

**APPENDIX I**

**FRANCHISES**

**Ordinance No. 334, Railroads**

**Ordinance No. 348, Electricity**

**Ordinance No. 371, Electricity**

**Ordinance No. 374, Electricity**

**Ordinance No. 768, Cable Communications**

**Ordinance No. 827, Cable Communications**

**Ordinance No. 828, Cable Communications**

**Ordinance No. 908, Natural Gas**



**Ordinance No. 334**

AN ORDINANCE AUTHORIZING THE LAYING DOWN OF TRACKS FOR RAILROADS AND THE EQUIPMENT, MAINTENANCE AND OPERATION THEREOF UPON AND ACROSS A CERTAIN PART OF THIRD STREET AND UPON AND ALONG NEWPORT AVENUE, IN THE TOWN OF NEWPORT, COUNTY OF PEND OREILLE IN THE STATE OF WASHINGTON.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF NEWPORT:

**Section 1.** Than consent, permission and authority are hereby given and granted unto the Great Northern Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and to its successors and assigns, to lay down and maintain tracks for a railroad to be operated by steam or other power, and to construct, operate, equip and maintain a railroad, and to run cars drawn by steam or other power within the Town of Newport, in the County of Pend Oreille, and State of Washington, over and across and upon the following named streets in the said Town of Newport, to-wit:

Upon and across or along any part of Third Street east of the alley intersecting Blocks Nine and Eleven in Talmadge's Addition to said Town of Newport, and over, upon, along and across Newport Avenue between the North line of Third Street in said Talmadge's Addition and the South line of Lot Three (3), Section Eighteen (18), Township Thirty-one (31) N. Range Forty-six E.W.M., where the same intersects said Newport Avenue.

**Section 2.** Said track or tracks shall be, upon said Newport Avenue north of Second Street, laid as nearly as possible in the middle of the street, and upon said Newport Avenue south of said Second Street and across Third Street may be laid upon such a curve as shall

be advisable for the purpose of said railway company; and said company shall construct and maintain such suitable crossings for the teamsters and travelers as shall be directed by the Council of said Town of Newport from time to time.

**Section 3.** The right hereby granted shall not restrict in any manner the right of the Town of Newport to enter upon said streets or any part thereof; or to occupy said streets for the purpose of making or completing any public works of importance thereon; or deprive the said Town of any rights or powers to regulate and control the use of streets and alleys in said town.

**Section 4.** Said railway company, its successors and assigns, shall not run trains over said streets at a greater rate of speed than ten miles per hour.

**Section 5.** The consent, permission and authority hereby given shall continue fifty years from the passage of this ordinance.

**Section 6.** This ordinance shall take effect and be in force from its passage and publication without expense to the Town of Newport.

Passed the Council this 6th day of May, 1953.

## Ordinance No. 348

### Ordinance No. 348

AN ORDINANCE GRANTING a non-exclusive franchise to PEND OREILLE ELECTRIC COOPERATIVE, INC., a non-profit corporation organized under the laws of the State of Washington, and to its successors and assigns, to occupy and use a route herein-after designated and described along the streets, alleys, bridges and other public property of the Town of Newport with facilities for the transmission of electric power, for a term of thirty-five (35) years subject to prior termination under certain conditions; providing for payment to the Town of compensation for the exercise of said Franchise and specifying other limitations, terms and conditions governing the exercise of said franchise.

BE IT ORDAINED by the Council of the Town of Newport of Pend Oreille County, Washington:

1) that PEND OREILLE ELECTRIC COOPERATIVE, INC., a non-profit corporation organized under the laws of the State of Washington, its successors and assigns, sometimes hereinafter called the "Grantee", be and it is hereby granted, for the term of thirty-five (35) years from the date when this ordinance becomes effective, unless sooner terminated as herein provided, the full right, power and authority to establish, construct and maintain, extend and operate, over, along, across and under the streets, alleys, bridges and other public property within and without the corporate limits of the Town of Newport in Pend Oreille County, Washington, as hereinafter designated and described, appurtenances and equipment used or to be used for the purpose of an electric transmission system only including all poles, towers, wires, underground conduits and lines, wires, and cables, vaults and manholes, for the installation, storage, operation and maintenance of electrical equipment so used or to be used. Said right and franchise shall be non-exclusive and pursuant thereto the Grantee, its successors and assigns may maintain and operate such above described facilities over and along the following route, within and without the Town:

Beginning at a point just West of the intersection of the South boundary of the city limits of the Town of Newport, and the Washington-Idaho state line; thence northerly along said Washington-Idaho state boundary to the north city limits of the Town of Newport.

Beginning at a point just South of the Northeastern corner of Washington Avenue and the north city limits of the Town of Newport at Willow Street; then westerly along the South side of Willow Street to the westerly line of the city limits in Warren Avenue, as extended; thence southerly along the East line of Warren Avenue, as extended, to the North side of Larch Street; thence westerly across Warren Avenue to the city limits.

Beginning at a point approximately two hundred fifty feet (250') North of the Southeast corner of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) in Section 13, Township 31 North, Range 45 EWM in the County of Pend Oreille, and the State of Washington; thence proceeding Southwesterly to join the General Telephone Company line, which point of intersection is approximately two hundred fifty feet (250') West of said Southeast corner of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of Section 13, Township 31 North, Range 45 EWM in the County of Pend Oreille, and the State of Washington. Said General Telephone Company line is approximately seventy-five feet (75') South of the city reservoir of the Town of Newport.

Over and along the above described routes, the Grantee, its successors and assigns, is granted the right to the use of an indeterminate area of land reasonably necessary for the erection and maintenance of its equipment and facilities above described.

2) PEND OREILLE ELECTRIC COOPERATIVE, INC., its successors and assigns, is granted the right during the life of this fran-

chise to cut and trim any and all trees growing in or over the street or alleys of the said Town of Newport, Pend Oreille County, Washington, that might or may interfere with any wires, poles, conduits or other apparatus of the Grantee, its successors and assigns.

3) All of the Grantee's electric property and facilities shall be constructed and at all times maintained in good order and condition to avoid television and radio interference and in accordance with standard electrical engineering practice and with all lawful governmental regulations.

4) The Grantee herein, its successors and assigns, shall have and is hereby given the right to make excavations and obstructions along the above described route, for the purpose of building, erecting, repairing or changing any of the poles, wires, conduits, cross-arms or other appliances or apparatus used or to be used in connection with the above purposes. PROVIDED, HOWEVER, that if and whenever the said Grantee, its successors or assigns, shall excavate in or obstruct any of the streets, alleys, or bridges along said route for the purposes aforesaid, it shall return the same to the order and condition they were in before they were excavated or obstructed, as soon as practical and within a reasonable time after such excavation or obstruction.

5) The said Grantee, its successors or assigns, on request of the Council of the Town shall remove or raise its wires when necessary to permit the movement of any house or building over and along the streets, alleys, bridges and other public property of the Town; PROVIDED, that the party to whom a permit has been granted to move any such building, on, over and along any of the streets, alleys, bridges and other public property of said Town shall pay to the Grantee hereunder, its successors or assigns, the cost incurred in removing, changing and/or replacing the wires of the Grantee, its successors or assigns.

6) The Grantee, its successors or assigns, in the exercise of the rights and privileges herein granted, shall erect poles and wires and build conduits in such manner as not to interfere with the free and unobstructed use of the streets, alleys, and bridges of the Town.

7) The Grantee shall at all times indemnify and hold the Town harmless from any and all accidents or liabilities arising from or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities.

In the event any judgment is recovered against the Town for any such liability, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided reasonable notice in writing of the pendency of such suit shall be given to the Grantee.

8) As compensation to the Town for the right and franchise hereby granted, the Grantee shall upon approval of this franchise and the construction of the electric transmission line herein described construct a service line to the dump of the Town of Newport and shall furnish free of charge not in excess of 60 KWH of electricity per month during the term of this franchise.

9) The franchise hereby granted may be revoked and forfeited by the Town by a duly enacted ordinance thereof in the event the Grantee shall fail, after reasonable notice or demand in writing signed by the Mayor, to comply with any of the terms, conditions or obligations imposed upon the Grantee hereunder.

10) This ordinance shall become effective on June 17th, 1955, and remain in force and effect for thirty-five (35) years thereafter until June 16, 1990, subject to termination as hereinabove provided; PROVIDED, that this franchise shall not become effective unless and until the written acceptance of this ordinance by the PEND OREILLE ELECTRIC COOPERATIVE, INC., signed by its proper officers, shall be filed with the Town Council prior to June 17, 1955.

Introduced and read the first and second times, the 6th day of June, 1955. Read the third time, the 15th day of June, 1955.

Passed by Town Council the 15th day of June, 1955.

**Ordinance No. 371**

AN ORDINANCE OF THE TOWN OF NEWPORT, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, TO CONSTRUCT, MAINTAIN AND OPERATE IN THE PRESENT AND FUTURE OVER, ALONG, ACROSS AND UNDER THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE TOWN OF NEWPORT WITH FACILITIES FOR SUPPLYING ELECTRIC SERVICE TO THE TOWN AND THE INHABITANTS THEREOF AND OTHERS FOR A TERM OF TWENTY-FIVE (25) YEARS, SUBJECT TO PRIOR TERMINATION UNDER CERTAIN CONDITIONS, SUBJECTING SUCH ELECTRIC SERVICE AT ALL TIMES TO REGULATION BY PUBLIC AUTHORITY; PROVIDING FOR PAYMENT TO THE TOWN OF COMPENSATION FOR THE EXERCISE OF SAID FRANCHISE AND SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF SAID FRANCHISE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEWPORT, WASHINGTON, as follows:

**Section 1.** There is hereby granted to Public Utility District No. 1 of Pend Oreille County, Washington, a municipal corporation of the State of Washington, herein referred to as the grantee, right, privilege and franchise for a period of twenty-five (25) years from the effective date of this ordinance, unless sooner terminated as herein provided, to construct, maintain and operate over, along, across and under the streets, alleys and other public places of the Town of Newport, appurtenances and equipment used or to be used for the purpose of an electric transmission and distribution

system in said Town, including all poles, towers, wires, underground conduits and lines, wires and cables, vaults and manholes, for the installation, storage, operation and maintenance of electrical equipment so used or to be used; and there is hereby granted the use of said streets, alleys and other public places for supplying electrical service to the Town and the inhabitants thereof, and others. Said right, privilege and franchise shall be non-exclusive and the Town expressly reserves the right of the Town itself to engage in such business at any time, and the right to grant similar rights, privileges and franchises to others.

**Section 2.** All of the Grantee's electric property and facilities shall be constructed and at all times maintained in good order and condition and in accordance with standard electrical engineering practice and with all lawful governmental regulations. The Town Council shall have authority of all times in the furtherance of the safety, convenience and welfare of the public, to control by appropriate regulations the location, elevation, and manner of construction and maintenance of the grantee's electric property and facilities in the Town streets, alleys and other public places, subject to the provisions of any State law applicable thereto, and the Grantee shall promptly conform with all such regulations.

**Section 3.** Where necessary for the protection of its services to the public, the Grantee shall remove any branches of trees which would impair the safe operation and maintenance of said lines, subject to the supervision of the proper officials of the Town. All poles, towers, lines and appurtenances shall be so erected as to not cause interference with traffic, and the placing of all poles, transformers, wires, or other appurtenances shall be referred to the street superintendent of the Town for his approval and shall be under and subject to reasonable control by the Town Council.

**Section 4.** The services furnished hereunder to said Town and its inhabitants shall be 24-hour service and shall be subject to such reasonable rules and regulations as the Grantee may make from time to time. The Grantee may require reasonable security for the payment of its charges.

**Section 5.** When necessary in order to permit any duly authorized person to move any building or other structure across or along any street or alley of the Town, the Grantee shall raise or temporarily remove its wires maintained hereunder upon the request of the street superintendent, and any costs caused to the Grantee in so doing shall be paid by the owner or mover of such building or other structure. The Grantee and the Town Council shall determine by regulation what is a necessary notice to be given to the Grantee for such work.

**Section 6.** The Town may without charge therefor attach its fire alarm and police signal wires to the poles of the Grantee in said Town, but at its own risk and only in accordance with good electrical practice. Said wires shall be subject to interference by the Grantee only when necessary in the maintenance, operation and repair of its lines, upon notice thereof first being given to a proper official of said Town.

**Section 7.** The Grantee further agrees to enter into joint pole agreements for the use of its poles with other utilities, private and public, who have been granted franchises by the Town, wherever it is possible to do so and will submit to the Town Council any agreement for arbitration where the Grantee and the other utilities referred to cannot agree to the terms of such a joint pole agreement, the Grantee being given the right of appeal the decision of the Town Council to such higher authority as provided by the laws of the State of Washington, and said right shall also be granted to the other utilities.

**Section 8.** The service to be furnished hereunder by the Grantee and all rates and charges therefor, shall be subject at all times to any rules and regulations and orders that may be lawfully prescribed by any authority or body having lawful jurisdiction over such matters under the laws of the State of Washington.

**Section 9.** The Grantee shall at all times indemnify and hold the Town harmless from any and all accidents or liabilities arising from or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities. In the event any judg-

ment is recovered against the Town for any such liability, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided reasonable notice in writing of the pendency of such suit shall be given to the Grantee.

**Section 10.** Whenever it is necessary in the interest of public safety or convenience, the town may require wires to be placed underground and poles not needed for service to the public shall be removed, and that whenever the said Grantee may elect during the life of this franchise to place said wires underground in any portion of the Town, permission is hereby granted so to do, provided the Grantee shall file with the Town Council a complete set of plans and specifications for such work, and shall lay the necessary pipes or conduits for the same in such manner as not to interfere with any existing pipes in such streets and alleys. All such work shall be done subject to the Supervision of the proper authorities of said Town.

**Section 11.** The said Grantee in the exercise of the rights and privileges herein granted, shall erect poles and string wires and build conduits in such manner as not to interfere with the free and unobstructed use of the streets, alleys and other public places of said Town.

**Section 12.** It shall be lawful for said Grantee to make all necessary excavations in any of the streets, alleys or other public places in the Town for the purpose of erecting and maintaining poles to support said wires or for the purpose of laying down, maintaining and operating any pipes or conduits underground for the purposes aforesaid, but whenever the said Grantee shall disturb any of the streets, alleys or other public places for the purposes aforesaid, it shall restore the same to as good order and condition as existed prior to such disturbance as soon as practicable and without any unnecessary delay, and failing to do so, the Town shall have the right to fix by resolution a reasonable time in which said repairs and restorations of streets, alleys and other public places shall be completed, and upon failure of such repairs and restorations being made, the Town shall cause the same to be made at the expense of the Grantee.

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**Section 13.** As compensation to the Town for the right, privilege and franchise hereby granted, the Grantee shall pay to the Town in each year an amount equivalent to three per cent (3%) of the Grantee's gross revenue from sales of electric power and energy and electric service within the corporate limits of the Town during the preceding calendar year, or fractional portion thereof from the effective date of this ordinance, and payment of such compensation shall be made in one payment annually on or before the first day of July of each year during said term.

The Grantee shall submit to the Town Council at the time designated for notifying other governmental agencies entitled to the same report, a report certified by a responsible officer of the Grantee of the amount of Grantee's gross revenue from sales as herein provided to enable the Town to determine the amount of compensation to be paid for the exercise of this franchise based on such income during the preceding calendar year, or fractional portion thereof. The books of the Grantee shall always be open to inspection by the Town for the purpose of verifying said report.

The Grantee shall be entitled to a credit against the amount of compensation determined to be due the Town for the exercise of this franchise during each year of said term, or fractional portion thereof, equal to the amount paid to the Town by Pend Oreille County, Washington, on the distribution to the Town of the privilege tax paid by the Grantee pursuant to Chapter 54, Revised Code of Washington, as amended or as the same may hereafter be amended, provided that any amount received from Pend Oreille County, Washington, in excess of the compensation determined to be due under the provisions of this section, shall not be applied as a credit against any subsequent year's compensation determined to be due the Town.

**Section 14.** The franchise hereby granted may be revoked and forfeited by the Town by duly enacted ordinance thereof in the event the Grantee shall fail, after reasonable notice or demand, to comply with any of the terms, conditions or obligations imposed upon the Grantee hereunder.

**Section 15.** The franchise hereby granted shall not be sold, leased, assigned, or otherwise alienated without the express consent of the Town by ordinance passed for that purpose, and no rule of estoppel shall ever be invoked against the Town, in case it shall assert the invalidity of any attempted transfer in violation of this section.

**Section 16.** This ordinance shall become effective upon the filing with the Town Clerk a written acceptance by the Grantee through the enactment and passage of a proper resolution by the Grantee accepting said franchise, and by the signing hereof by the Mayor, attestation by the Town Clerk, and publication as required by law. All costs of publication of this ordinance shall be at the expense of the Grantee.

