

**TOWN OF WILBUR
RESOLUTION NO. 256**

CABLE TELEVISION FRANCHISE AGREEMENT

A RESOLUTION OF THE **TOWN OF WILBUR**, LINCOLN COUNTY, WASHINGTON, GRANTING TO USA MEDIA GROUP LLC, A LICENSE TO CONSTRUCT, OPERATE AND MAINTAIN A COAXIAL CABLE SUBSCRIBER SYSTEM FOR TELEVISION SIGNAL DISTRIBUTION THROUGHOUT THE **TOWN OF WILBUR**; AND PROVIDING FOR DEFINITIONS; PROVIDING FOR GRANT OF FRANCHISE; PROVIDING FOR AREA OF OPERATION; PROVIDING FOR ACCEPTANCE, EFFECTIVE DATE AND TERM; PROVIDING FOR CONDITIONS ON USE OF STREETS AND ROADS; PROVIDING FOR CONSTRUCTION AND OPERATION; PROVIDING FOR SIGNAL QUALITY; PROVIDING FOR CONDUCT OF OPERATIONS; PROVIDING FOR PUBLIC SERVICE CONNECTIONS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR UNAUTHORIZED CONNECTIONS OR MODIFICATIONS; PROVIDING FOR FRANCHISE FEES AND PERIODIC REVIEW OF SUCH FEES; PROVIDING FOR RECORDS AND REPORTS; PROVIDING FOR FRANCHISE RENEWAL; PROVIDING FOR TRANSFER OF FRANCHISE AND REQUIRED CONSENT OF THE TOWN; PROVIDING FOR TERMINATION AND CANCELLATION; PROVIDING FOR THE EFFECT OF FORCE MAJEURE; PROVIDING FOR SEVERABILITY AND NOTICE.

WHEREAS, the **TOWN OF WILBUR** (hereinafter the "Town") is authorized to grant, renew and deny franchise for the installation, operation and maintenance of cable television and other telecommunication systems within the Town's boundaries by virtue of

(i) Federal and State statutes, (ii) the Town's police powers, and (iii) the Town's authority over its public rights of way;

WHEREAS, USA Media Group LLC, (hereinafter "USA Media") has applied to the Town Council (hereinafter "Town Council") for a renewal of a franchise (hereinafter the "Franchise") to construct, and operate and maintain a cable television system within the Town; and

WHEREAS, the Town hereby finds that it would serve the public interest of the citizens of the Town to approve the renewal of USA Media cable television Franchise subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, be it resolved by the Mayor and the Town Council that a nonexclusive cable television Franchise be granted to USA Media, under the terms and conditions as hereinafter set forth;

Section 1. Definitions:

For the purpose of this resolution, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word “shall” is always mandatory and not merely directory.

A. Cable Television System means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service which includes video programming and other services which is provided to multiple Subscribers within a community, but such terms do not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations, (2) a facility that serves only certain residents in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; or (3) any facilities of any electric utility used solely for operating its electric utility systems.

B. Gross Revenues shall mean all monthly basic service revenues received from Subscribers by USA Media from the operation of its Cable Television System within the Town excluding installation, relocation of outlets and rental charges, that share of fees remitted to suppliers for programming services and monies which USA Media is required by a third party to expend for promotional activities. Gross Revenues shall not include refunds to Subscribers, uncollectible accounts or taxes on services furnished by USA Media herein which are imposed directly upon any Subscriber or user by the local or other governmental unit and collected by USA Media on behalf of such government unit.

C. Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

D. Standard Installation shall mean any installation to a single-family residence located up to 125 feet from the existing distribution system.

E. Street shall mean any street, alley, lane, sidewalk or other Public place of the Town.

G. Subscriber shall mean an authorized recipient lawfully receiving Cable Television Service.

H. Reasonable Notice shall mean the following: Unless otherwise defined herein, reasonable notice means the delivery of written notice to the other party at least thirty (30) days prior to the action proposed of the alleged defect, situation or default. In the event of any emergency that poses an immediate risk of harm to the health, safety, welfare or property of the residents of the Town, reasonable notice shall be construed to mean written or verbal notice of the action, condition or defect or situation as soon as practicable under the circumstances.

Section 2. Grant of Franchise

The nonexclusive right is hereby granted to USA Media for the Term (as hereinafter defined) and subject to the terms, conditions, and limitations hereinafter stated, to use the streets, alleys, lanes and public places of the Town now laid out or dedicated, and all extensions thereof, and additions thereto, to construct, erect, operate and maintain in, upon, along, across, above, over, and under the aforementioned streets, alleys, lanes and public places of the Town, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of a Cable Television System for the reception, sale, and distribution of television and radio signals and for any and all other lawful purposes except as otherwise hereinafter provided.

