANCHISEE PARENT STRUCTURE AS OF JANUARY 24, 2007

Verizon Northwest parent: GTE Corporation 100%

GTE Corporation Parents:

Verizon Communications Inc. 92.88%

NYNEX Corporation 5.93% (which is 100% owned by Verizon Communications Inc.)

Bell Atlantic Global Wireless, Inc. 1.19% (which is 100% owned by Verizon Investments Inc., which is 100% owned by Verizon Communications Inc.)

EXHIBIT F
CUSTOMER SERVICE STANDARD REPORT METRICS

THE FOLLOWING INFORMATION IS PROPRIETARY AND CONFIDENTIAL AND IS CONDITIONALLY EXEMPT FROM THE OREGON PUBLIC RECORDS LAW. THE FOLLOWING INFORMATION QUALIFIES AS PROPRIETARY AND CONFIDENTIAL BUSINESS INFORMATION PURSUANT TO, WITHOUT LIMITATION, OREGON REVISED STATUTE § 192.501(2) AND ANY OTHER APPLICABLE LAW AND SHOULD NOT BE DISCLOSED.

Verizon Video Franchise Report:

Contract Requirements	Jan	Feb	Mar	1st Qtr	April	May	June	2nd Qtr	July	Aug	Sept	3rd Qtr	Oct	Nov	Dec	4th Qtr
VCCR 1 Customer Contact Availability																
90% Calls Answered within 30 Seconds																
3% Calls Received a Busy																
VMR 3 Trouble Completion Interval																
90% Completed Service Interruption Troubles <72 hours																
VPR 1 Completed within Specified # of Days																
95% Standard Installs Completed within seven (7) business days after ONT Placement Date or if ONT exists or Customer Can provide within seven (7) business days of Order Creation Date (125 ft)																

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: TA 2006-0003 (PUD Text Amendment)

FOR AGENDA OF: ~~03-05-07~~ 03-19-07 **BILL NO:** 07052

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 02-23-07

CLEARANCES: City Attorney
Dev. Serv.

PROCEEDING: ~~First Reading~~
Second Reading and Passage

EXHIBITS:
1. Ordinance
2. Land Use Order No. 1941
3. Draft PC Minutes Dated 02-07-07
4. Staff Memo Dated 02-10-07

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0	BUDGETED $0	REQUIRED $0

HISTORICAL PERSPECTIVE:

On June 14, 2006, the Planning Commission held the first of a series of public hearings to consider TA 2006-0003 (Planned Unit Development (PUD) Text Amendment) that proposes to amend Development Code Chapter 40 (Applications) Section 40.15.15, Planned Unit Developments; Chapter 60 (Special Regulations) Section 60.35, Planned Unit Developments; and Chapter 90 (Definitions) of the Beaverton Development Code currently effective through Ordinance 4414 (January 2007). The Planning Commission held additional public hearings on July 26 and August 23, 2006, which concluded with the Planning Commission voting 6-1 to recommend approval of the proposed PUD Text Amendment, as memorialized in Land Use Order No. 1902. On November 13, 2007, the City Council held a work session for TA 2006-0003 (PUD Text Amendment) at which the Council agreed to remand the proposed text amendment to the Planning Commission to address a series of issues and questions. The Planning Commission considered each of the issues at a public hearing conducted on February 7, 2007. Following the close of the public hearing on February 7, 2007, the Planning Commission voted 6-0 (San Soucie absent) to recommend approval of the proposed PUD Text Amendment, as amended and memorialized in Land Use Order No. 1941.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is an Ordinance including the proposed text amended by the Planning Commission to reflect deliberation of the issues remanded by Council, Land Use Order No. 1941, draft Planning Commission meeting minutes from January 17, 2007, and staff memo dated January 10, 2007. The original PC materials before the Council remand were distributed to the Council in Agenda Bill No. 06194.