PASSED by the Town Council of the Town of Newport, Washington, this \_\_\_\_ day of May, 1959.

**Ordinance No. 374**

AN ORDINANCE GRANTING A non-exclusive franchise to INLAND POWER & LIGHT CO., a non-profit corporation organized under the laws of the State of Washington, and to its successors and assigns, to occupy and use a route hereinafter designated and described along the streets, alleys, bridges and other public property of the Town of Newport with facilities for the transmission of electric power, for a term of thirty-five (35) years subject to prior termination under certain conditions; and specifying the limitations, terms and conditions governing the exercise of said franchise.

BE IT ORDAINED by the Council of the Town of Newport of Pend Oreille County, Washington:

1. That INLAND POWER & LIGHT CO., a non-profit corporation organized under the laws of the State of Washington, its successors and assigns, sometimes hereinafter called the "Grantee", be and it is hereby granted, for the term of thirty-five (35) years from the date when this ordinance becomes effective, unless sooner terminated as herein provided, the full right, power and authority to establish, construct and maintain, extend and operate, over, along, across and under the streets, alleys, bridges and other public property within the corporate limits of the Town of Newport in Pend Oreille County, Washington, as hereinafter designated and described, appurtenances and equipment used or to be used for the purpose of supplying electricity and power to the premises and only to the premises of INLAND POWER & LIGHT CO. located on the following described property:

That portion of Lots 16, 17, 18 and 19 in Block 21 of Talmadge's Second Addition to the Town of Newport, Pend Oreille County, Washington, according to the recorded plat thereof, more particularly described as follows:

Commencing at the Southwest corner of above Lot 19, thence Northerly along the west line of above Lot 19, a distance of 66 feet to the true point of beginning; thence

easterly and parallel to the South lines of above Lots 18 and 19 to an intersection with the West line of above Lot 17; thence Northerly along the west line of above Lot 17, to a distance of 16 feet; thence easterly and parallel to the South lines of above Lots 16 and 17, to an intersection with the East line of above Lot 16; thence Northerly along the east line of above Lot 16 to the Northeast corner of Lot 16; thence Southwesterly along the northwesterly lines of above Lots 16, 17, 18 and 19 to the Northwest corner of above Lot 19; and thence Southerly along the west line of above Lot 19 to the true point of beginning,

including all poles, towers, wires, underground conduits and lines, and cables, vaults, and manholes for the installation, storage, operation, and maintenance of electrical equipment so used or to be used. Said right and franchise shall be non-exclusive and pursuant thereto the Grantee, its successors and assigns, may maintain and operate such above described facilities for the purpose specified over and along the following route within the town;

Beginning on the North side of Fourth Street from the Idaho-Washington State line where Grantee's pole is now located; thence westerly along the north side of Fourth Street for approximately one block; thence southwesterly along Fourth Street to a point opposite the Grantee's property; thence southeasterly across Fourth Street to the Grantee's premises in the Town of Newport, County of Pend Oreille, State of Washington, as more clearly shown on a map marked Exhibit A, hereto attached and by reference made a part hereof.

Over and along the above described routes, the Grantee, its successors and assigns, is granted the right to the use of an indeterminate area of land reasonably necessary for the erection and maintenance of its equipment and facilities above described. It is expressly provided that this franchise is subject to the provisions and conditions of an agreement dated December 14, 1921, wherein the Great North-

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ern Railway Company is the Grantor and the Town of Newport is the Grantee, wherein the Town of Newport is granted the right to maintain a roadway on a part of the property over which this franchise is granted.

2. INLAND POWER AND LIGHT CO., its successors and assigns, is granted the right during the life of this franchise to cut and trim any and all trees along said right-of-way that may or might interfere with any wires, poles, conduits or other apparatus of the Grantee, its successors and assigns.

3. All of the Grantee's electric property and facilities shall be constructed and at all times maintained in good order and condition to avoid television and radio interference, and constructed in accordance with Table I of the Electrical Construction Code of the State of Washington, which became effective January 1, 1959.

4. The Grantee herein, its successors and assigns, shall have and is hereby given the right to make excavations and obstructions along the above described route, for the purpose of building, erecting, repairing or changing any of the poles, wires, conduits, cross-arms or other appliances or apparatus used or to be used in connection with the above purposes. PROVIDED, HOWEVER, that if and whenever the said Grantee, its successors or assigns, shall excavate in or obstruct any of the streets, alleys, or bridges along said route for the purposes aforesaid, it shall return the same to the order and condition that were in before they were excavated or obstructed, as soon as practical and within a reasonable time after such excavation or obstruction.

5. The said Grantee, its successors or assigns, on request of the Council of the Town shall remove or raise its wires when necessary to permit the movement of any house or building over and along the streets, alleys, bridges and other public property of the Town; PROVIDED, that the party to whom a permit has been granted to move any such public property of said Town shall pay to the Grantee hereunder, its successors or assigns, the cost incurred in removing, changing and/or replacing the wires of the Grantee, its successors or assigns.

6. The Grantee, its successors or assigns, in the exercise of the rights and privileges herein granted, shall erect poles and string wires and build conduits in such manner as not to interfere with the free and unobstructed use of the streets, alleys, and bridges of the Town.

7. The Grantee shall at all times indemnify and hold the Town harmless from any and all accidents or liabilities arising from or by reason of any and all accidents or liabilities arising from or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities.

In the event any judgment is recovered against the Town for any such liability, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided reasonable notice in writing of the pendency of such suit shall be given to the Grantee.

8. The franchise hereby granted may be revoked and forfeited by the Town by a duly enacted ordinance thereof in event the Grantee shall fail, after reasonable notice or demand in writing signed by the Mayor, to comply with any of the terms, conditions or obligations imposed upon the Grantee hereunder.

9. This ordinance shall become effective on August 28th, 1959, and remain in force and effect for thirty-five (35) years thereafter until August 27th, 1994, subject to termination as hereinabove provided; PROVIDED, that this franchise shall not become effective unless and until the written acceptance of this ordinance by the INLAND POWER AND LIGHT CO., signed by its proper officers, shall be filed with the Town Council prior to September 7, 1959.

Introduced and read the first and second times, the 5th day of August, 1959. Read the third time, the 19th day of August, 1959.

Passed by Town Council the 19th day of August, 1959.

**Ordinance No. 768**

AN ORDINANCE GRANTING A FRANCHISE TO PEND OREILLE CABLE T.V. LIMITED PARTNERSHIP D/B/A NORTHLAND CABLE T.V. TO OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATIONS AND ADMINISTRATION OF THE CABLE COMMUNICATIONS SYSTEM; PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS; AND REPEALING ALL ORDINANCES IN CONFLICT HERewith. THE CITY COUNCIL OF THE CITY OF NEWPORT, STATE OF WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Purpose.**

The City of Newport finds that it is the purpose of this Ordinance and subsequent amendments to provide for regulation and administration and granting of a franchise for cable television.

**Section 2. Short Title.**

This Ordinance shall be known and may be cited as the "Newport Cable Communications Ordinance."

**Section 3. Definitions.**

For the purposes of this Ordinance the following terms, phrases, words, 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 number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning. The definitions in this Ordinance shall control, for

interpretation purposes, when in conflict with the general definitions in the Newport Municipal Code.

(1) "City" shall mean the City of Newport of the State of Washington and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

(2) "Council" shall mean the present legislative governing body of the City or any future body constituting the legislative body of the City.

(3) "Grantee" shall mean Pend Oreille Cable TV Limited Partnership, a Washington limited partnership, d/b/a Northland Cable T.V., and any lawful successor or transferee, assignee or employee of said partnership.

(4) "Cable Communications System" or "System," also referred to as "Cable Television System," "Cable System," "CATV System," or "Community Antenna TV System" shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, head end equipment, master controls, each earth station, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the City.

(5) "Franchise" shall mean the right granted through a contractual agreement between the City and a person by which the City authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the City. Any franchise awarded by an agreement in accordance herewith shall be a nonexclusive franchise.

(6) "Franchise Area" shall be everything within the boundaries of the City of Newport, Washington, plus all future annexations.

(7) "Grantor" or "City" means the City of Newport or any delegate acting within the scope of its jurisdiction.

(8) "Franchise fees" means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a Grantee solely because of its status as such. The term "franchise fee" does not include:

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(a) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against Grantee);

(b) Capital costs which are required by the franchise to be incurred by Grantee for public, educational or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code.

(e) Any other fee not required to be so included by 47 USC 542(g)(1).

(9) "Gross Revenues" shall mean all operating revenue without deduction from the cable communications system paid directly or indirectly to a Grantee, its affiliates, subsidiaries, parent, and any person in which a Grantee has a financial interest in association with the provisions of cable communications services within the City, including, but not limited to, basic service monthly fees, premium service fees, institutional service fees, service transfer fees, and leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues and copyright fees; provided, however, this shall not include any revenues from sale of capital assets or lease of property for purposes unrelated to cable communications. Gross revenues shall include, valued at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by a Grantee or others described above in consideration of performance by the Grantee or others described above of any advertising or other service in connection with the cable system.

(10) "Leased Access" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to tender services to the citizens of the City and shall include without limitation all use pursuant to

Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521 et seq.).

(11) "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(12) "Subscriber" means any person who legally receives any one or more of the services provided by the Cable Communications System.

(13) "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within the City.

(14) "Committee" shall mean the CATV Committee of the City Council.

### **Section 4. Police Powers and Review Standard.**

(1) Nothing in this Ordinance awarding a franchise in accordance herewith shall be construed as an abrogation by the City of any of its police powers.

(2) This Franchise and all acts, omissions or decisions by the City, the city administration, City Council or any city official in any way arising out of, regarding or referring to this Franchise or this Ordinance, shall be deemed and presumed to be made within their reasonable discretion and considering factors of public safety, aesthetics or convenience or the health and welfare of the citizens.

### **Section 5. Grant of Authority.**

There is hereby granted for a period of 15 years by the City to the Grantee, its successors and assigns, a franchise (herein, this "Franchise") conveying to the Grantee the right, privilege and authority to construct, operate and maintain a cable television system within the City for the distribution of television signals, radio, or any other lawful service, subject to the terms, conditions and provisions contained herein, provided the Grantee submits proof of upgrade of the cable system to 400 MHG (approximately equivalent to 50 - 52 channels) with an engineer's certificate of

upgrade completion within 10 years of the signing of this Franchise. If the upgrade is not completed in the 10 years, the Franchise shall terminate at the end of the 10th year and the Grantee shall be required to then timely exercise renewal rights under the Federal Cable Act.

#### **Section 6. Non-Exclusive Grant.**

The Franchise granted herein shall not be exclusive and the City reserves the right to grant a similar right, privilege, and authority to any person, firm or corporation at any time during the period of this Franchise provided, however, that no other franchise will be granted on terms less burdensome than those contained herein.

#### **Section 7. Franchise Agreement.**

(1) This Ordinance is a Cable Communications Franchise Agreement and is a contract between the City and the Grantee, binding upon both parties. It is the intent of the parties that the Franchise Agreement (or any renewal hereof) shall be subject to amendment from time to time to allow the Grantee to innovate and implement new services and developments, or to agree to any terms allowed by law and for which each party agrees to bargain in good faith with the other party, upon the initiation of any proposed amendment.

(2) Notwithstanding (1) above, it is understood that nothing in this Franchise shall preclude or prohibit the City from enacting any Ordinance, from time to time, in the interest of public health and safety, which may impact the Grantee in its operation of the cable system, as a proper exercise of City's police power. Grantee's rights hereunder are subject to such police power and in the event of any conflict between the provisions of this Ordinance and any present or future exercise of the City's police power, such conflict shall be resolved in favor of such police power.

(3) In addition to those matters required elsewhere in this Ordinance, Grantee expressly represents as follows:

(a) It recognizes the right of the City, pursuant to the powers delineated in subsection (2) above, to make reasonable amend-

ments to this Ordinance during the term of this Ordinance (or any renewal term) upon sixty (60) days notice to the Grantee, except that no prior notice shall be required with respect to an emergency amendment; provided, however, that the City's judgment as to reasonability shall be presumed subject to rebuttal by Grantee. This Franchise creates no right of renewal provided that both parties acknowledge the renewal process by the Cable Act. Any renewal proceedings shall be undertaken in accordance with the Cable Act and all applicable laws and regulations.

#### **Section 8. Construction of Cable System.**

(1) It shall be a violation of this Ordinance for the Grantee or any other person acting on its behalf to obstruct, open, or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining City approval to do so, in writing from the Mayor or his designee, except for emergency repairs, which approval shall not be unreasonably withheld and shall be granted or denied in a timely manner. Such violation shall be deemed a material breach of this Franchise and shall subject the Grantee to all measures and remedies which are available to the City.

(2) Any obstruction, opening, or disturbance of any street, sidewalk, driveway, public way or other public place shall be properly guarded by adequate barriers, lights, signals and warnings to prevent danger to any person or vehicle. Grantee shall at its own cost and expense and liability, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good condition as such property was in immediately prior to the disturbance, damage, or injury. If Grantee fails to comply with the requirements of the preceding sentence within ten (10) days following written demand by the City, the City may cause such work to be done and shall charge Grantee for such.

(3) The Grantee shall, at its own cost, expense and liability, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from said street or other public place, any of its property when

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required to do so by the City because of: Street or other public excavation; construction; repair; regrading or grading; traffic conditions; installation of sewers, drains or water pipes; city-owned power or signal lines; tracks, vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare. City will give 10 days written notice except in case of emergency.

(4) The Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.

(5) The Grantee shall keep reasonably accurate, complete and current maps and records of its system and facilities. Grantee shall furnish two complete sets of "as built" maps and records to the City upon request by City. Such maps and records shall be available for inspection by the public during normal business hours at the office of the City Clerk.

(6) Any interruption in service shall be done, as far as is practicable, outside of prime time which is 7:00 p.m. to 11:00 p.m. local time.

(7) The City shall have the right, during the term of this Franchise, to install and maintain free of charge upon the poles, towers and other fixed facilities of the Grantee, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the Grantee.

(8) Location within the easements and rights of way of the City of any of Grantee's equipment, wires or other property is subject to the approval of the Mayor, which approval will not be unreasonably withheld and shall be granted or denied in a timely fashion.

(9) Construction, 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 City following accepted construction procedures and practices and working through existing committees and organizations consistent with local trade and industry practice except to the extent City is preempted by federal law.

### **Section 9. System Configuration.**

(1) The cable system shall have the capacity to carry twenty-two (22) video channels (two hundred twenty (220) MHz). Grantee shall activate at least eleven (11) channels. One (1) such channel shall be designated for public, educational and governmental access programming.

(2) Grantee shall maintain the technical performance, audio and picture quality at F.C.C. standards. City reserves the right to enact such standards if at any time in the future it is allowed to do so.

(3) Grantee shall notify the City prior to making any substantial technical modification to this cable system. All construction work shall be undertaken in accordance with this Ordinance.

(4) City may require, in writing, biannual reviews which Grantee shall conduct, at Grantee's expense, as part of its commitment to operate the cable system and to satisfy the future cable related needs and interests of the community, taking into account the cost of doing so. The City's written request shall provide Grantee at least three months to prepare such report, and shall specify what topics should be addressed. Such request may include an analysis of the technological and economic feasibility and viability of new uses of the cable system, such as water meter reading, traffic signal controls, alarm systems and health monitoring signal devices. Within two months after receipt of the City's written request, Grantee shall provide City with a draft of such report to allow City to comment. Grantee shall provide the final report no later than June 15th in odd-numbered years for the term of this franchise.

### **Section 10. Parental Control.**

(1) Grantee shall provide subscriber controlled "lockout" devices to subscribers upon their request. Such devices shall be capable of blocking out the sound and video signal of any premium channel offered by Grantee.

(2) Upon the introduction of addressable cable services as to any program which is transmitted on a channel offered on a per channel or per program basis, Grantee shall, as to any pre-

mium service which Grantee elects to offer on a coded or "scrambled" basis, code or scramble such service, sound and video in a manner standard at that time to the cable industry.

#### **Section 11. Grantee's Rules.**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary or convenient to enable Grantee to exercise its rights and perform its obligations under this Franchise to insure reasonably uninterrupted service to all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, the rules of the Federal Communications Commission or the laws of the State of Washington. It is a condition of this Franchise that Grantee must comply with all applicable federal and state laws and regulations. Nothing in this Franchise is a waiver of police powers by the City.

#### **Section 12. Authority for Use of Streets.**

(1) For the purpose of operating and maintaining a Cable Communications System in City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets, alleys, sidewalks, public ways and other publicly owned or controlled property within City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

(2) Grantee shall construct and maintain a Cable Communications System so as not to unreasonably interfere with other uses of streets, alleys, sidewalks, public ways and other publicly owned or controlled property. Grantee shall make practicable use of existing poles and other facilities available to Grantee. Grantee shall provide reasonable notice to all residents affected by proposed construction prior to the commencement of that work if

construction will result in an outage of more than two hours.