Section 3. Area of Operation

A. USA Media shall have the right to construct, operate, and maintain, in, on, along, across, above, over and under the streets, alleys, lanes and public places of the Town, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of a Cable Television System as such locations as are reasonably suitable and convenient for the purposes of USA Media and the Town, subject to the lawful exercise of the police power heretofore or hereafter granted to the Town by the General Assembly.

B. USA Media will make standard installations to all residences located within the Town in which the density of homes is less than 35 per cable mile measured from USA Media's existing distribution plant, in the following manner subject to the following: USA Media will calculate the cost of construction to provide service to any such area upon the request of any residents of such area. The residents requesting service will pay in advance of such construction, in equal amounts, such portion of the cost of construction determined by applying to such costs a fraction the numerator of which is 35 reduced by the number of homes requesting service within a particular area, and the denominator of which is 35.

D. USA Media shall, upon request, make basic service available to all commercial establishments located within 300 feet of its existing distribution plant at the expenses of such commercial establishments.

E. USA Media will make standard installations to all residences within an annexed area adjacent to the Town in which the density of homes is at least 35 per cable mile measured from USA Media's existing distribution plant. In the event that such annexed area is served by another cable operator, or entity at the time of such request, USA Media will have the option, but not the obligation, to provide service.

F. The Town agrees that any grant of additional franchises by the Town to any other entity to provide the services similar to those provided by USA Media pursuant to this agreement and over which the Town has regulatory authority similar to the Town's regulatory authority over USA Media, shall cover the entire territorial area of the Town and shall not be on terms and conditions (including, without limitation, the franchise fee) more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth herein.

G. Extensions into new subdivisions shall be at partial expense of the developer. As of the effective date of this resolution, and notwithstanding the provisions of any other of section of this franchise, the minimum improvements which a developer shall make or agree to make, at its sole cost, shall include provision for the cable television service available to each separate lot within the subdivision. The developer may engage the franchised cable television operator within the Town to perform the foregoing construction, or may engage an independent contractor of its choice to do so. If an independent contractor is engaged, construction shall be subject to final approval of the franchised cable television operator within the Town.

The Town Council shall have authority to promulgate such policy or policies as it deems are required to effect the implementation of this Section .

Section 4. Acceptance; Effective Date; Term

A. After the Town has taken final action to approve the granting of this Franchise; USA Media will file its acceptance with Town by countersigning this Franchise. Such acceptance will acknowledge that USA Media agrees to be bound by and to comply with the provisions contained herein.

B. The Franchise granted herein will take effect and be in full force from and after final passage by the Town, subject to the acceptance provided in paragraph A above and shall continue in full force and effect for a

period of Twenty (20) years (hereinafter the “Term”), subject to review of the franchise fee at regular intervals every five (5) years as set forth in section 12.

Section 5. Conditions on use of Streets and Roads

A. Trimming/Cutting Trees. USA Media shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures, the trees in and along the Streets. In the exercise of such right, USA Media shall not cut or otherwise injure any trees to any greater extent than is reasonably necessary.

B Restoring Streets. USA Media shall restore, reconstruct, or repair any Street, and any sewer or gas or water main, or pipe, or fire alarm, disturbed, or destroyed by the exercise of any right granted to USA Media by this Franchise, in a manner reasonably satisfactory to the Town. In the event that the Town determines that USA Media has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the Town, after giving USA Media notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair, and USA Media shall reimburse the Town in full for all reasonable expenses incurred by the Town in carrying out all or part of such restoration, reconstruction or repair.

C. Safety. USA Media shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and device for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the streets shall be guarded and protected at all times by placement of adequate barriers, fences, or boardings, the bounds of which will be clearly designated by warning lights.

D. Compliance with Applicable Laws. USA Media shall install and maintain its wire, cables, fixtures, and other equipment in accordance with applicable law including any pertinent subdivision restrictions, and the applicable section of the National Electric Safety Code as revised during the Term and in such manner as shall not interfere with any installations of the Town or of any public utility serving the Town. The Town acknowledges that as of the effective date of this Franchise, USA Media’s existing cables, wires and other like facilities are in compliance with this provision.

E. Temporary Moving of Wires. USA Media shall, on the request of any Person holding a building-moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of

such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and USA Media shall have the authority to require such payment. USA Media shall be given not less than five-business day's notice to arrange for such temporary wire changes

F. Inspection. The Town shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets, subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise.