RECOMMENDED ACTION:

Staff recommends the City Council approve the recommendation of the Planning Commission for TA 2006-0003 (PUD Text Amendment) as set forth in Land Use Order No. 1941. Staff further recommends the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4430

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE, CHAPTERS:
40, 60, and 90;
TA 2006-0003 (PUD Text Amendment).

WHEREAS, the purpose of the Planned Unit Development (PUD) Text Amendment is to create standards that protect and improve the quality of development in Beaverton and to encourage innovative development through the use of incentive regulations. The PUD Amendment proposes to amend the PUD regulations contained in Chapter 40, Chapter 60, and Chapter 90 Definitions of the Beaverton Development Code; and

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on May 5, 2006, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on June 14, 2006; and

WHEREAS, the Planning Commission held the first of three public hearings on June 14, July 26, and August 23, 2006 and approved the proposed PUD Development Code Text Amendment based upon the criteria, facts, and findings set forth in the staff report dated July 7, 2006, staff memos dated July 21, and August 17, 2006, and as amended at the hearings; and

WHEREAS, on February 7, 2007, the Planning Commission conducted a public hearing to review issues remanded to the Planning Commission from the City Council for further consideration at the conclusion of which the Planning Commission voted to recommend the Beaverton City Council adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1941; and

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2006-0003 (PUD Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1941; and

WHEREAS, the City Council adopts as to criteria, facts, and findings, described in Land Use Order No. 1941 dated February 12, 2007 and the Planning Commission record, all of which the Council incorporates by this reference and finds to constitute an adequate factual basis for this ordinance; and now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. *Ordinance No. 2050, effective through Ordinance No. 4414, the* Development Code, is amended to read as set out in Exhibit "A" of this Ordinance attached hereto and incorporated herein by this reference.

Section 2. All Development Code provisions adopted prior to this Ordinance, which are not expressly amended or replaced herein, shall remain in full force and effect.

Section 3. Severance Clause. The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair of otherwise affect in any manner the validity, enforceability, or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 5th day of March, 2007.

Passed by the Council this ___ day of _____, 2007.

Approved by the Mayor this ___ day of _____, 2007.

ATTEST:

SUE NELSON, City Recorder

APPROVED:

ROB DRAKE, Mayor

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: TA 2006-0010
(Sunset Transit Center and Teufel Town Center MPR Text Amendment)

FOR AGENDA OF: ~~03-05-07~~ 03-19-07 **BILL NO:** 07053

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 02-20-07

CLEARANCES: City Attorney
Dev. Serv.

PROCEEDING: ~~First Reading~~
Second Reading and Passage

EXHIBITS:
1. Ordinance
2. Land Use Order No. 1939
3. Draft PC Minutes 02-07-07
4. Staff Report dated 01-10-07

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0	BUDGETED $0	REQUIRED $0

HISTORICAL PERSPECTIVE:

On February 07, 2007, the Planning Commission held a public hearing to consider TA 2006-0010 (Sunset Transit Center and Teufel Town Center MPR Text Amendment) that proposes to amend Section 60.05.55, Design Review – Major Pedestrian Route Map for the Merlo and South Tektronix Station Community Areas, of the Beaverton Development Code currently effective through Ordinance 4414 (February 2007). The purpose of the amendment is to apply the Major Pedestrian Route (MPR) Design Review Standards to property annexed within the Sunset Transit Center and Teufel Town Center.

Following the close of the public hearing on February 7, 2007, the Planning Commission voted 6-0 (San Soucie absent) to recommend approval of the proposed Sunset Transit Center and Teufel Town Center MPR text amendment as memorialized in Land Use Order No. 1939.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is an Ordinance including the proposed text, Land Use Order No. 1939, the draft Planning Commission meeting minutes, and staff report.

RECOMMENDED ACTION:

Staff recommend the City Council adopt the recommendation of approval forwarded by the Planning Commission for TA 2006-0010 (Sunset Transit Center and Teufel Town Center MPR Text Amendment). Staff further recommend the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4431

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE,
CHAPTER 60;
TA 2006-0010 (Sunset Transit Center & Teufel Town Center
Major Pedestrian Route Text Amendment).