(3) Notwithstanding the above grant to use streets, alleys, sidewalks, public ways and other publicly owned or controlled property, no such street, alleys, sidewalks, public ways and other publicly owned or controlled property shall be used by Grantee if the Mayor or his designee, determines that such use is inconsistent with the terms, conditions or provisions by which such street, alleys, sidewalks, public ways and other publicly owned or controlled property was created or dedicated, or presently used.

#### **Section 13. Conditions on Street Occupancy.**

(1) All transmissions and distributions structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(2) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost, expense and liability and in a manner approved by the Mayor or his designee, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(3) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways any places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee at its sole expense and liability.

#### **Section 14. Erection of Poles.**

No Franchise shall be deemed (expressly or implied) to authorize the Grantee to construct or install poles or wire holding structures within streets for the purpose of placing cables, wires, lines or otherwise without the written consent of the City within which the street is situated which shall not be unreasonably with-

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held and shall be granted or denied in a timely manner. With respect to any poles or wire-holding structures which a Grantee is authorized to construct and install within streets, a public utility, including telephone and electric, or public utility district serving the City may, if denied the privilege of utilizing such poles or wire-holding structures by the Grantee, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's operations, the City Council may authorize such use subject to such terms and conditions as it deems appropriate. Such authorization shall include the condition that the public utility or public utility district pay to the Grantee any and all actual and necessary costs incurred by the Grantee in permitting such use.

### **Section 15. Undergrounding.**

Wherever deemed appropriate by the Mayor or his designee, acting within his reasonable discretion and considering factors of public safety, aesthetics and convenience, the cable wires and facilities shall be underground at Grantee's sole expense and liability. Grantee shall not be required to underground cable wires and facilities unless the electrical power service to the same area is also required to be underground, unless the Mayor and City Council, by resolution, upon finding of fact determine a unique public health, safety and welfare hazard requires the Grantee solely to underground. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above

the ground from poles a Grantee may construct and install its cables, wires and other facilities from the same pole.

With respect to any cables, wires and other like facilities constructed and installed by a Grantee above ground, the Grantee shall, at its sole expense and liability, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area.

### **Section 16. Relocation.**

If during the term of a franchise the City elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, sidewalk, alley, public way or other publicly owned and controlled property, or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, the Grantee, shall, except as otherwise hereinafter provided, at its sole expense and liability remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the area in which all utility lines, including those for the Cable Television System were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that the City shall not be liable to a grantee for such costs. Regardless of who bears the costs, a grantee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the Grantee advising the Grantee of the date or dates removal or relocation is to be undertaken.

### **Section 17. Movement of Buildings.**

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City or State of Washington, temporarily remove, raise or

lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

**Section 18. Cable Service and Standards.**

(1) Grantee shall provide equal and uniform cable television service 24 hours a day, to all within the corporate limits of the City of Newport, the Franchise Area defined, whose contour, so far as is possible, shall follow streets. Within the perimeter of the contour, no dwelling units, commercial, industrial, governmental, electrical or other buildings, shall be excluded from service provided to the Franchise Area.

(2) Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, Ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. City reserves the right to regulate to the extent allowed by law if the federal preemption is lifted.

(3) In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.

**Section 19. Public, Educational and Governmental Access.**

Grantee shall provide reasonable access for public, education and governmental use pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 611 (47 USC 531) upon request. City reserves the right to reasonable public educational and governmental access but does not create an obligation to exercise that right which will be exercised if at all in the sole discretion of the City Council. In case of dispute, the City Council reserves the right to decide what shall comprise reasonable access after a public hearing guided by the spirit and purpose of the Cable Communica-

tions Policy Act of 1984. Any reasonable cost of capital equipment shall be paid by the Grantee incurred in helping the City.

Use of facilities for public, education and governmental access upon the Cable Television System shall be made available, without rental, deposits, or any other charge whatsoever, provided Grantee may require a reasonable security deposit and a demonstration of reasonable competence to run the equipment (and Grantee will provide training) for twenty-four (24) hours per day, seven (7) days a week in connection with the production of public, education and/or governmental access programming cablecast upon the Cable Television System. Consistent with City rules and regulations, Grantee shall:

(1) Allow person and entities desiring to cablecast public, education and/or governmental access programming to produce programming upon and electronically interface directly with Cable Television System of Grantee so as to effectively cablecast the public, education and/or governmental access programming, or, in the alternative,

(2) A Grantee shall make all reasonable efforts to coordinate the cablecasting of public, education and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community.

**Section 20. Service to Public Bodies.**

The Grantee shall, at its own expense and liability, install one cable connection at each public school located within the City. The Grantee may, at its option, provide similar free service to other private, parochial and religious schools.

**Section 21. Approval of Construction by City; Inspection; Correction of Defects in System; Breach or Default by Grantee.**

(1) The City shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to insure the proper performance of the terms of this Ordinance.

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(2) In the event the Grantee should violate any of the terms of this Ordinance or any federal, State or local law or regulation, or any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the Franchise Agreement, the City shall promptly give the Grantee sixty (60) days written notice of the violation, breach, default or noncompliance. The Grantee shall within sixty (60) days of transmission of written notice from the City substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the City. In the event that the Grantee fails to substantially undertake such corrective action within sixty (60) days of transmission of such written notice and promptly complete the corrective action, the City may:

(a) Make such correction itself and charge the cost of the same to the Grantee; and/or

(b) In the case of a material breach of this Franchise, declare the Grantee in default and terminate the franchise and rights granted under this Franchise in accord with the procedures in Section 25, Procedures for Remediating Franchise Violations.

(c) In addition to all other rights and powers retained by the City under this Franchise, the Council reserves the right to forfeit and terminate the Franchise and all rights and privileges of Grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by Grantee shall include, but shall not be limited to the following:

(i) An uncured violation of any material provision of this Franchise or any material rule, order, regulation or determination of the City made pursuant to its power to protect the public health, safety and welfare;

(ii) An attempt to evade any material provision of the Franchise or practice of any fraud or deceit upon the cable communications system customers and subscribers or upon the City;

(iii) Failure to begin or substantially complete any system construction or system extension as set forth in the Franchise;

(iv) A failure to provide the services promised in the application or specified in the Franchise, or a reasonable substitute therefor;

(v) Failure to restore service after ten (10) consecutive days of interrupted service, except when approval of such interruption is obtained from the City;

(vi) Material misrepresentation of fact in the application for, or during negotiations relating to the Franchise;

(vii) Failure to provide insurance, construction bond, letter of credit or indemnity as required by the Franchise.

(3) None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault of Grantee or occurs as a result of circumstances beyond Grantee's control. Grantee shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agency or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond Grantee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. Grantee shall bear the burden of proof in establishing the existence of such conditions.

(4) Should the Council determine, following the public hearing at which Grantee may present evidence, argument and question witnesses in accord with Section 25, Procedures for Remediating Franchise Violations, that the violation or breach by Grantee was the fault of Grantee and within the Grantee's control, the Council may, by resolution, declare that the Franchise be forfeited and terminated; provided, however, the Council may, in its discretion, provide an opportunity for the Grantee to remedy the violation or breach and come into compliance with the Franchise and this Ordinance so as to avoid the termination.

Grantee shall be afforded due process in such procedures provided Grantee shall seasonably state any violation of this Section in writing in time to give the City reasonable

opportunity to correct the said violation of due process.

(5) Upon any termination of the franchise by the City or the City's refusal to renew the same pursuant to applicable federal law, the Grantee shall after receipt of Notice of Termination or refusal to renew franchise, remove its facilities and equipment in accord with Section 43, Removal, and in the event that the Grantee does not remove its facilities and equipment within the time provided in this Section, the City may do so, the removal cost to be borne in any event by the Grantee. Any enforcement action or remedy provided by this Section or this Ordinance or by the Franchise Agreement shall not be deemed exclusive but shall be alternative or cumulative in nature.

(6) In all respects herein, time is of the essence.

#### **Section 22. Hold Harmless.**

(1) The Grantee shall at all times fully defend, indemnify and hold the City, its agencies, boards, officers, agents, officials and employees, harmless from any and all claims, accidents, losses, charges, damages and liabilities arising from or by reason of any intentional or negligent act, occurrence, or omission of the Grantee, in law or in equity of any and every kind and nature whatsoever, whether caused by or arising out of an act or omission or any negligence of Grantee, singularly or jointly with others, its representatives, permittees, or employees or contractors, in the construction, operation, use or maintenance of any of the Grantee's Cable Television System and/or enjoyment of any privileges granted by this Franchise, or because of Grantee's performance of franchise obligations. Such indemnity shall include costs of negotiation or defense and other costs incurred, and reasonable attorney's fees.

(2) Grantee shall not be responsible for damages determined to arise out of the City's sole negligence or, in the case where damages are determined to arise out of concurrent negligence of the parties, Grantee's liability shall extend to damages determined to arise beyond the extent of Grantee's concurrent negligence only so far as permitted by law.

(3) Grantee hereby waives immunity under Title 51 R.C.W. The City and the Grantee have specifically negotiated this provision, as required by R.C.W. 4.24.115, to the extent it may apply.

(4) Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs or expenses, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided the Grantee has reasonable notice or actually knew, or of the pendency of such suit.

(5) Grantee waives all claims for loss, liability and/or damage against the City of Newport, its agencies, officers, agents, officials or employees, arising out of or in connection with the Grantee's enjoyment of franchise rights and privileges, or because of Grantee's performance or franchise obligations. No action, error or omission, or failure to act by the City in connection with administering its rights, duties related to this Franchise shall be asserted by the Grantee, directly, indirectly or by way of seeking indemnification, against the City, its agencies, boards, officers, agents, officials or employees, except where required by law.

(6) It is not the intent of this Franchise to acknowledge, create, imply or expand any duty or liability of the City without respect to its role as franchising authority, in the exercise of its police power or for any other purpose. Any City duty, nonetheless deemed created, shall be a duty to the general public and not to any specific party, group or entity.

(7) Failure to comply with this Section shall be considered a material breach.

#### **Section 23. Grantee Insurance.**

As a part of the indemnification provided by Section 22, but without limiting the foregoing, Grantee shall file with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, personal injury liability, owners and contractors personal injury liability, broad form property damage, contractual liability, automobile liability

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(owned; nonowned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the Grantee and their capacity as such, their officers, agents and employees. The City and said city and officers, agents and employees shall be named as coinsureds, and the policy or policies shall be of no less than one million dollars (\$1,000,000.00) per occurrence with a one million dollar (\$1,000,000.00) aggregate, but shall never be less than the city's insurance coverage. The insurance policy or policies shall contain contractual liability insurance naming the Grantee and City, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 22.

The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of this Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Clerk.

### **Section 24. CATV Committee – Authorization – Duties.**

(1) There is hereby created and established a CATV Committee for the purpose of performing such duties as the Mayor or Council may direct, which may consist of Council members, Council members and residents of City or the Council as a whole, at the Council's option, and making recommendations to the City regarding the operations of the Grantee and the Grantee's performance under this franchise.

(2) The number and qualifications of the membership of the CATV Committee shall be determined by motion of the Council, and its members shall serve for such term as may be established.

(3) The CATV Committee shall be charged with the performance of the following duties:

(a) Qualifications of Grantee. The Committee shall if directed by the Council, review the legal, financial, technical, and other quali-

fications of a proposed transferee under Section 40, Transfer of Rights, in the Ordinance, and the adequacy, and feasibility of construction arrangements to determine that the Grantee is fully capable to satisfy all of the provisions, terms and conditions of the Franchise for expansion or substitution as set forth in this Ordinance, and any other reasonable condition, limitation or restriction the City may deem necessary to enact in connection with this Franchise. In the course of performing these duties, the Committee shall report its findings to the Council during regularly scheduled public meetings of the Council.

(b) Settlement of Complaints. The Committee is hereby authorized and empowered to adjust, settle or compromise any non-material complaint, controversy or charges regarding the quality of service, equipment malfunctions or similar matters arising from the operations of the Grantee under this Franchise, or any other area reserved for municipal content under the Federal Cable Act or any preemption by federal or state, either on behalf of any subscriber of the Cable System, the Grantee or the City, in the best interest of the public.

### **Section 25. Procedures for Remediating Franchise Violations.**

In the event that the City determines the Grantee has violated any material provision of this Franchise, the City may make a written demand on Grantee that it remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of the City within sixty (60) days following such demands, the City shall determine whether or not such violation by Grantee was excusable or inexcusable, in accordance with the following procedure:

(1) At a meeting with the Mayor or his designee within fifteen (15) days of receipt of Notice of Violation to establish the table for corrective action and corrective action to be taken.

(3) If the meeting with Mayor or designee does not result in a satisfactory resolution, or if corrective action is not promptly completed, then an appeal or referral may be made by to the City Council.

If the hearing is conducted by the City Council, upon conclusion of the hearing, the City Council shall adopt a decision which includes findings of fact and conclusions.

If the decisions by the City Council is that there are grounds for termination of the franchise and that the franchise shall be terminated, the Council may adopt a resolution which terminates the franchise and includes its decision. The effective date of termination shall be such date as is prescribed by the City Council, within its sole discretion, in the resolution.

#### **Section 26. Alternative Remedies.**

No provision of this Ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

#### **Section 27. Non Enforcement.**

A Grantee shall not be relieved of any obligation to comply with any of the provisions of this Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City or its officers, agents, or employees to enforce prompt compliance.

#### **Section 28. Amount and Payment of Franchise Fees.**

During the term of each franchise, each Grantee shall pay to the City Council an amount equal to five (5%) percent per year of the Grantee's annual Gross Revenue.

Said fees shall be paid yearly, no later than ninety (90) days following the last day of December of each year this Franchise is in effect. Not later than the date of each payment, the Grantee shall file with the City Clerk/Treasurer, a written statement signed under penalty

of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of Gross Revenues received by a Grantee during the payment period for which payment is made.

Not less than annually, the Grantee shall provide the City Council with a certification without qualifications of a certified public accountant certifying the accuracy of the yearly franchise fee payments. Said certification shall be prepared in accordance with generally accepted accounting principles as established by the Financial Accounting Standards Board (FASB).

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

#### **Section 29. Interest on Delinquent Franchise Fees.**

Any Franchise Fees which remain unpaid after the dates specified in Section 28 above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

#### **Section 30. Auditing and Financial Records.**

During the term of each franchise, the City may conduct audits of the books, records and accounts of the Grantee for the purpose of determining whether the Grantee has paid franchise fees in the amounts prescribed by Section 29 above. The audit may be conducted by the Clerk/Treasurer of the City or by an independent certified public accounting firm retained by the City, and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and Grantee.

The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

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### Section 31. Rates.

City reserves the right to impose rate regulations and procedures if at any time in the future it should be allowed to do so.

### Section 32. Costs.

(1) The city accepts the restrictions of the Federal Cable Act, Section 622 (47 USC 542(g) (2)) with respect to allowable municipal taxes, fees or assessments in excess of the permissible franchise fee, reserving the right to amend this Section if such federal restrictions should be eliminated or relaxed.

(2) The Grantee agrees to pay, no later than thirty (30) days from the date of this Franchise, any municipal tax, fee or assessment lawfully imposed by the City, in addition to the franchise fee as provided herein. Such fees may include, but are not limited to municipal requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security, funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(3) In the event of Grantee's failure to make timely payment of any sum identified in this or any other Section of this Franchise or other lawful municipal billing, Grantee shall, in addition, pay to the City the sum of \$250.00 per day as and for liquidated damages to the City until all sums due and owing are paid in full.

(4) Grantee, within sixty (60) days after receipt from the City of written itemization, shall reimburse the City for the cost of all outside consultants incurred during the franchise process to the extent not recovered by application fees. Such payment shall be deemed to be a charge incidental to the award of a franchise and shall not be subject to the limitation on franchise fees contained in the Federal Cable Act.

(5) Grantee shall, within thirty (30) days after receipt from the City of written itemization, reimburse the City for all costs of publication in connection with the adoption of this Franchise Ordinance.

(6) After the effective date of this Agreement, as necessary in the analysis of all matters relative to this Franchise, City shall be entitled

to employ the services of technical, financial or legal consultants and advisors. Except as otherwise expressly provided herein, all reasonable fees of any such consultants or advisors incurred by City in this regard shall be borne by the Grantee, regardless of the outcome of any specific matter under consideration. Such payment shall be deemed to be a charge incidental to the enforcement of a franchise and shall not be subject to the limitations on franchise fees contained in the Federal Cable Act.

(7) No acceptance by the City of any payment from Grantee shall be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to auditing and recomputation by City.