G. Location of Distribution Lines—Poles/Underground Cable. The poles used for the distribution system will be, to the extent possible, those erected and maintained by either the power company or the telephone company or both, whenever agreement can be reached with the owners of such poles. USA Media will have the right to erect and maintain poles where none exist at the time USA Media seeks to install its Cable Television System. No poles or other wire holding structure shall be erected by USA Media without prior approval of the Town, through established permit procedure. The Town agrees that such prior approval will be given on a timely basis and will not be unreasonably withheld. Location of any pole or structure shall be removed or modified by USA Media whenever the Town determines that the public health, safety and welfare would be enhanced thereby. For all new residential structures in which undergrounding is required by the Town, the builder, subdivider or developer of such structure at his sole costs and expense, shall provide, in accordance with USA Media's current specifications all conduits, trenches to buildings point of entry, from the boundary of the development, back fill and restoration of trench are.

H. Moving of USA Media Property. USA Media will, upon reasonable notice from the Town, protect, support, temporarily disconnect or relocate its property in the same Street when required by the Town or State by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, or any other types of structures or improvements.

Section 6. Construction and Operation

A. All installation and maintenance of electronic equipment will be durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State and local codes where applicable.

B. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

C. Constuction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Town following accepted construction procedures and practices and working through existing committees and organizations.

D. All cable and wires installed above ground shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

E. Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.

F. USA Media will not intentionally interfere with television reception of Persons not served by USA Media, nor will the Cable Television System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Town.

Section 7. Signal Quality

USA Media will use commercially reasonable efforts to produce a picture that is undistorted and accompanied with proper sound on typical standard production television sets in good repair, and in compliance with FCC technical standards. If requested by the Town, USA Media will demonstrate by instruments and otherwise that the signal is being delivered in compliance with FCC technical standards.

Section 8. Conduct of Operations

A. USA Media will render efficient Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. USA Media will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.

B. USA Media shall comply with all Federal Communications Commission rules and regulations, both present and future.

Section 9. Public Service Connections

USA Media shall provide, without charge, one (1) basic service outlet to each fire station, school, county or public hospital and police station within the Town, and to such other municipally owned buildings, and libraries, as may be designated by the Town, provided, however, that if it is necessary to extend USA Media's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public Building, that school or institution shall have the option of paying USA Media's direct

costs for such extension in excess of five hundred (500) feet. If this option is not exercised, USA Media shall be released from the obligation to provide service to such building. Further, USA Media shall be permitted to recover from any public or private building owner entitled to free service, the direct cost of installing more than one (1) outlet, or concealed inside wiring, or a service outlet requiring more than two hundred fifty (250) feet of drop cable.

Section 10. Insurance and Indemnification

A. By its acceptance of this Franchise, USA Media specifically agrees that it will pay all damages and penalties which the Town may legally be required to pay which result from any negligent operation of the Cable Television System on the part of USA Media. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the Franchise.

B. USA Media will indemnify the Town, its officers and employees, from and against any and all claims, demands, actions, suits, and proceedings by others, and against all liability to others, arising out of the negligence of USA Media in the construction and operation of its Cable Television System in the Town, provided that the Town gives USA Media prompt notice in writing of any such claims, demands, actions, suits and proceedings, without limitations.

C. The Town, to the extent provided by the statutory and common law of the State of Washington and by the Constitution of the State of Washington, will be responsible for acts of negligence or breach of obligation committed by the Town for which the Town is legally responsible, subject to any and all defenses and limitation of liability provided by law. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the Town. This paragraph in no way waives the Town's limited right of sovereign limitation of protection under the applicable statutory limitation of liability available to municipalities generally in this State.

D. USA Media shall maintain in full force and effect for the Term of the Franchise, at USA Media's expense, a comprehensive liability insurance policy with the Town named as an insured, written by a company authorized to do business in the State of Washington, protecting the Town against liability for loss, personal injury and property damage occasioned by the operation of the Cable Television System by USA Media, in an amount not less than \$1,000,000. Evidence in the form of a certificate of insurance shall be provided to the Town upon request.

Section 11. Unauthorized Connections or Modifications

A. It is unlawful for any Person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the Cable Television System for any purpose whatsoever, without the express consent of USA Media.

B. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the Cable Television System for any purpose whatsoever.

C. Any Person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The Town agrees to cooperate with USA Media in the prosecution of any such violations.

Section 12. Franchise Fees

A. USA Media will pay to the Town quarterly, within sixty (60) days following the end of each quarter, an amount equal to three percent of USA Media's quarterly Gross Revenues ("Franchise Fee"). The Franchise Fee will be deemed to reimburse the Town for the rights granted herein and or all costs of regulation and administration of the Franchise. The Town reserves the right to increase the Franchise Fee to up to five percent of USA Media's annual Gross Revenue upon sixty days written notice to USA Media at five (5) year intervals.