WHEREAS, the purpose of the Sunset Transit Center & Teufel Major Pedestrian Route (MPR) Map Text Amendment is to amend Chapter 60, Design Review Standards, Sections 60.05.55, of the Beaverton Development Code currently effective through Ordinance 4414 (February 2007) by adding a new MPR map for the Sunset Transit Center & Teufel Town Center; and,

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on January 10, 2007, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on February 7, 2007; and,

WHEREAS, on February 7, 2007, the Planning Commission conducted a public hearing for TA 2006-0010 (Sunset Transit Center & Teufel Town Center Major Pedestrian Route Text Amendment) at the conclusion of which the Planning Commission voted to recommend to the Beaverton City Council to adopt the proposed amendments to the Development Code based upon the criteria, facts, and findings set forth in the staff report dated February 7, 2007, and as summarized in Planning Commission Land Use Order No. 1939; and,

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2006-0010 (Sunset Transit Center & Teufel Town Center Major Pedestrian Route Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1939; and,

WHEREAS, the City Council adopts as to criteria, facts, and findings, described in Land Use Order No. 1939 dated February 12, 2007, and the Planning Commission record, all of which the Council incorporates by this reference and finds to constitute an adequate factual basis for this ordinance; and now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, effective through Ordinance No. 4414, the Development Code, is amended to read as set out in Exhibit "A" of this Ordinance attached hereto and incorporated herein by this reference.

Section 2. All Development Code provisions adopted prior to this Ordinance which are not expressly amended or replaced herein shall remain in full force and effect.

Section 3. *Severance Clause. The invalidity or lack of enforceability of any terms or* provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 5th day of March, 2007.

Passed by the Council this __ day of _____, 2007.

Approved by the Mayor this __ day of _____, 2007.

ATTEST:

SUE NELSON, City Recorder

APPROVED:

ROB DRAKE, Mayor

ORDINANCE NO. 4431

EXHIBIT A

Major Pedestrian Routes

Legend

MPR Class

- Class 1 - Both Sides
- Class 1 - One Side
- Class 2 - Both Sides
- Class 2 - One Side
- Future Class 1

Beaverton City Limits

Taxlot

Light Rail Station

City of Beaverton

0 125 250 500 750 1,000 Feet

North

NW BARNES RD
NW SALTZMAN RD
NW 118TH AVE
NW 117TH AVE
NW CEDAR HILLS BLVD
NW CORNELL RD
NW 107TH AVE
NW CORNELL ST
NW LEAHY RD
NW WALNUT ST
NW 101ST AVE
NW MURLEA DR
NW 99TH AVE
NW ORCHARD DR
NW LEE ST
SW CORBY DR
SW CERTLE LN
SW ODDS ST
SW WASHINGTON ST
SW 95TH AVE
SW VALERIA VIEW
SW MORRISON ST
SW TAYLOR ST
SW 117TH AVE
SW 26TH AVE
SW TAYLOR CT
SUNSET HWY
SW CEDAR HILLS BLVD
SW BARNES RD
SW BROOKSIDE DR
SW 95TH AVE
SW TERWILLIGER BLVD
SW DELMONT AVE
SW JANEWOOD ST
SW FOOTHILL DR
SW ROWDON
SW BUTNER RD
SUNSET HWY

Source Data
City of Beaverton Community Development Department -
Beaverton City Limits - Current as of July 2006
Major Pedestrian Routes - Current as of November 2006
METRO Regional Land Information System (RLIS) -
Light Rail Line and Stations - Current as of October 2006
Washington County Assessment and Taxation -
Washington Co. Taxlots - Current as of January 2007

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GIS/RDB 1/17/2007 - 0022.mxd

PDF Version of this map is available internally @ T:\MAPS\CDD\07_0022_MPR_MERLO_2007a.pdf

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: TA 2006-0012
(Merlo & Tektronix MPR Text Amendment)

FOR AGENDA OF: ~~03-05-07~~ 03-19-07 **BILL NO:** 07054

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 02-20-07

CLEARANCES: City Attorney
Dev. Serv.