(8) Failure to comply with this Section shall constitute a material breach of the Franchise and shall subject the Grantee to all measures, legal or equitable, whether available to the City under this Franchise or otherwise.

(9) Grantee shall maintain in full force and effect, an acceptable corporate surety bond issued by a surety licensed therefore by the State of Washington in an amount equal to (\$5,000.00) Five Thousand Dollars.

Neither the provisions of this Section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under the Franchise for damages, either to the full amount of the cancellation by the surety during the term of the Franchise, whether for failure to pay a premium or otherwise. The form of the bond and surety shall be subject to the approval by the City Council.

### Section 33. Previous Rights Abandoned.

This Agreement is in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by Grantee or any successor pertaining to the construction, operation, modification or maintenance of a cable system in the City. The acceptance of this Agreement shall operate as between Grantee and City as an

abandonment of any and all such rights, privileges, powers, immunities, and authorities within the City. All construction, operation, modification, and maintenance by the Grantee of any cable system in the City shall be under this Franchise and not under any other right, privilege, power, immunity or authority.

**Section 34. Time is of the Essence.**

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of Grantee, such time shall be deemed of the essence. Any failure of Grantee to perform within the time allotted shall always be sufficient grounds for the City to invoke any appropriate remedy, including, without limitation, termination of this Franchise pursuant to Section 25.

**Section 35. City's Approvals, Consents and Exercise of Discretion.**

In any provision of this Franchise requiring that City not withhold its consent or approval unreasonably or requiring that the City exercise its discretion reasonably, City's withholding of its consent or approval and City's exercising of its discretion shall be based on City's determination that its action lawfully and reasonably serves the public interest. In any dispute between the parties on such issue the burden shall be upon Grantee to establish, by clear and convincing evidence, that the City has acted arbitrarily and capriciously.

**Section 36. Interpretation of Franchise.**

The administration and interpretation of this Franchise shall be vested in the City. Grantee agrees that all interpretations and decisions regarding administration of the Franchise, as determined by the City, are final, binding and conclusive unless that interpretation is found to be arbitrary and capricious by a court of competent jurisdiction.

**Section 37. Remedies Cumulative.**

The rights and remedies reserved to the City by this Franchise are cumulative and shall be in addition to, and not in derogation of, any other rights or remedies which the City may have with the respective subject matter of this

Franchise. A waiver of rights or remedies shall not affect any other rights or times.

**Section 38. Guarantee.**

In consideration of the grant of this Franchise to Grantee and the benefit to them, Grantee's parent, owner or partner shall guarantee, absolutely and unconditionally, the performance by Grantee of all the obligations of Grantee pursuant to and in accordance with all of the terms, provisions and conditions of the Franchise. This guarantee shall continue in full force and effect until all obligations of the Grantee under this Franchise shall have been fully satisfied and discharged.

**Section 39. Taxes.**

Subject to the provisions of Federal Cable Act, nothing contained in this Franchise shall be construed to except the Grantee from any tax, liability or assessment authorized by law or from provisions of the Newport Municipal Code.

**Section 40. Transfer of Rights.**

(1) The Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, or sublet, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City which consent will not be unreasonably withheld.

No such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole or in part to secure an indebtedness.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the City and must agree to comply with all provisions of the Franchise and such conditions as may be prescribed by Council expressed by resolution. City shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

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(2) The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a franchise.

(3) In no event shall a transfer or ownership of control be approved without successor in interest becoming a signatory to the Franchise Agreement.

(4) Any unauthorized transfer in violation of this Franchise shall be deemed a material breach in default of this Franchise and shall subject the Grantee to all penalties and remedies prescribed in this Franchise and to all other remedies, legal and equitable, which are available to the City, including, but not limited to cumulatively and/or in the alternative:

(a) The immediate entry of an ex parte order by a court of competent jurisdiction:

(i) Enjoining Grantee, its officers, agents, employees and all others acting in concert with them, from transferring or assigning or otherwise disposing of any interest in the cable system,

(ii) Appointing a receiver, acceptable to the City, who shall forthwith assume the management of the cable system in accordance with the terms and conditions of this Franchise, and

(iii) Requiring all subscription fees, installation fees and all other fees payable to Grantee to be paid into an escrow account which shall be subject to release to Grantee only on order of the court.

(b) The immediate termination of this Franchise and acceleration of all the obligations and rights thereunder, including but not limited to those described in Section 25 of this Franchise.

(c) The right of immediate exercise by the City of its right to purchase the system from Grantee under the provisions of this Franchise.

(8) Grantee shall notify the City of any occurrence which constitutes a transfer not in accordance with the provisions of this Franchise.

(9) Grantee shall notify the City of entry of any judgment against Grantee within seventy-two (72) hours of the occurrence of such event.

(10) Subject to the requirements contained in the Franchise, the Franchise shall be binding on any successors or assigns of Grantee.

(11) All costs to the City of awarding a transfer of this Franchise will be paid by the Grantee.

### **Section 41. Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, Grantee shall notify the City of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a transfer of rights under Section 40, Transfer of Rights, and the provisions of this Ordinance governing the consent of the City to such transfer shall apply.

### **Section 42. Receivership.**

(1) A Grantee shall immediately notify the City in writing if it: (a) files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; (2) files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or (3) is adjudicated bankrupt, makes an assignment for the benefit of creditors or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of its cable system.

(2) City reserves all rights under the law after the appointment of a receiver or trustee, whether in receivership, reorganization, bankruptcy or other action or proceeding.

(3) To the fullest extent allowed by law, transfer by the trustee, receiver or debtor in residence to a third party of assets necessary to conduct Cable T.V. business or provide cable service to the Franchise area shall be an event

that triggers that right of the City under the provisions of this Ordinance governing the consent of the City including but not limited to Section 40, Transfer of Rights.

#### **Section 43. Removal.**

Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchases the Cable Television System, the Grantee shall remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost, expense and liability, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the Mayor based upon a determination, in the sole discretion of the Mayor, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Mayor to remove cable or conduit shall be mailed to the Grantee. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Mayor or assignee of the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the Franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City or an assignee purchase the System, the Grantee, at its sole expense and liability, shall, unless relieved of the obligation by the City, remove from the streets all above

ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee.

The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the Franchise.

#### **Section 44. Severability.**

If any section, subsection, sentence, clause, phrase, or material portion of this Ordinance 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.

#### **Section 45. Ordinances Repealed.**

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. They are: Ordinance No. 481, adopted March 8, 1972; Ordinance No. 487, adopted September 20, 1972; Ordinance No. 489, adopted December 20, 1972; Ordinance No. 520, adopted June 4, 1975; Ordinance No. 538, adopted November 17, 1976; Ordinance No. 559, adopted May 3, 1978; and Ordinance No. 702, adopted December 16, 1986.

#### **Section 46. Applicable Law.**

Notwithstanding anything to the contrary herein, the terms of this Franchise shall be governed in accordance with the terms of the Cable Communications Policy Act of 1984 (the "Cable Act") Pub.L.No. 98-549, 47, USC Section 521 et seq. (Supp III 1985), as the same may be amended from time to time. In the event of a conflict between terms of this

**Ordinance No. 827**

Ordinance, or other ordinances of the City, and the Cable Act, the Cable Act shall control wherever it preempts.

**Section 47. Notices.**

All notices and other communications hereunder shall be in writing and deemed to have been duly given if delivered by hand or delivery service providing proof of delivery or if mailed (first class or certified, return receipt and postage prepaid) to the following respective addresses:

Pend Oreille Cable TV Limited  
Partnership  
ATTN: John S. Whetzell & James A.  
Penney  
1201 Third Avenue, Suite 3600  
Seattle, WA 98101

With a copy to:

Pend Oreille Cable TV Limited Partnership  
405 North 4th Street PO Box 1488  
Sandpoint, ID 83864

to the City:

City of Newport  
PO Box 546  
Newport, WA 99156

or to such other address(es) as the Grantee or the City may specify in a notice delivered in accordance with the terms hereof.

**Section 48. Effective Date.**

In the interest of the peace, health and safety of the people of the City, this Ordinance shall be in full force and effect upon its passage by the Council, approval of the Mayor and publication as required by law on June 19, 1990.

Passed by the City Council of the City of Newport, Washington this 5th day of June, 19\_\_.

**Ordinance No. 827**

AN ORDINANCE OF THE CITY OF NEWPORT, WASHINGTON, PROVIDING FOR FRANCHISING AND REGULATION OF CABLE COMMUNICATION, TO PROVIDE FOR PAYMENT OF FEES, PROVIDE FOR THE REGULATING OF RATES, ESTABLISH CONSTRUCTION, MAINTENANCE, AND OPERATIONS STANDARDS, PROVIDE REMEDIES, AND PRESCRIBE PENALTIES FOR VIOLATIONS OF THIS CHAPTER, AND PROVIDE FOR THE GENERAL ADMINISTRATION OF CABLE FRANCHISES.

THE CITY COUNCIL OF THE CITY OF NEWPORT, STATE OF WASHINGTON DO ORDAIN AS FOLLOWS:

**ARTICLE 1  
INTRODUCTION**

**Section 1. Short Title.**

This Ordinance shall be known and may be cited as the “Newport Cable Franchise Regulation Ordinance.”

**Section 2. Purpose.**

The City of Newport finds that it is the purpose of this Ordinance and subsequent amendments to:

(a) Provide for the franchising and regulation of cable communication within the City of Newport;

(b) Provide for a cable communications system that will meet the current needs of the City of Newport and that can be modified to meet future needs;

(c) Provide for the payment of fees and other valuable consideration to the City for the use of the public ways and for the privilege to construct and operate cable communications systems;

(d) Provide, consistent with applicable law, for the regulation by the City of certain rates to be charged to subscribers for certain cable communications services;

(e) Provide for the establishment of construction, maintenance, and operations standards to ensure the safety of the public;

(f) Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the City;

(g) Provide remedies and prescribe penalties for violation of this Chapter and any franchise granted hereunder; and

(h) Exercise and avail the City of all regulatory powers authorized by federal or state law.

### Section 3. Definitions.

For the purposes of this Ordinance the following terms, phrases, words, 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 number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders wherever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning. The definitions in this ordinance shall control, for interpretation purposes, when in conflict with the general definitions in the Newport Municipal Code. These definitions shall not limit nor restrict any regulatory authority now or hereafter granted by federal or state law and regulations.

(1) "Access Channel" shall mean any channel set aside for public use, educational use, or governmental use without a channel usage charge.

(2) "Access user" shall mean any person or entity entitled to make use of an access channel consistent with the intended purpose of the channel.

(3) "Application" shall mean a proposal seeking authority to construct and operate a cable communications system within the City pursuant to this Ordinance. It shall include the initial proposal plus amendments.

(4) "Basic service" shall mean subscriber cable television services which include the delivery of local television broadcast signals,

access channels, leased channels and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services. This definition shall not limit or restrict any regulatory authority now or hereafter granted by federal or state law.

(5) "Cable Advisory Board" or "CATV Committee" shall mean that board established by the City to handle cable matters. Said board can be, at the discretion of the City Council, the City Council.

(6) "Cable Communications System" or "System," also referred to as "Cable Television System," "Cable System," "CATV System" or "Community Antenna TV System" shall mean a system of antennae, cables, wires, lines, towers, wave guides, or other conductors, converters, amplifiers, head end equipment, master controls, each earth station, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signal within the City but does not include any facility of any electric utility used solely for operating its electric utility system.

(7) "Cable Television services" shall mean the one-way transmission of video programming and associate nonvideo signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.

(8) "Channel" means 6 MHz of bandwidth in the electromagnetic spectrum capable of carrying any type of transmission which a franchisee of a cable system is authorized to provide to its subscribers.

(9) "City" shall mean the City of Newport of the State of Washington and all the territory within its present and future boundaries and including any area over which the city exercises jurisdiction.

(10) "Connection" shall mean the attachment of the drop to the radio or television set or to the communications device of the subscriber.

(11) "Construction," the terms "construction is completed," "construction has been

## Ordinance No. 827

completed,” and “construction shall be completed” shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed, or for underground construction, that all cable has been laid and trenches refilled, all public ways restored to the City’s approval and except as prevented by weather conditions or delayed because of season, landscaping restored; that all amplifier housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, energized, and all bonding and grounding has been completed; that all necessary connectors, splitters and taps have been installed; that construction of the headends and/or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable services to subscribers in a safe and reliable manner has been completed consistent with the terms of a franchise, industry standards and all FCC standards; and proof that performance tests have been successfully conducted on each otherwise completed segment of the cable system shall be provided to the City. It is expected that segments of less than the entire system will be activated and proofed when completed. Construction of any segment or of the entire system will not be considered complete until proof that successful performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) has been submitted to the City and any problems found during testing have been corrected. The term “completion of construction” does not include marketing and installation of subscriber service.

(12) “Converter” shall mean an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

(13) “Council” shall mean the present legislative governing body of the City or any future body constituting the legislative body of the City.

(14) “Drop” shall mean the coaxial or fiber optic cable or cables that connects a sub-

scriber’s premises to the nearest feeder line of the cable communications system.

(15) “Easement” shall mean permission to use all public ways, including public utility easements, for the purposes of constructing and operating a cable communications system to serve the public.

(16) “Feeder line” shall mean the coaxial or fiber optic cables running to line extenders and taps for purposes of interconnection to individual subscribers.

(17) “FCC” shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.

(18) “File” shall mean the delivery, by mail or otherwise, to the appropriate office, officer, or agent of the City of any document or other thing which this Ordinance or a franchise requires a franchisee to file with the City. The date of receipt by the City shall be considered the file date. Unless specified to the contrary, the filing shall be with the City Clerk.

(19) “Franchise” shall mean the right granted through a contractual agreement between the City and a person by which the City authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the City. Any franchise awarded by an agreement in accordance herewith shall be a nonexclusive franchise.

(20) “Franchisor”, “Grantor” or “City” means the City of Newport, Washington or any delegate acting within the scope of its jurisdiction.

(21) “Franchise Fees” means any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a Grantee solely because of its status as such. The term “franchise fee” does not include:

(a) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services) but not including a tax, fee or assessment which is unduly discriminatory against Grantee;

(b) Capital costs which are required by the franchise or be incurred by Grantee for public, educational or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code, as amended.

(e) Any other fee not required to be so included by 47 USC 542 (g)(1).

(22) “Franchisee” or “Grantee” shall mean an entity authorized to construct and/or operate a cable communications system within the City pursuant to this Ordinance, including any lawful successor, transferee or assignee of an original franchisee.

(23) “Gross Revenues” shall mean all operating revenue and monies collected or accruing without deduction, from the cable communications system paid directly or indirectly to a Grantee, its affiliates, subsidiaries, parent, and any person in which a Grantee has a financial interest in association with the provisions of cable communications services within the City, including, but not limited to, basic service monthly fees, premium service fees, institutional service fees, service transfer fees, and leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues and copyright fees; provided, however, this shall not include any revenues from sale of capital assets or lease of property for purposes unrelated to cable communications.

(24) “Installation” shall mean the connection of the system at the subscriber’s premises.

(25) “Institutional services” shall mean one- and two-way non-entertainment transmission services for businesses, public agencies and community institutions. Such services include but are not limited to, video transmission and voice and data communications.

(26) “Leased Access” “leased channel” or “leased access channel” shall mean the use of a fee-for-service basis of Cable Television System by business enterprises (whether profit, nonprofit or governmental) to tender services to the citizens of the City and shall include without limitation all use pursuant to Section 612 of the Cable Communication Policy Act of 1984 (47 USC 521 et Seq.) and as amended.

(27) “Maintain” or “maintenance” shall mean the repair, restoration, replacement, renovation and testing of the cable communications system or components thereof so as to ensure that it operates in a safe and reliable manner and as required by a franchise FCC standards and requirements and this Ordinance.

(28) “Person” means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(29) “Premium service” shall mean pay television offered on a per channel or per program basis.

(30) “Service tier” shall mean a specific set of cable supervisor services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.

(31) “Subscriber” means any person who legally receives any one or more of the services provided by the Cable Communications System.

(32) “Street” or “public way” shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within the City.

(33) “User” shall mean a party utilizing a cable communications system’s facilities for purposes of production or transmission of material or information to subscribers.

## **ARTICLE 2 AUTHORITY**

### **Section 1. Requirement of a Franchise.**

It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications system within the City without a valid franchise obtained pursuant to the provisions of this ordinance.

### **Section 2. General Franchise Characteristics.**

Any franchise issued pursuant to the provisions of this Ordinance shall be deemed to:

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(a) Authorize use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable communications system, but shall neither expressly nor impliedly be deemed to authorize a franchisee to provide service to or install cables, wires, lines, or any other equipment or facilities upon, private property without the owners consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof; provided, no grant of use by the City shall be interpreted inconsistent with the Revised Code of Washington Title 35A or extended permission or use outside a purpose, dedication, or reservation granted to or held by the City; provided further, nothing herein shall prohibit a franchisee from exercising its rights under the Revised Code of Washington.