Section 13. Records and Reports

A. Copies of all petitions, applications and communications submitted by USA Media and directly related to USA Media's Franchise to the Federal Communications Commission, Securities and Exchange Commission or Agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise, shall be submitted to the Town upon written request.

B. The Town shall have the right, at its own expense and upon at least ten (10) working days prior written notice, to inspect at USA Media's offices during normal business hours, all books and records directly related to USA Media's Franchise Fee and USA Media's Proof of Performance tests. To the extent protected and/or exempted by the Washington Public Records Act and other related laws and statutes, the Town will not disclose to the public or to competitors of USA Media any commercial or financial information reviewed by the Town pursuant to this Franchise Agreement.

Section 14. Franchise Renewal

Upon completion of the Term, the Town may grant renewal of this Franchise in accordance with the procedures for franchise renewals set forth in the Cable Communications Policy Act of 1984 and Television Consumer Protection and Competition Act of 1992.

Section 15. Transfer of Franchise

USA Media shall not transfer this Franchise to another party, person, or entity, except to a company controlling, controlled by or under common control with USA Media, without first receiving the prior written consent of the Town, which shall not be unreasonably withheld. Provided however, the Town reserves the right to review the financial stability and performance of any proposed buyer, transferee or grantee and to withhold consent if, in the determination of the Town, such proposed transfer would not be in the best interests of the Town.

Section 16. Termination; Cancellation

A. In addition to all other rights and powers pertaining to the Town by virtue of this Franchise or otherwise, the Town reserves the right, after reasonable notice to USA Media and the reasonable opportunity of USA Media to cure any alleged Franchise Violation, and to be heard before Town Council, to terminate and cancel this Franchise and all rights and privileges of USA Media hereunder in the event that USA Media:

(i) Willfully fails to reasonably carry out any material provision of this Franchise or any material rule, order, or determination of the Town pursuant to this Franchise.

(ii) Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

B. Such termination and cancellation shall be by resolution duly adopted after sixty (60) days notice to USA Media and shall in no way affect any of the Town's rights under this Franchise or any provision of law.

Section 17. Force Majeure

With respect to any provision of this franchise the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon USA Media, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike, labor unrest, or other events, the occurrence of which was not reasonably foreseeable by USA Media or is beyond USA Media's reasonable control.

Section 18. Miscellaneous

A. The right is hereby reserved by the Town to adopt, in addition to the provision contained herein and in existing applicable resolutions, such additional regulation, as it shall find necessary in the exercise of its police power.

B. If any section, subsection, sentence, clause, phrase or portion of the Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

C. The Town acknowledges that acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressed or implied, by USA Media of any constitutional or legal right which USA Media may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The Town acknowledges that USA Media hereby reserves its rights under applicable Federal and State constitutions and law.

D. All notices or correspondence to be served upon the Town or USA Media by the other party shall be in writing and delivered by first class mail, postage prepaid or by facsimile or by a national express mail service.

Notices or correspondence to the Town shall be addressed as follows:

Mayor
Town of Wilbur
P.O. Box 214
Wilbur, WA 99185-0214

Notices or correspondence to USA Media shall be addressed as follows:

USA Media Group, LLC
6490 McCarran Blvd. #22
Reno, Nevada 89509
Attn: Jim Faircloth, President

With a copy to:

USA Media Group, LLC
611 6th
P.O. Box 490
Umatilla, OR 97882

The Town or USA Media may designate such other address or addresses from time to time by giving written notice to the other as set forth above.

19. Prior Inconsistency.

All resolutions or parts of resolutions, inconsistent with this resolution, to the extent of such inconsistency, are hereby repealed.

PASSED BY THE TOWN COUNCIL OF THE TOWN OF WILBUR,
WASHINGTON THIS _____ DAY OF JUNE, 2002.

AYE:

NAY:

ABSTAIN:

Mayor DONALD G. REID

ATTEST:

By: _____
Town Clerk CARLA SHIRLEY

APPROVED AS TO FORM:

Town Attorney CYNTHIA E. MCMULLEN

USA Media Group, LLC, hereby accepts the within Franchise and agrees to be bound by and comply with provisions contained herein.

USA MEDIA GROUP, LLC, a
Limited Partnership

By: USA MEDIA GROUP, LLC,
Limited Partnership, it's general partner

By: USA MEDIA GROUP, LLC, its
corporate general partner.

By: _____
Jim K. Faircloth,
President

SWORN to before me this _____ day of _____, 2002.

Notary Public for the State
Of _____
My Commission Expires: _____