PROCEEDING: ~~First Reading~~
Second Reading and Passage

EXHIBITS:
1. Ordinance
2. Land Use Order No. 1940
3. Draft PC Minutes 02-07-07
4. Staff Report dated 01-10-07

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED $0	BUDGETED $0	REQUIRED $0

HISTORICAL PERSPECTIVE:

On February 7, 2007, the Planning Commission held a public hearing to consider TA 2006-0012 (Merlo & Tektronix MPR Text Amendment) that proposes to amend Section 60.05.55, Design Review – Major Pedestrian Route Map for the Merlo and South Tektronix Station Community Areas, of the Beaverton Development Code currently effective through Ordinance 4414 (February 2007). The purpose of the amendment is to apply the Major Pedestrian Route (MPR) Design Review Standards to property annexed within the Merlo and South Tektronix Station Community Areas.

Following the close of the public hearing on February 7, 2007, the Planning Commission voted 6-0 to recommend approval of the proposed Merlo and Tektronix Station Community MPR text amendment as memorialized in Land Use Order No. 1940.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is an Ordinance including the proposed text, Land Use Order No. 1940, the draft Planning Commission meeting minutes, and staff report.

RECOMMENDED ACTION:

Staff recommend the City Council adopt the recommendation of approval forwarded by the Planning Commission for TA 2006-0012 (Merlo & Tektronix MPR Text Amendment). Staff further recommend the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4432

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE,
CHAPTER 60;
TA 2006-0012 (Merlo & Tek Major Pedestrian Route
Text Amendment).

WHEREAS, the purpose of the Merlo and Tek Major Pedestrian Route Map Text Amendment is to amend Chapter 60, Design Review Standards, Sections 60.05.55, of the Beaverton Development Code currently effective through Ordinance 4414 (February 2007) by amending the Merlo and South Tektronix Station Community MPR Maps; and,

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on January 10, 2007, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on February 7, 2007; and,

WHEREAS, on February 7, 2007, the Planning Commission conducted a public hearing for TA 2006-0012 (Merlo & Tek MPR Text Amendment) at the conclusion of which the Planning Commission voted to recommend to the Beaverton City Council to adopt the proposed amendments to the Development Code based upon the criteria, facts, and findings set forth in the staff report dated January 10, 2007, and as summarized in Planning Commission Land Use Order No. 1940; and,

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2006-0012 (Merlo & Tek MPR Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1940; and,

WHEREAS, the City Council adopts as to criteria, facts, and findings, described in Land Use Order No. 1940 dated February 12 2007, and the Planning Commission record, all of which the Council incorporates by this reference and finds to constitute an adequate factual basis for this ordinance; and now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, effective through Ordinance No. 4414, the Development Code, is amended to read as set out in Exhibit "A" and "B" of this Ordinance attached hereto and incorporated herein by this reference.

Section 2. All Development Code provisions adopted prior to this Ordinance which are not expressly amended or replaced herein shall remain in full force and effect.

Section 3. Severance Clause. The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 5th day of March, 2007.

Passed by the Council this __ day of _____, 2007.

Approved by the Mayor this __ day of _____, 2007.