(b) Be nonexclusive, and shall neither expressly nor impliedly be deemed to preclude the issuance of subsequent franchises to operate one or more other cable communications systems within the City or the ownership or operation of a cable communications system by the City; and

(c) Convey no property right to a franchisee or right to renewal, except as otherwise provided by applicable law.

### **Section 3. Franchise as a Contract.**

A franchise issued pursuant to the provisions of this ordinance shall be deemed to constitute a contract between a franchisee and the City. A franchisee shall be deemed to have contractually committed itself to comply with the terms, conditions and provisions of a franchise, and with all written rules, orders and regulations applicable to a franchise which are issued, promulgated, or made pursuant to the provisions of this ordinance. All requirements in this Ordinance not directly mentioned in a franchise shall be deemed a part of the franchise and binding on the franchisee. Notwithstanding its contract status, the City reserves all regulatory powers now or hereafter granted or authorized by state or federal law.

### **Section 4. Subject Authority.**

A franchisee shall, at all times during the

life of a franchise, be subject to all lawful exercise of the police power by the City and to such lawful regulations as the City shall hereafter enact. The construction, operation and maintenance of the system shall also be in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the United States, the State of Washington, the City or any agency of said governments.

### **Section 5. No Waiver of Terms.**

A franchisee shall not be excused from complying with any of the terms and conditions of this Ordinance by a failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

### **Section 6. Police Powers and Review Standard.**

(a) Nothing in this ordinance or the awarding of a franchise in accordance herewith shall be construed as an abrogation by the City of any of its police powers.

(b) This ordinance and any franchise granted under it and all acts, omissions or decisions by the City, the city administration, City Council, or any city official in any way arising out of regarding or referring to this ordinance or any franchise granted under it shall be deemed and presumed to be made within their reasonable discretion and considering factors of public safety, aesthetics or convenience or the health and welfare of the citizens.

## **ARTICLE 3 FRANCHISE APPLICATIONS**

### **Section 1. Filing of Applications.**

Applications for a cable television franchise will be considered pursuant to the following procedures:

(a) An application must be filed in writing with the City Clerk.

(b) The City may request any additional information from an applicant at any time.

(c) All application to be acceptable for filing must be accompanied by a nonrefundable filing fee of not less than \$2000.00 or such greater amount as may from time to time be set by the City Council.

(d) The City may advertise a request for proposals.

### **Section 2. Content of Applications.**

To be acceptable for filing an application must conform to any applicable Request for Proposals and all the information specified therein. Where an application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:

(a) Identification of the ownership of the applicant, if not a natural person, including names and addresses of all persons with one (1) percent or more ownership interest and the ultimate controlling natural person and identification of all offices and directors and any other primary business affiliation of each.

(b) An indication of whether the applicant, or any entity controlling the applicant, or any affiliate of said controlling entity including any officer of a corporation or major stockholder thereof, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States, had an involuntary petition against it pursuant to the bankruptcy code, been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, had a cable franchise revoked, or has been found guilty by any court or administrative agency in the United States of (1) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. If so, the application shall identify any such person or entity and fully explain the circumstances.

(c) A demonstration of the applicant's technical, legal, and financial ability to construct and operate the proposed cable facility.

(d) A description of any physical facility proposed, how any construction will be implemented, services to be provided, proposed rates for each service tier and charges for installation, converters and other services, financial projections for each year of the franchise term, and a list of all other cable communication systems owned by the applicant.

(e) An affidavit of the applicant or duly authorized officer thereof, certifying in a form acceptable to the City, the truth and accuracy of the information contained in the application

and acknowledging the enforceability of application commitments.

(f) In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the material terms of the existing franchise and with applicable law.

(g) Any other information that the city or its agents, may request of the applicant.

### **Section 3. Applicant Representative.**

Any person who files an application with the City for a cable television franchise shall at all times disclose to the City in writing, the names, addresses, and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application.

## **ARTICLE 4 TERMS**

### **Section 1. Contract and Acceptance.**

(a) The franchise ordinance will constitute a contract, freely entered into, between the City and the franchisee. A franchise and its terms and conditions shall be accepted by a franchisee by written instrument, in a form acceptable to the City Clerk, and filed with the City within thirty (30) days after the granting of the franchise by the City.

(b) A franchise granted pursuant to this Ordinance shall not take effect until the applicant pays a filing fee to the City. The filing fee shall be as specified in a franchise agreement, but it shall not exceed the City's costs in the franchising process, including any costs associated with the publication of this ordinance and a franchise ordinance, the cost of services provided by the City staff, and the costs of outside consultants, less the application filing fees received. The City shall provide to a franchisee a statement summarizing such costs prior to the execution of the franchise.

### **Section 2. Publication Cost.**

A franchisee shall be responsible for all costs of publication of the franchise. Such costs shall include, but are not limited to the cost of publication in any newspaper including

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but not limited to any notice of public hearing which shall be in addition to the filing fee.

### Section 3. Insurance, Bonds, Indemnity.

Any franchise issued under this ordinance shall require the franchisee to obtain and pay all premiums for and deliver to the City, written evidence of payment of premiums for and a certificate of insurance for the following:

(a) Comprehensive commercial or general liability insurance.

(b) Comprehensive automobile liability insurance policy or policies.

(c) An irrevocable letter of credit or acceptable alternative for 110% of the costs of any construction undertaken by the franchisee.

(d) And an agreement indemnifying and holding harmless City from any loss or liability for bodily injury or property damage arising out of or in connection with franchisee's enjoyment of franchise privileges.

(e) All insurance policies of Grantee shall name City as an additional insured, in an amount no less than one million per occurrence with a one million aggregate, but the amount shall never be less than the City's insurance coverage.

### Section 4. Forfeiture and Termination.

(a) In addition to all other rights and powers retained by the City under this Ordinance and any franchise issued pursuant thereto, the Council reserves the right to forfeit and terminate a franchise and all rights and privileges of a franchisee in the event of a violation or breach of these terms and conditions. A violation or breach by a franchisee shall include, but shall not be limited to, the following:

(1) An uncured violation of any provision of this ordinance or a franchise issued thereunder, or any rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

(2) An attempt to evade any provision of a franchise or practice of any fraud or deceit upon the cable communications system customers and subscriber or upon the City;

(3) Failure to begin or complete any system construction or system extension as set forth in the franchise;

(4) Failure to provide the services promised in the application or specified in a franchise, or a reasonable substitute therefor;

(5) Failure to restore service after ten (10) consecutive days of interrupted service, except when approval of such interruption is obtained from the City;

(6) Failure to provide insurance, construction bond, irrevocable letter of credit or indemnity as required by this ordinance or by the franchise;

(7) A pattern of inadequate service and failure to respond to subscriber complaints;

(8) Misrepresentation of material facts in the application for, or during negotiations relating to, a franchise.

(b) None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault on the Grantee or occurs as a result of circumstances beyond the Grantee's control; provided Grantee shall not be excused by economic hardship nor by nonfeasance, or malfeasance of its directors, officers, agents or employees, provided further, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond Grantee's control if it is caused by any nonnegligent act or unintended or nonnegligent omission of its employees (assuming proper training, or agents) (assuming reasonable diligence in their selection). Grantee shall bear the burden of proof in establishing the existence of such conditions were beyond its control.

(c) Should the council determine, following the public hearing at which grantee may present evidence, argument and question witnesses in accord with the procedures provided herein, that the violation or breach by the grantee was the fault of the grantee and within the grantees control, the council may, by resolution declare that the franchise be forfeited and terminated; provided, however, the Council may, in its discretion, provide an opportunity for the Grantee to remedy the violation or breach and come into compliance with the franchise and this ordinance so as to avoid the termination. Grantee shall be afforded due process in such procedures provided Grantee shall reasonably state any violation of this Section in

writing in time to give the City a reasonable opportunity to correct the said violation of due process.

(d) Upon any termination of the franchise by the City or the City's refusal to renew the same pursuant to applicable federal law, the grantee shall after receipt of Notice of termination or refusal to renew franchise, promptly remove its facilities and equipment and restore all property and premises in addition to all provisions of the franchise and this ordinance. In the event that the grantee does not remove its facilities and equipment as requested by the City, the City may do so, the entire removal cost shall be borne in any event by the Grantee. Any enforcement action or remedy provided by this section or this ordinance or by the franchise agreement shall not be deemed exclusive but shall be alternative or cumulative in nature.

#### **Section 5. Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the cable communication system facilities, or upon the termination of any lease covering all or a substantial part of the cable communication system, or upon the occasion of additional events which effectively cause termination of the system's operation, Grantee shall notify the City of such fact and such notification or the occurrence of such termination events shall be treated as a notification that a transfer of rights under this ordinance and the provision of this Ordinance governing the consent of the City to such transfer shall apply.

#### **Section 6. Receivership.**

(1) A grantee shall immediately notify the City in writing if it (a) files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or make an arrangement with creditors; (b) files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or (c) is adjudicated bankrupt, makes an assignment for the benefit of creditors or applies for or consents to the appointment of any receiver or

trustee of all or any part of its property including all or any part of its cable system.

(2) City reserves all rights under the law after the appointment of a receiver or trustee, whether in receivership, reorganization, bankruptcy of other action or proceeding.

(3) To the fullest extent allowed by law, transfer by the trustee, receiver or debtor in residence to a third party of assets necessary to conduct Cable T.V. business or provide cable service to the franchise area shall be an event that triggers the rights of the City under the provisions of this Ordinance governing the consent of the City including but not limited to the section on transfer of rights.

#### **Section 7. Purchase of Cable System by City.**

The City reserves the right to negotiate and purchase any cable system should it determine that such a purchase is in the best interest of the City. This section does not place upon any franchisee any obligation to make an offer to the City before selling its cable system to any other party.

#### **Section 8. Removal of Cable Communications System.**

Upon expiration or termination of the franchise, if the franchise is not renewed and if neither the City nor an assignee purchases the Cable Television System, the Grantee shall remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the street along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost, expense and liability, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the Mayor based upon a determination, in the sole discretion of the Mayor, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for

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public purposes restoring all property and premises to the original or better condition. Any order by the Mayor to remove cable or conduit shall be mailed to the Grantee. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Mayor or assignee of the City, in its discretion. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City, in its discretion.

Upon expiration or termination of the franchise, if the franchise is not renewed and if neither the City or an assignee purchase the System, the Grantee, at its sole expense and liability, shall, unless relieved of the obligation by the City, remove from the streets all above ground elements of the cable television system, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee.

The grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition or better they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the franchise.

### **Section 9. Transfer of Ownership or Control and Rights.**

(1) The franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, or sublet, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person with-

out the prior written consent of the City which consent will not be unreasonably withheld.

No such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole or in part to secure an indebtedness.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the City and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by Council expressed by resolution. In addition, the City reserves all authority permitted by federal or state laws to review assignees' qualifications and suitability to provide cable service. City shall be deemed to have denied a proposed transferor assignment in the event its consent is not communicated in writing to Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer assignment.

(2) The consent or approval of the City Council to any transfer of the franchise shall not constitute a waiver or release of the right of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions for the franchise and this ordinance.

(3) In no event shall a transfer, of ownership or control be approved without successor in interest becoming a signator to the Franchise Agreement.

(4) Any unauthorized transfer in violation of this Franchise shall be deemed a material breach in default of this Franchise and shall subject the Grantee to all penalties and remedies prescribed in this Franchise and to all other remedies, legal and equitable, which are available to the City, including, but not limited to cumulatively and/or in the alternative:

(a) The immediate entry of an ex parte order by a court of competent jurisdiction (i) enjoining grantee, its officers, agents, employees and all others acting in concert with them from transferring or assigning or otherwise disposing of any interest in the cable system, (ii) appointing a receiver, acceptable to the City, who shall forthwith assume the management of the cable system in accordance with the terms and conditions of the Franchise, and

(iii) requiring all subscription fees, installation fees and all other fees payable to Grantee to be paid into an escrow account which shall be subject to release to Grantee only on order of the court.

(b) The immediate termination of the Franchise and acceleration of all the obligations and rights thereunder, including but not limited to those described in this ordinance.

(c) The right of immediate exercise by the City of its right to purchase the system from Grantee under the provisions of the Franchise.

(8) Grantee shall notify the City of any occurrence which constitutes a transfer not in accordance with the provisions of the Franchise and this ordinance.

(9) Grantee shall notify the City of entry of any judgment against Grantee within seventy-two (72) hours of the occurrence of such event.

(10) Subject to the requirements contained in the Franchise and this ordinance the Franchise shall be binding on any successors or assignees of Grantee.

(11) All costs of the City of awarding a transfer of the Franchise will be paid by the Grantee.

#### **Section 10. Amount and Payment of Franchise Fees.**

During the term of each franchise, each Grantee shall pay to the City Council an amount equal to five (5%) percent per year of the Grantee's annual Gross Revenue.

Said fees shall be paid monthly no later than thirty (30) days following the last day of the month concerned of each year this franchise is in effect. Not later than the date of each payment, the Grantee shall file with the City Clerk/Treasurer, a written statement signed under penalty of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of Gross Revenues received by a Grantee during the payment period for which payment is made.

If City requires it, not less than annually, the Grantee shall provide the City Council with a certification without qualifications of a certified public accountant certifying the accuracy of the yearly franchise fee payments. Said cer-

tification shall be prepared in accordance with generally accepted accounting principles as established by the financial Accounting Standards Board (FASB).

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

#### **Section 11. Interest on Delinquent Franchise Fees.**

Any Franchise Fees which remain unpaid after the dates specified above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

#### **Section 12. Auditing and Financial Records.**

During the term of each franchise, the City may conduct audits of the books records and accounts of the Grantee for the purpose of determining whether the Grantee has paid franchise fees in the amounts prescribed above. The audit may be conducted by the Clerk/Treasurer of the City or by an independent certified public accounting firm retained by the City, and shall be conducted at the sole expense of the City unless an error is discovered, in which case the Grantee shall pay all expenses. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and Grantee.

The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records in the City of Newport, at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

#### **Section 13. Costs.**

(1) The Grantee agrees to pay, no later than thirty (30) days from the date of this Franchise, any municipal tax, fee or assessment lawfully imposed by the City, in addition to the franchise fee as provided herein. Such fees may include, but are not limited to municipal

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requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security, funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(2) In the event of Grantee's failure to make timely payment of any sum identified in this or any other Section of this Franchise or other lawful municipal billing, Grantee shall, in addition, pay to the City the sum of \$250.00 per day as and for liquidated damages to the City until all sums due and owing are paid in full.

(3) Grantee, within sixty (60) days after receipt from the City of written itemization, shall reimburse the City for the cost of all outside consultants incurred during the franchise process to the extent not recovered by application fees. Such payment shall be deemed to be a charge incidental to the award of a franchise and shall not be subject to the limitation on franchise fees contained in the Federal Cable Act.

(4) Grantee shall, within thirty (30) days after receipt from the City of written itemization, reimburse the City for all costs of publication in connection with the adoption of this Franchise Ordinance.

(5) After the effective date of this Agreement, as necessary in the analysis of all matters relative to this Franchise, City shall be entitled to employ the services of technical, financial or legal consultants and advisors. Except as otherwise expressly provided herein, all reasonable fees of any such consultants or advisors incurred by City in this regard shall be borne by the Grantee, regardless of the outcome of any specific matter under consideration. Such payment shall be deemed to be a charge incidental to the enforcement of a franchise and shall not be subject to the limitations on franchise fees contained in the Federal Cable Act.

(6) No acceptance by the City of any payment from Grantee shall be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to auditing and recomputation by City.

(7) Failure to comply with this Section shall constitute a material breach of the Franchise and shall subject the Grantee to all measures, legal or equitable, whether available to the City under this Franchise or otherwise.

(8) Grantee shall maintain in full force and effect, an acceptable corporate surety bond issued by a surety licensed therefore by the State of Washington in an amount to be set by the Council if Council so sets. Alternately, the City may accept an approved letter of credit or cash deposit with the City Treasurer.

Neither the provisions of this Section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under the Franchise for damages either to the full amount of the cancellation by the surety during the term of the Franchise, whether for failure to pay a premium or otherwise. The form of the bond and surety shall be subject to the approval by the City Council.

### **ARTICLE 5 SUBSCRIBER FEES AND RECORD**

#### **Section 1. Subscriber Fees and Rates.**

Those fees and charges subject to regulation by the City pursuant to state and federal law shall not be increased without prior approval of the city. The City reserves the right to regulate rates for any service pursuant to changes in federal or state law which would authorize such regulation. The City reserves the right to establish procedures for any lawful regulation of rates.

#### **Section 2. Reports.**

The Franchisee shall make reports to the City at such times and provide such information as is requested.

### **ARTICLE 6 STANDARDS**

#### **Section 1. System Technical Standards.**

The cable communication system to be installed by a franchisee shall comply in all respects with the technical performance

requirements set forth by the Federal Communications Commission. The City reserves the right to amend, in its sole discretion, this ordinance or a franchise to incorporate technical performance standards in the event it has the legal authority to promulgate such standards.

### **Section 2. Access and Local Programming.**

Grantee shall provide reasonable access for public, education and governmental use pursuant to the provisions of the Cable Communication Policy Act of 1984 and subsequent cable acts upon request. City reserves the right to reasonable public educational and governmental access, but this provision does not create an obligation to exercise that right. In case of dispute, the City Council reserves the right to decide what shall comprise reasonable access after a public hearing, guided by the spirit and purpose of the Cable Communications Policy Act of 1984 and subsequent cable acts and regulations. Any cost of capital equipment incurred in complying with the City's determination shall be paid by the Grantee.

Use of facilities for public, education and governmental access upon the Cable Television System shall be made available, without central deposits, or any other charge whatsoever, provided Grantee may require a reasonable security deposit and a demonstration of reasonable competence to run the equipment (and Grantee will provide training) for twenty four (24) hours per day, seven (7) days a week in connection with the production of public education and/or access programming cable cast upon the Cable Television System. Consistent with City rules and regulations Grantee shall:

(1) Allow person and entities desiring to cablecast public, education and/or governmental access programming to produce programming upon and electronically interface directly with Cable Television System of Grantee so as to effectively cable cast the public, education and/or governmental access programming; or, in the alternative.

(2) A Grantee shall make all reasonable efforts to coordinate the cablecasting of public, education and/or governmental access programming upon the Cable Television System

at the same time and upon the same channel designations as such programming is cable cast upon other cable television systems within the community.

The grantee shall, at its own expense and liability, install one cable connection at each public school located within the City, at the public library, and at the request of the Mayor in City buildings designated by the Mayor. The grantee may at its option, provide similar free service to other private, parochial and religious schools.

### **Section 3. Standby Power.**

A franchisee shall maintain equipment capable of providing stand by power for the headends for a minimum of eight (8) hours, and transportation and trunk amplifiers for a minimum of four (4) hours. The standby power equipment shall engage automatically in the event of a power failure. A franchisee shall comply with all safety regulations to prevent stand by generators from "back feeding" or otherwise powering the "dead" utility line.

### **Section 4. Parental Control.**

(1) Grantee shall provide subscriber controlled "lock-out" devices to subscriber upon their request. Such devices shall be capable of blocking out the sound and video signal of any premium channel offered by Grantee.

(2) Upon the introduction of addressable cable services as to any program which is transmitted on a channel offered on a per channel or per program basis, grantee shall, as to any premium service which grantee elects to offer on a coded or "scrambled" basis, code or scramble such service, sound and video in a manner standard at the time to the cable industry.

### **Section 5. Emergency Audio Alert System.**

The cable system shall be engineered, constructed and maintained to provide for an audio alert system. This audio alert system shall allow authorized officials of the City or its designated representatives to override automatically the "audio" signal on all channels and to transmit and report emergency information. A franchisee shall in the case of any emergency or disaster, make its entire system

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available without charge to the City or any other governmental or civil defense agency that the City shall designate for the duration of such emergency or disaster.

### ARTICLE 7 SYSTEM CONSTRUCTION AND INSTALLATION

#### Section 1. Construction Standards.

(a) Any cable system constructed within the City shall meet or exceed all federal, state or local technical standards consistent with this ordinance, a franchise agreement, and a franchisee's application.

(b) In addition the City may require additional reasonable proof of performance tests not more often than annually and within ninety (90) days of the completion of the construction of a new system or the upgrading or reconstruction of an existing system. In the event that the City requires proof of performance testing under this section, the City shall provide the franchisee with a detailed list of electrical tests and testing methodology which the City deems necessary to evaluate the performance of the new, upgraded or reconstructed system. The City may observe the testing performed under this section, and may provide a list of locations and/or areas where the tests specified are to be performed. The city shall be entitled to recover from the franchisee fifty percent (50%) of all of its costs associated with defining tests and procedures, observation of said tests, and evaluation of tests findings.

#### Section 2. Construction and Installation Work.

(a) Before commencing any construction in, above, over, across, under, through or in any way connected with the streets, public ways or public places of the City, a franchisee shall first submit to the City its plan and design maps. A franchisee may commence construction in accordance with such maps upon written approval by the Mayor or his designee and upon issuance of all permits and licenses necessary to do the work; provided, however, that the City approval shall not be unreasonably withheld. A franchisee shall give the City

notice within a reasonable time prior to the commencement of the proposed construction, but in no event shall said notice be given less than seven (7) days before such commencement unless waived by the City or unless shorter notice is reasonably necessary. Such construction shall be done under the supervision of the mayor.

(b) A franchisee or any other person acting on its behalf shall not obstruct, open, or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining the approval to do so after proceeding in the manner prescribed above; provided for minor construction of an emergency nature, a franchisee may proceed upon oral approval from the Mayor or designee.

(c) Any obstruction, opening, or disturbance of any street, sidewalk, driveway, public way or other public place shall be properly guarded by adequate barriers, lights, signals, and warnings to prevent danger to any person or vehicle. A franchisee shall, at its own cost and expense, restore and replace any property disturbed, damaged or any way injured by or on account of its activities to as good or better condition as said property was in immediately prior to the disturbance, damage, or injury.

If a franchisee fails to comply with the requirements of the preceding sentence within ten (10) days following written demand by the City the City may cause such work to be done at the franchisee's expense. Nothing in this subsection shall be interpreted to preclude a franchisee from passing onto a customer the actual construction costs associated with extending cable plant more than one hundred and fifty (150) feet.

(d) A franchisee shall maintain all wires, conduits, cables and other real and personal property and facilities in good condition and order and repair. All cables facilities shall be maintained so as to further, to the extent reasonably possible, the objective of maintaining the aesthetic character of the City. The City in its sole discretion, may determine whether a franchisee has complied with this requirement. If a franchisee fails to comply with this re-

quirement the City may cause such work to be done at the franchisee's expense.

(e) All construction, installation and maintenance must comply with the federal and state codes and regulations and those adopted by the city.

(f) The Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.

(g) The Grantee shall keep reasonably accurate, complete and current maps and records of its system and facilities. Grantee shall furnish two complete sets of "as built" maps and records to the City upon request by City. Such maps and records shall be available for inspection by the public during normal business hours at the office of the City Clerk.

(h) Any interruption in service shall be done, as far as is practicable, outside of prime time which is 7:00 p.m. to 11:00 p.m. local time.

(i) The City shall have the right, during the term of any Franchise, to install and maintain free of charge upon the poles, towers and other fixed facilities of the Grantee, any wire and pole fixtures that does not unreasonably interfere with the cable system operations of the Grantee.

(j) Locations within the easements and rights of way of the City of any of Grantee's equipment, wires or other property is subject to the approval of the Mayor, or designee which approval will not be unreasonably withheld and shall be granted or denied in a timely fashion.

(k) Construction, 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 City following accepted construction procedures and practices and working through existing committees and organizations consistent with local trade and industry practice except to the extent City is preempted by federal law.

### **Section 3. Location of Structures, Lines and Equipment.**

(a) A franchisee shall utilize existing poles,

conduit systems and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduit systems or other facilities whether on public property or on privately owned property until approval of the property owner or appropriate governmental authority is obtained. However, the location of any pole or wire-holding structure by a franchisee shall not constitute a vested interest, and such poles, structure, or facilities shall be removed, replaced or modified by the franchisee at its own expense whenever the city authority reasonably determines that the public interest so necessitates.

(b) All transmission and distribution structures, lines, and equipment installed by a franchisee within the City shall be located so as to cause minimum interference with the scope or use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places and where they will not interfere with any gas, electric telephone, water or other preexisting utility facility.

(c) Wherever deemed appropriate by the mayor or his designer, acting within his reasonable discretion and considering factors of public safety, aesthetics and convenience, the cable wires and facilities shall be underground at Grantee's sole expense and liability. Grantee shall not be required to underground cable wires and facilities unless the electrical power service to the same area is also required to be underground, unless the Mayor and City Council, by resolution upon finding of fact determine a unique public health, safety and welfare hazard requires the Grantee solely to underground. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any

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area of the City where there are certain cable, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles a grantee may construct and install its cables, wires and other facilities from the same pole with permission of the owner of the pole.

With respect to any cables, wires, and other like facilities constructed and installed by a grantee above ground the Grantee shall, at its sole expense and liability, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area.

(d) All cables and wires or other works shall be installed parallel with existing telephone and electric utility wires wherever possible. Multiple configurations shall be parallel arrangements and bundled in accordance with engineering and safety considerations.

(e) No franchise shall be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire holding structures within the streets and ways of the City for the purpose of placing cables, wires, lines or otherwise without the written consent of the City within which street is situated. Such permission may be conditioned on additional requirements related to the location or other circumstances of the installation.

(f) A franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from said street or other public place, any of its property when required to do so by the City.

(g) The City shall have the right, during the term of a franchise to install and maintain free of charge upon the poles and conduit systems of the franchisee any wire and pole fixtures and appurtenances. The City use of a franchisee's poles and conduit system shall not unreasonably interfere with the use or enjoyment of such poles and conduits by the franchisee.

(h) The franchisee shall provide, at no charge, to any available "one number locator service," as defined by Chapter 19.122 of the

Revised Code of Washington, RCW 19.122.020(13), a list of its underground facilities and equipment. A franchisee shall, before commencing excavation, provide notice of the scheduled commencement of excavation through the one number locator service if such a service is available.

(i) On request to a franchisee by any person who is authorized to perform work on any public right of way which has been used by a franchisee for erection of a cable communications system, a franchisee shall provide information regarding the type, location, height, and other pertinent information of poles, conduits, and other structures which the franchisee has placed on said right of way. The reasonable cost of fulfilling such request shall be born by the person making such request, except in the case of the city or its agents.

### **Section 4. Replacement of Pavement.**

In case of disturbance of any street, alley, public way, or paved area, the Grantee shall at its own cost, expense, and liability and in a manner approved by the Mayor, or his designee, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done. Failure to replace paving in a reasonable time shall give the City the right to replace it at the Grantee's expense.

### **Section 5. Movement of Buildings.**

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City or State of Washington, temporarily remove, raise or lower its wire to permit the movement of the building. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

### **Section 6. Trimming Trees.**

The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the

City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee at its sole expense and liability.

### **Section 7. Repair of Damages.**

A franchisee, its successors and assigns shall promptly repair any damage of every type and nature to City property or City improvements caused by the failure or workmanship of the franchisee's work or equipment during the life of a franchise.

## **ARTICLE 8 SYSTEM OPERATION**

### **Section 1. Cable Service and Standards.**

(1) Grantee shall provide equal and uniform cable television service 24 hours a day, to all within the corporate limits of the City of Newport, the franchise area or fined whose contour, so far as is possible, shall follow streets. Within the perimeter of the contour, no dwelling units, commercial, industrial, governmental, electrical or other buildings, shall be excluded from service provided to the Franchise area.

(2) Grantee shall construct, install and maintain its cable television system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements and technical standards equivalent to those established by the FCC. City reserves the right to regulate to the extent allowed by law if the federal pre-emption is lifted.

(3) In any event, the Cable Television System shall not endanger or interfere with the safety or persons or property within the City or other areas where the Grantee may have equipment located.

### **Section 2. Discrimination.**

A franchisee shall not deny service, access or otherwise discriminate against any person, including subscribers and users on the basis or race, color, religion, national origin, age, sex, physical or mental disability, or marital status. A franchisee shall comply at all times with all

other applicable federal, state, and local laws and regulations.

### **Section 3. Tampering or Unauthorized Connections.**

It shall be a misdemeanor punishable by ninety (90) days in jail and/or a \$1,000.00 fine for any person to make any connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable communication system within the City for the purpose of enabling anyone to receive any television signal or other information transmitted over the cable communications system, without the consent of the franchisee; and for any person, without the consent of a franchisee to willfully tamper with, remove, or injure any cables, wires, or other cable communications system equipment except, however, a subscriber may disconnect a television receiver from the cable system at any time. This section is an alternative to any State misdemeanor or gross misdemeanor adopted by the City by reference. The City prosecutor may charge under either one or the other ordinance.

### **Section 4. Consumer Protection.**

(a) The City reserves the authority to take any reasonable action, including amendments to this ordinance to protect consumers of cable communications services.

(b) The City reserves the rights granted under the Cable Television Consumer Protection and Competition Act of 1992 and the regulations from the Federal Communications Commission including but not limited to rates for basic cable services including but not limited to (1) all local and distant television broadcast signals carried by the cable operator, (2) all signals carried under retransmission consent agreements and must carry requirements; and (3) all public, educational and governmental (PEG) programming provided by the cable operator.

(c) The City reserves the right to file complaints with the Federal Communications Commission if it believes that cable rates not under regulation by the City are unreasonable.

(d) To the extent allowed by law including but not limited to the Cable Television Consumer Protection and Competition Act of 1992, the Revised Code of Washington, City shall be immune from any claim for monetary damages relating to the City's regulation of cable services and rates.

(e) City may require, in writing, biannual reviews which Grantee shall conduct, at Grantee's expense, as part of its commitment to operate the cable system and to satisfy the future cable related needs and interests of the community, taking into account the cost of doing so. The City's written request shall provide Grantee at least three months to prepare such report, and shall specify what topics should be addressed. Such request may include an analysis of the technological and economic feasibility and viability of new uses of the cable system, such as water meter reading, traffic signal controls, alarm systems and health monitoring signal devices. Within two months after receipt of the city's written request, Grantee shall provide City with a draft of such report to allow City to comment. Grantee shall provide the final report no later than June 15th in odd-numbered years for the term of the franchise.

## **ARTICLE 9 INTERCONNECTION AND COOPERATION**

### **Section 1. Standards.**

(a) A franchisee's system shall be designed and constructed so as to be capable of interconnection with any systems existing in the area contiguous to the city and in the city and with any systems anticipated for future construction.

(b) A franchisee shall cooperate with any interconnection corporation, regional interconnection authority or county or state regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing, or otherwise providing for the interconnection of cable communications system beyond the boundaries of individual political jurisdictions.

## **ARTICLE 10 ADMINISTRATION**

### **Section 1. CATV Committee.**

(1) There is hereby created and established a CATV Committee for the purpose of performing such duties as the Mayor or Council may direct, which may consist of Council members, Council members and residents of City or the Council as a whole, at the council's option, and making recommendations to the City regarding the operations of the Grantee and the Grantee's performance under a franchise.

(2) The number and qualifications of the membership of the CATV Committee shall be determined by motion of the Council, and its members shall serve for such terms as may be established.

(3) The CATV Committee shall be charged with the performance of the following duties:

(a) Qualifications of Grantee. The committee shall if directed by the council, review the legal financial, technical and other qualifications of proposed transferee under the section on transfer of rights in this ordinance, and the adequacy and feasibility of construction arrangements to determine that the grantee is fully capable to satisfy all of the provisions, terms and conditions of the franchise and this ordinance for expansion or substitution as set forth in this ordinance, and any other reasonable condition, limitation or restriction the City may deem necessary to enact in connection with any Franchise. In the course of performing these duties the committee shall report its findings to the Council during regularly scheduled public meetings of the council.

(b) Settlement of Complaints. Subject to the authority of the City Council, the committee is hereby authorized and empowered to adjust, settle, or compromise any complaint, controversy or charges regarding the quality of service, equipment malfunctions or similar matters arising from the operations of the grantee under a franchise or any other area reserved for municipal content under the Federal Cable Act or any preemption by federal or state, either on behalf of any subscriber of the

Cable System, the Grantee or the City, in the best interest of the public.

**ARTICLE 11  
EFFECTIVE DATE AND  
SEVERABILITY**

**Section 1. Severability.**

In any section, subsection, sentence, clause, phrase, or material portion of this Ordinance 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.

**Section 2. Effective Date.**

In the interest of the peace, health and safety of the people of the City, this ordinance shall be in full force and effect upon its passage by the Council, approval of the Mayor and publication as required by law.

Passed by the City Council of the City of Newport, Washington this 4th day of May, 1993.

**Ordinance No. 828**

AN ORDINANCE OF THE CITY OF NEWPORT, WASHINGTON, GRANTING A FRANCHISE TO CONCEPT COMMUNICATION CORPORATION, TO OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATIONS AND ADMINISTRATION OF THE CABLE COMMUNICATIONS SYSTEM; PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

THE CITY COUNCIL OF THE CITY OF NEWPORT, STATE OF WASHINGTON, DO ORDAIN AS FOLLOWS.