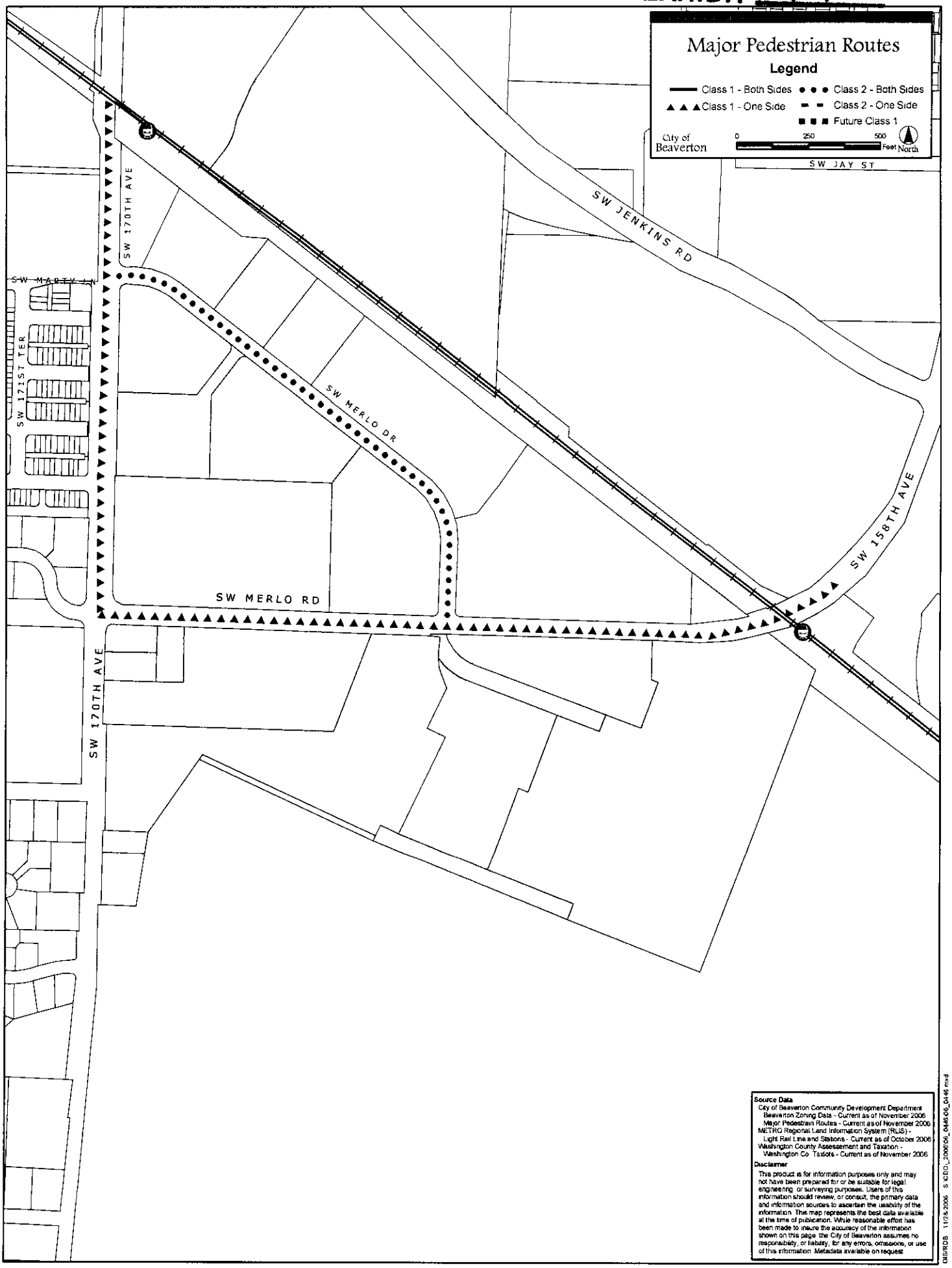
ATTEST:

SUE NELSON, City Recorder

APPROVED:

ROB DRAKE, Mayor

EXHIBIT A



Source Data
City of Beaverton Community Development Department
Beaverton Zoning Data - Current as of November 2006
Major Pedestrian Routes - Current as of November 2006
METRO Regional Land Information System (RLIS) -
Light Rail Line and Stations - Current as of October 2006
Washington County Assessment and Taxation -
Washington Co Taxlots - Current as of November 2006

Disclaimer
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GIS/RDB 11/28/2006 S:\CDD_2006\06_0446\06_0446.mxd

PDF Version of this map is available internally @ T:\MAPS\CDD\06_0446_MPR_MERL_2006b.pdf

EXHIBIT B

PDF Version of this map is available internally @ T:\MAPS\CDD\06_0446_MPR_STEK_2006d.pdf