**Section 1. Purpose.**

The City of Newport finds that it is the purpose of this Ordinance and subsequent amendments to provide for regulation and administration and granting of a franchise for cable television.

**Section 2. Short Title.**

This Ordinance shall be known and may be cited as the "Newport Concept Communication Cable Communications Ordinance."

**Section 3. Definitions.**

For the purposes of this Ordinance the following terms, phrases, words, 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 number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning. The definitions in this Ordinance shall control, for interpretation purposes when in conflict with

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the general definitions in the Newport Municipal Code.

(1) "City" shall mean the City of Newport of the State of Washington and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

(2) "Council" shall mean the present legislative governing body of the City or any future body constituting the legislative body of the City.

(3) "Grantee" shall mean Concept Communication Corporation, and any lawful successor or transferee, assignee or employee of said partnership.

(4) "Cable Communications System" or "System," also referred to as "Cable Television System," "Cable System," "CATV System," or "Community Antenna TV System" shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, head end equipment, master controls, each earth station, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the City.

(5) "Franchise" shall mean the right granted through a contractual agreement between the City and a person by which the City authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the City. Any franchise awarded by an agreement in accordance herewith shall be a nonexclusive franchise.

(6) "Franchise Area" shall be everything within the boundaries of the City of Newport, Washington, plus all future annexations.

(7) "Grantor" or "City" means the City of Newport or any delegate acting within the scope of its jurisdiction.

(8) "Franchise fees" means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a Grantee solely because of its status as such. The term "franchise fee" does not include:

(a) Any tax, fee, or assessment of general applicability (including any such tax, fee,

or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against Grantee);

(b) Capital costs which are required by the franchise to be incurred by Grantee for public, educational or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code, as amended;

(e) Any other fee not required to be so included by 47 USC 542(g)(1).

(9) "Gross Revenues" shall mean all operating revenue and monies collected or accruing without deduction from the cable communications system paid directly or indirectly to a Grantee, its affiliates, subsidiaries, parent, and any person in which a Grantee has a financial interest in association with the provisions of cable communications services within the City, including, but not limited to, basic service monthly fees, premium service fees, institutional service fees, service transfer fees, and leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues and copyright fees; provided, however, this shall not include any revenues from sale of capital assets or lease of property for purposes unrelated to cable communications. Gross revenues shall include, valued at retail price levels, the value of any goods, services, or other enumeration in non-monetary form, received by a Grantee or others described above in consideration of performance by the Grantee or others described above of any advertising or other service in connection with the cable system.

(10) "Leased Access" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to tender services to the citizens of the City and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521 et seq.).

(11) "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(12) "Subscriber" means any person who legally receives any one or more of the services provided by the Cable Communications System.

(13) "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within the City.

(14) "Committee" shall mean the CATV Committee of the City Council.

#### **Section 4. Police Powers and Review Standard.**

(1) Nothing in this Ordinance awarding a franchise in accordance herewith shall be construed as an abrogation by the City of any of its police powers.

(2) This Franchise and all acts, omissions or decisions by the City, the city administration, City Council or any city official in any way arising out of, regarding or referring to this Franchise or this Ordinance, shall be deemed and presumed to be made within their reasonable discretion and considering factors of public safety, aesthetics or convenience or the health and welfare of the citizens.

#### **Section 5. Grant of Authority.**

There is hereby granted for a period of 15 years by the City to the Grantee, its successors and assigns, a franchise (herein, this "Franchise") conveying to the Grantee the right, privilege and authority to construct, operate and maintain a cable television system within the City for the distribution of television signals, radio, or any other lawful service, subject to the terms, conditions and provisions contained herein.

Grantee shall upgrade the system to provide at least 50 to 550 megahertz by ten years from the effective date of this franchise.

#### **Section 6. Non-Exclusive Grant.**

The Franchise granted herein shall not be exclusive and the City reserves the right to grant a similar right, privilege, and authority to any person, firm or corporation at any time during the period of this Franchise provided, however, that no other franchise will be granted on terms less burdensome than those contained herein.

#### **Section 7. Franchise Agreement.**

This Ordinance is a Cable Communications Franchise Agreement and is a contract between the City and the Grantee, binding upon both parties. It is the intent of the parties that the Franchise Agreement (or any renewal hereof) shall be subject to amendment from time to time to allow the Grantee to innovate and implement new services and developments, or to agree to any terms allowed by law and for which each party agrees to bargain in good faith with the other party, upon the initiation of any proposed amendment.

(2) Notwithstanding (1) above, it is understood that nothing in this Franchise shall preclude or prohibit the City from enacting any Ordinance, from time to time, in the interest of public health and safety, which may impact the Grantee in its operation of the cable system, as a proper exercise of City's police power. Grantee's rights hereunder are subject to such police power and in the event of any conflict between the provisions of this Ordinance and any present or future exercise of the City's police power, such conflict shall be resolved in favor of such police power.

(3) In addition to those matters required elsewhere in this Ordinance, Grantee expressly represents as follows:

(a) It recognizes the right of the City, pursuant to the powers delineated in subsection (2) above, to make reasonable amendments to this Ordinance during the term of this Ordinance (or any renewal term) upon sixty (60) days notice to the Grantee, except that no prior notice shall be required with respect to an emergency amendment; provided, however, that the City's judgment as to reasonability shall be presumed subject to rebuttal by Grantee. This Franchise creates no right of

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renewal provided that both parties acknowledge the renewal process by the Cable Act. Any renewal proceedings shall be undertaken in accordance with the Cable Act and all applicable laws and regulations.

### **Section 8. Construction of Cable System.**

It shall be a violation of this Ordinance for the Grantee or any other person acting on its behalf to obstruct, open, or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining City approval to do so, in writing from the Mayor or his designee, except for emergency repairs, which approval shall not be unreasonably withheld and shall be granted or denied in a timely manner. Such violation shall be deemed a material breach of this Franchise and shall subject the Grantee to all measures and remedies which are available to the City.

(2) Any obstruction, opening, or disturbance of any street, sidewalk, driveway, public way or other public place shall be properly guarded by adequate barriers, lights, signals and warnings to prevent danger to any person or vehicle. Grantee shall at its own cost and expense and liability, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good condition as such property was in immediately prior to the disturbance, damage, or injury. If Grantee fails to comply with the requirements of the preceding sentence within ten (10) days following written demand by the City, the City may cause such work to be done and shall charge Grantee for such.

(3) The Grantee shall, at its own cost, expense and liability, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from said street or other public place, any of its property when required to do so by the City because of: Street or other public excavation; construction; repair; regrading or grading; traffic conditions; installation of sewers, drains or water pipes; city-owned power or signal lines; tracks, vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary

for the public health, safety or welfare. City will give 10 days written notice except in case of emergency.

(4) The Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.

(5) The Grantee shall keep reasonably accurate, complete and current maps and records of its system and facilities. Grantee shall furnish two complete sets of "as built" maps and records to the City upon request by City. Such maps and records shall be available for inspection by the public during normal business hours at the office of the City Clerk.

(6) Any interruption in service shall be done, as far as is practicable, outside of prime time which is 7:00 p.m. to 11:00 p.m. local time.

(7) The City shall have the right, during the term of this Franchise, to install and maintain free of charge upon the poles, towers and other fixed facilities of the Grantee, any wire and pole fixtures that does not unreasonably interfere with the cable system operations of the Grantee.

(8) Location within the easements and rights of way of the City of any of Grantee's equipment, wires or other property is subject to the approval of the Mayor, or designee which approval will not be unreasonably withheld and shall be granted or denied in a timely fashion.

(9) Construction, 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 City following accepted construction procedures and practices and working through existing committees and organizations consistent with local trade and industry practice except to the extent City is preempted by federal law.

### **Section 9. System Configuration.**

(1) The cable system shall have at least a continuous frequency spectrum from 50 MHz to 400 megahertz (four hundred 400 MHz). Grantee shall activate at least twenty-five (25) basic channels. In addition to the 25 basic

channels, the Grantee shall provide public, educational and governmental programming channels such that there is one channel designated for education access programming and one channel designated for governmental and public access programming.

(2) Grantee shall maintain the technical performance, audio and picture quality at F.C.C. standards. City reserves the right to enact such standards if at any time in the future it is allowed to do so.

(3) Grantee shall notify the City prior to making any substantial technical modification to this cable system. All construction work shall be undertaken in accordance with this Ordinance and the Cable Regulatory Ordinance of the City of Newport.

(4) City may require, in writing, biannual reviews which Grantee shall conduct, at Grantee's expense, as part of its commitment to operate the cable system and to satisfy the future cable related needs and interests of the community, taking into account the cost of doing so. The City's written request shall provide Grantee at least three months to prepare such report, and shall specify what topics should be addressed. Such request may include an analysis of the technological and economic feasibility and viability of new uses of the cable system, such as water meter reading, traffic signal controls, alarm systems and health monitoring signal devices. Within two months after receipt of the City's written request, Grantee shall provide City's written request, Grantee shall provide City with a draft of such report to allow City to comment. Grantee shall provide the final report no later than June 15th in odd-numbered years for the term of this franchise.

#### **Section 10. Parental Control.**

(1) Grantee shall provide subscriber controlled "lock-out" devices to subscribers upon their request. Such devices shall be capable of blocking out the sound and video signal of any premium channel offered by Grantee.

(2) Upon the introduction of addressable cable services as to any program which is transmitted on a channel offered on a per channel or per program basis, Grantee shall, as to any pre-

mium service which Grantee elects to offer on a coded or "scrambled" basis, code or scramble such service, sound and video in a manner standard at that time to the cable industry.

#### **Section 11. Grantee's Rules.**

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary or convenient to enable Grantee to exercise its rights and perform its obligations under this Franchise to insure reasonably uninterrupted service to all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, the rules of the Federal Communications Commission or the laws of the State of Washington. It is a condition of this Franchise that Grantee must comply with all applicable federal and state laws and regulations. Nothing in this Franchise is a waiver of police powers by the City.

#### **Section 12. Authority for Use of Streets.**

(1) For the purpose of operating and maintaining a Cable Communications System in the City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets, alleys, sidewalks, public ways and other publicly owned or controlled property within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

(2) Grantee shall construct and maintain a Cable Communications System so as not to unreasonably interfere with other uses of streets, alleys, sidewalks, public ways and other publicly owned or controlled property. Grantee shall make practicable use of existing poles and other facilities available to Grantee. Grantee shall provide reasonable notice to all residents affected by proposed construction prior to the commencement of that work if

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construction will result in an outage of more than two hours.

(3) Notwithstanding the above grant to use streets, alleys, sidewalks, public ways and other publicly owned or controlled property, no such street, alleys, sidewalks, public ways and other publicly owned or controlled property shall be used by Grantee if the Mayor or his designee, determines that such use is inconsistent with the terms, conditions or provisions by which such street, alleys, sidewalks, public ways and other publicly owned or controlled property was created or dedicated, or presently used.

### **Section 13. Conditions on Street Occupancy.**

(1) All transmissions and distributions structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(2) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost, expense and liability and in a manner approved by the Mayor or his designee, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(3) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee at its sole expense and liability.

### **Section 14. Erection of Poles.**

No Franchise shall be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise without the written consent of the City within which the street is situated which shall not be unreason-

ably withheld and shall be granted or denied in a timely manner. Grantee acknowledges that appeal of any denial of access to poles to the City Council under the Cable Franchise Regulation Ordinance is for mediation purposes only and City does not guarantee access to poles owned by other persons or entities.

### **Section 15. Undergrounding.**

Wherever deemed appropriate by the Mayor or his designee, acting within his reasonable discretion and considering factors of public safety, aesthetics and convenience, the cable wires and facilities shall be underground at Grantee's sole expense and liability. Grantee shall not be required to underground cable wires and facilities unless the electrical power service to the same area is also required to be underground, unless the Mayor and City Council, by resolution, upon finding of fact determine a unique public health, safety and welfare hazard requires the Grantee's solely to underground. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles a Grantee may construct and install its cables, wires and other facilities from the same pole.

With respect to any cables, wires and other like facilities constructed and installed by a Grantee above ground, the Grantee shall, at its sole expense and liability, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area.

**Section 16. Relocation.**

If during the term of a franchise the City elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, sidewalk, alley, public way or other publicly owned and controlled property, or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, the Grantee, shall, except as otherwise hereinafter provided, at its sole expense and liability remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the area in which all utility lines, including those for the Cable Television System were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that the City shall not be liable to a grantee for such costs. Regardless of who bears the costs, a grantee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the Grantee advising the Grantee of the date or dates removal or relocation is to be undertaken.

**Section 17. Movement of Buildings.**

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City or State of Washington, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

**Section 18. Cable Service and Standards.**

(1) Grantee shall provide equal and uniform cable television service 24 hours a day, to

all within the corporate limits of the City of Newport, the Franchise Area defined, whose contour, so far as is possible, shall follow streets. Within the perimeter of the contour, no dwelling units, commercial, industrial, governmental, electrical or other buildings, shall be excluded from service provided to the Franchise Area.

(2) Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, Ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. City reserves the right to regulate to the extent allowed by law if the federal preemption is lifted.

(3) In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.

**Section 19. Public, Educational and Governmental Access.**

Grantee shall provide reasonable access for public, education and governmental use pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 611 (47 USC 531) upon request. City reserves the right to reasonable public educational and governmental access but does not create an obligation to exercise that right which will be exercised if at all in the sole discretion of the City Council. In case of dispute, the City Council reserves the right to decide what shall comprise reasonable access after a public hearing guided by the spirit and purpose of the Cable Communications Policy Act of 1984. Any reasonable cost of capital equipment shall be paid by the Grantee incurred in helping the City.

Use of facilities for public, education and governmental access upon the Cable Television System shall be made available, without rental, deposits, or any other charge whatsoever, provided Grantee may require a reasonable security deposit and a demonstration of reasonable competence to run the equipment (and Grantee will provide training) for twenty-four (24) hours per day, seven (7) days a week

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in connection with the production of public, education and/or governmental access programming cablecast upon the Cable Television System. Consistent with City rules and regulations, Grantee shall:

(1) Allow person and entities desiring to cablecast public, education and/or governmental access programming to produce programming upon and electronically interface directly with Cable Television System of Grantee so as to effectively cablecast the public, education and/or governmental access programming, or, in the alternative,

(2) A Grantee shall make all reasonable efforts to coordinate the cablecasting of public, education and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community.

(3) Grantee shall, at its own expense, liability and cost, provide modulars and all other facilities and equipment as required by federal and state laws, rules and regulations governing public, educational and governmental access programming. The public access use, such as the Grantor and the Newport School Districts shall be solely responsible for the content of programs on this public, educational and governmental access programming.

### **Section 20. Service to Public Bodies.**

The Grantee shall, at its own expense and liability, install one cable connection at each public school located within the City. The Grantee may, at its option, provide similar free service to other private, parochial and religious schools.

### **Section 21. Approval of Construction by City; Inspection; Correction of Defects in System; Breach or Default By Grantee.**

(1) The City shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to insure the proper performance of the terms of this Ordinance. The reasonable cost incurred by the City as a result of the violation of Section 21 will be paid by the Grantee upon billing.

(2) In the event the Grantee should violate any of the terms of this Ordinance or any federal, State or local law or regulation, or any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the Franchise Agreement, the City shall promptly give the Grantee sixty (60) days written notice of the violation, breach, default or noncompliance. The Grantee shall within sixty (60) days of transmission of written notice from the City substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the City. In the event that the Grantee fails to substantially undertake such corrective action within sixty (60) days of transmission of such written notice and promptly complete the corrective action, the City may:

(a) Make such correction itself and charge the cost of the same to the Grantee; and/or

(b) In the case of a material breach of this Franchise, declare the Grantee in default and terminate the franchise and rights granted under this Franchise in accord with the procedures in Section 25, Procedures for Remedy- ing Franchise Violations.

(c) In addition to all other rights and powers retained by the City under this Franchise, the Council reserves the right to forfeit and terminate the Franchise and all rights and privileges of Grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by Grantee shall include, but shall not be limited to the following:

(i) An uncured violation of any material provision of this Franchise or any material rule, order, regulation or determination of the City made pursuant to its power to protect the public health, safety and welfare,

(ii) An attempt to evade any material provision of the Franchise or practice of any fraud or deceit upon the cable communications system customers and subscribers or upon the City,

(iii) Failure to begin or substantially complete any system construction or system extension as set forth in the Franchise;

(iv) A failure to provide the services promised in the application or specified in the Franchise, or a reasonable substitute therefor;

(v) Failure to restore service after ten (10) consecutive days of interrupted service, except when approval of such interruption is obtained from the City;

(vi) Material misrepresentation of fact in the application for, or during negotiations relating to the Franchise;

(vii) Failure to provide insurance, construction bond, letter of credit or indemnity as required by the Franchise.

(3) None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault of Grantee or occurs as a result of circumstances beyond Grantee's control. Grantee shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agency or employee's provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond Grantee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. Grantee shall bear the burden of proof in establishing the existence of such conditions.

(4) Should the Council determine, following the public hearing at which Grantee may present evidence, argument and question witnesses in accord with Section 25, Procedures for Remediating Franchise Violations, that the violation or breach by Grantee was the fault of Grantee and within the Grantee's control, the Council may, by resolution, declare that the Franchise be forfeited and terminated, provided, however, the Council may, in its discretion, provide an opportunity for the Grantee to remedy the violation or breach and come into compliance with the Franchise and this Ordinance so as to avoid the termination.

Grantee shall be afforded due process in such procedures provided Grantee shall reasonably state any violation of this Section in writing in time to give the City reasonable

opportunity to correct the said violation of due process.

(5) Upon any termination of the franchise by the City or the City's refusal to renew the same pursuant to applicable federal law, the Grantee shall after receipt of Notice of Termination or refusal to renew franchise, remove its facilities and equipment in accord with Section 43, Removal, and in the event that the Grantee does not remove its facilities and equipment within the time provided in this Section, the City may do so, the removal cost to be borne in any event by the Grantee. Any enforcement action or remedy provided by this Section or this Ordinance or by the Franchise Agreement shall not be deemed exclusive but shall be alternative or cumulative in nature.

(6) In all respects herein, time is of the essence.

#### **Section 22. Hold Harmless.**

(1) The Grantee shall at all times fully defend, indemnify and hold the City, its agencies, boards, officers, agents, officials and employees, harmless from any and all claims, accidents, losses, charges, damages and liabilities arising from or by reason of any intentional or negligent act, occurrence, or omission of the Grantee, in law or in equity of any and every kind and nature whatsoever, whether caused by or arising out of an act or omission or any negligence of Grantee, singularly or jointly with others, its representatives, permittees, or employees or contractors, in the construction, operation, use or maintenance of any of the Grantee's Cable Television System and/or enjoyment of any privileges granted by this Franchise, or because of Grantee's performance of franchise obligations. Such indemnity shall include costs of negotiation or defense and other costs incurred, and reasonable attorney's fees.

(2) Grantee shall not be responsible for damages determined to arise out of the City's sole negligence or, in the case where damages are determined to arise out of concurrent negligence of the parties, Grantee's liability shall extend to damages determined to arise beyond the extent of Grantee's concurrent negligence only so far as permitted by law.

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(3) Grantee hereby waives immunity under Title 51 R.C.W. The City and the Grantee have specifically negotiated this provision, as required by R.C.W. 4.24.115, to the extent it may apply.

(4) Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs or expenses, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided the Grantee has reasonable notice or actually knew, or of the pendency of such suit.

(5) Grantee waives all claims for loss, liability and/or damage against the City of Newport, its agencies, officers, agents, officials or employees, arising out of or in connection with the Grantee's enjoyment of franchise rights and privileges, or because of Grantee's performance or franchise obligations. No action, error or omission, or failure to act by the City in connection with administering its rights, duties related to this Franchise shall be asserted by the Grantee, directly, indirectly or by Way of seeking indemnification, against the City, its agencies, boards, officers, agents, officials or employees, except where required by law.

(6) It is not the intent of this Franchise to acknowledge, create, imply or expand any duty or liability of the City without respect to its role as franchising authority, in the exercise of its police power or for any other purpose. Any City duty, nonetheless deemed created, shall be a duty to the general public and not to any specific party, group or entity.

(7) Failure to comply with this Section shall be considered a material breach.

### **Section 23. Grantee Insurance.**

As a part of the indemnification provided by Section 22, but without limiting the foregoing, Grantee shall file with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, personal injury liability, owners and contractors personal injury liability, broad form property damage, contractual liability, automobile liability

(owned; non-owned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the Grantee and their capacity as such, their officers, agents and employees. The City and said city and officers, agents and employees shall be named as co-insureds, and the policy or policies shall of no less than one million dollars (\$1,000,000.00) annual aggregate limit, per occurrence but shall never be less than the City's insurance coverage. The insurance policy or policies shall contain contractual liability insurance naming the Grantee and City, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 22.

The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of this Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Clerk.

### **Section 24. CATV Committee – Authorization – Duties.**

(1) There is hereby created and established a CATV Committee for the purpose of performing such duties as the Mayor or Council may direct, which may consist of Council members, Council members and residents of City or the Council as a whole, at the Council's option, and making recommendations to the City regarding the operations of the Grantee and the Grantee's performance under this Franchise.

(2) The number and qualifications of the membership of the CATV Committee shall be determined by motion of the Council, and its members shall serve for such term as may be established.

(3) The CATV Committee shall be charged with the performance of the following duties:

(a) Qualifications of Grantee. The Committee shall if directed by the Council, review the legal, financial, technical, and other qualifications of a proposed transferee under Sec-

tion 40, Transfer of Rights, in the Ordinance, and the adequacy, and feasibility of construction arrangements to determine that the Grantee is fully capable to satisfy all of the provisions, terms and conditions of the Franchise for expansion or substitution as set forth in this Ordinance, and any other reasonable condition, limitation or restriction the City may deem necessary to enact in connection with this Franchise. In the course of performing these duties, the Committee shall report its findings to the Council during regularly scheduled public meetings of the Council.

(b) Settlement of Complaints. The Committee is hereby authorized and empowered to adjust, settle or compromise any non-material complaint, controversy or charges regarding the quality of service, equipment malfunctions or similar matters arising from the operations of the Grantee under this Franchise, or any other area reserved for municipal content under the Federal Cable Act or any preemption by federal or state, either on behalf of any subscriber of the Cable System, the Grantee or the City, in the best interest of the public.

### **Section 25. Procedures for Remedying Franchise Violations.**

In the event that the City determines the Grantee has violated any material provision of this Franchise, the City may make a written demand on Grantee that it remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of the City within sixty (60) days following such demands, the City shall determine whether or not such violation by Grantee was excusable or inexcusable, in accordance with the following procedure:

(1) At a meeting with the Mayor or his designee within fifteen (15) days of receipt of Notice of Violation to establish the table for corrective action and corrective action to be taken.

(3) If the meeting with Mayor or designee does not result in a satisfactory resolution, or if corrective action is not promptly completed, then an appeal or referral may be made by to the City Council.

If the hearing is conducted by the City

Council, upon conclusion of the hearing, the City Council shall adopt a decision which includes findings of fact and conclusions.

If the decisions by the City Council is that there are grounds for termination of the franchise and that the franchise shall be terminated, the Council may adopt a resolution which terminates the franchise and includes its decision. The effective date of termination shall be such date as is prescribed by the City Council, within its sole discretion, in the resolution.

### **Section 26. Alternative Remedies.**

No provision of this Ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

### **Section 27. Non Enforcement.**

A Grantee shall not be relieved of any obligation to comply with any of the provisions of this Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City by its officers, agents, or employees to enforce prompt compliance.

### **Section 28. Amount and Payment of Franchise Fees.**

During the term of each franchise, each Grantee shall pay to the City Council an amount equal to five (5%) percent per year of the Grantee's annual Gross Revenue. Said fees shall be paid monthly, no later than thirty (30) days following the last day of the month that they become due, each year this Franchise is in effect. Not later than the date of each payment, the Grantee shall file with the City Clerk/Treasurer, a written statement signed under penalty

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of perjury by an officer of the Grantee, the amounts of Gross Revenues as defined by Section 3 paragraph (9) received by a Grantee during the payment period for which payment is made. If requested by the Grantor, after review of the books and records of account of Grantee, the Grantee shall provide the City Council with a certification without qualifications of a certified public accountant certifying the accuracy of any yearly franchise fee payments. Said certification shall be prepared in accordance with generally accepted accounting principles as established by the Financial Accounting Standards Board (FASB).

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

### **Section 29. Interest on Delinquent Franchise Fees.**

Any Franchise Fees which remain unpaid after the dates specified in Section 28 above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

### **Section 30. Auditing and Financial Records.**

During the term of each franchise, the City may conduct audits of the books, records and accounts of the Grantee for the purpose of determining whether the Grantee has paid franchise fees in the amounts prescribed by Section 29 above. The audit may be conducted by the Clerk Treasurer of the City or by an independent certified public accounting firm retained by the City, and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and Grantee.

The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

### **Section 31. Rates.**

City reserves the right to impose rate regulations and procedures if at anytime in the future it should be allowed to do so.

### **Section 32. Costs.**

(1) The city accepts the restrictions of the Federal Cable Act, Section 622 (47 USC 542(g)(2)), with respect to allowable municipal taxes, fees or assessments in excess of the permissible franchise fee, reserving the right to amend this Section if such federal restrictions should be eliminated or relaxed.

(2) The Grantee agrees to pay, no later than thirty (30) days from the date of this Franchise, any municipal tax, fee or assessment lawfully imposed by the City, in addition to the franchise fee as provide herein. Such fees may include, but are not limited to municipal requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security, funds, letters of credit, insurance, indemnification, penalties or liquidated damages.

(3) In the event of Grantee's failure to make timely payment of any sum identified in this or any other Section of this Franchise or other lawful municipal billing, after written notice, Grantee shall, in addition, pay to the City the sum of \$250.00 per day as and for liquidated damages to the City until all sums due and owing are paid in full.

(4) Grantee, within sixty (60) days after receipt from the City of written itemization, shall reimburse the City for the cost of all outside consultants incurred during the franchise process to the extent not recovered by application fees. Such payment shall be deemed to be a charge incidental to the award of a franchise and shall not be subject to the limitation on franchise fees contained in the Federal Cable Act.

(5) Grantee shall, within thirty (30) days after receipt from the City of written itemization, reimburse the City for all costs of publication in connection with the adoption of this Franchise Ordinance.

(6) After the effective date of this Agreement, as necessary in the analysis of all matters relative to this Franchise, City shall be entitled

to employ the services of technical, financial or legal consultants and advisors.

Except as otherwise expressly provided herein, all reasonable fees of any such consultants or advisors incurred by City in this regard shall be borne by the Grantee, regardless of the outcome of any specific matter under consideration. Such payment shall be deemed to be a charge incidental to the enforcement of a franchise and shall not be subject to the limitations on franchise fees contained in the Federal Cable Act.

(7) No acceptance by the City of any payment from Grantee shall be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to auditing and recomputation by City.

(8) Failure to comply with this Section shall constitute a material breach of the Franchise and shall subject the Grantee to all measures, legal or equitable, whether available to the City under this Franchise or otherwise.

(9) Grantee shall maintain in full force and effect, an acceptable corporate surety bond issued by a surety licensed therefore by the State of Washington in an amount equal to (\$5,000.00) Five Thousand Dollars, or other appropriate security acceptable to the City in proper form approved by the City Attorney in lieu of said surety bond.

Neither the provisions of this Section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under the Franchise for damages, either to the full amount of the cancellation by the surety during the term of the Franchise, whether for failure to pay a premium or otherwise. The form of the bond and surety shall be subject to the approval by the City Attorney.

### **Section 33. Previous Rights Abandoned.**

This Agreement is in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by Grantee or any successor pertaining to the construction, operation, modifi-

cation or maintenance of a cable system in the City. The acceptance of this Agreement shall operate as between Grantee and City as an abandonment of any and all such rights, privileges, powers, immunities, and authorities within the City. All construction, operation, modification, and maintenance by the Grantee of any cable system in the City shall be under this Franchise and not under any other right, privilege, power, immunity or authority.

### **Section 34. Time is of the Essence.**

Whenever this Agreement shall set forth any time for an act to be performed by or on behalf of Grantee, such time shall be deemed of the essence. Any failure of Grantee to perform within the time allotted shall always be sufficient grounds for the City to invoke any appropriate remedy, including, without limitation, termination of this Franchise pursuant to Section 25.

### **Section 35. City's Approvals, Consents and Exercise of Discretion.**

In any provision of this Franchise requiring that the City not withhold its consent or approval unreasonably or requiring that the City exercise its discretion reasonably, City's withholding of its consent or approval and City's exercising of its discretion shall be based on City's determination that its action lawfully and reasonably serves the public interest. In any dispute between the parties on such issue the burden shall be upon Grantee to establish, by clear and convincing evidence, that the City has acted arbitrarily and capriciously.

### **Section 36. Interpretation of Franchise.**

The administration and interpretation of this Franchise shall be vested in the City. Grantee agrees that all interpretations and decisions regarding administration of the Franchise, as determined by the City, are final, binding and conclusive unless that interpretation is found to be arbitrary and capricious by a court of competent jurisdiction.

### **Section 37. Remedies Cumulative.**

The rights and remedies reserved to the City by this Franchise are cumulative and shall be

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in addition to, and not in derogation of, any other rights or remedies which the City may have with the respective subject matter of this Franchise. A waiver of rights or remedies shall not affect any other rights or times.

### Section 38. Guarantee.

In consideration of the grant of this Franchise to Grantee and the benefit to them, Grantee's parent, owner or partner shall guarantee, absolutely and unconditionally, the performance by Grantee of all the obligations of Grantee pursuant to and in accordance with all of the terms, provisions and conditions of the Franchise. This guarantee shall continue in full force and effect until all obligations of the Grantee under this Franchise shall have been fully satisfied and discharged.

### Section 39. Taxes.

Subject to the provisions of Federal Cable Act, nothing contained in this Franchise shall be construed to except the Grantee from any tax, liability or assessment authorized by law or from provisions of the Newport Municipal Code.

### Section 40. Transfer of Rights.

(1) The Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, or sublet, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City which consent will not be unreasonably withheld.

No such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole or in part to secure an indebtedness.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the City and must agree to comply with all provisions of the Franchise and such conditions as may be prescribed by Council expressed by resolution. City shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to Grantee within

one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

(2) The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a franchise.

(3) In no event shall a transfer or ownership of control be approved without successor in interest becoming a signatory to the Franchise Agreement.

(4) Any unauthorized transfer in violation of this Franchise shall be deemed a material breach in default of this Franchise and shall subject the Grantee to all penalties and remedies prescribed in this Franchise and to all other remedies, legal and equitable, which are available to the City, including, but not limited to cumulatively and/or in the alternative.

(a) The immediate entry of an ex parte order by a court of competent jurisdiction (i) enjoining Grantee, its officers, agents, employees and all others acting on concert with them, from transferring or assigning or otherwise disposing of any interest in the cable system, (ii) appointing a receiver, acceptable to the City, who shall forthwith assume the management of the cable system in accordance with the terms and conditions of this Franchise, and (iii) requiring all subscription fees, installation fees and all other fees payable to Grantee to be paid into an escrow account which shall be subject to release to Grantee only on order of the court.

(b) The immediate termination of this Franchise and acceleration of all the obligations and rights thereunder, including but not limited to those described in Section 25 of this Franchise.

(c) The right of immediate exercise by the City of its right to purchase the system from Grantee under the provisions of this Franchise.

(8) Grantee shall notify the City of any occurrence which constitutes a transfer not in accordance with the provisions of this Franchise.

(9) Grantee shall notify the City of entry of any judgment against Grantee within seventy-two (72) hours of the occurrence of such event.

(10) Subject to the requirements contained in the Franchise, the Franchise shall be binding on any successors or assigns of Grantee.

(11) All costs to the City of awarding a transfer of this Franchise will be paid by the Grantee.

#### **Section 41. Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, Grantee shall notify the City of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a transfer of rights under Section 40, Transfer of Rights, and the provisions of this Ordinance governing the consent of the City to such transfer shall apply.

#### **Section 42. Receivership.**

(1) A Grantee shall immediately notify the City in writing if it: (a) files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; (b) files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or (c) is adjudicated bankrupt, makes an assignment for the benefit of creditors or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of its cable system.

(2) City reserves all rights under the law after the appointment of a receiver or trustee, whether in receivership, reorganization, bankruptcy or other action or proceeding.

(3) To the fullest extent allowed by law, transfer by the trustee, receiver or debtor in residence to a third party of assets necessary to conduct Cable T.V. business or provide cable service to the Franchise area shall be an event that triggers that rights of the City under the

provisions of this Ordinance governing the consent of the City including but not limited to Section 40, Transfer of Rights.

#### **Section 43. Completion.**

(1) A Final Order of Completion shall be issued by the City when:

(a) Construction of the Cable Television System has been completed within the entirety of the Franchise Area in compliance with the construction standards and the design and other requirements of this Ordinance;

(b) Cable television services have been made available to one hundred (100%) of the dwelling units within the Franchise Area;

(c) Complete and accurate "as built" plans have been filed by the Grantee as herein-after provided.

(2) For purposes of this Ordinance, cable television service shall be deemed to be made available when cable television services are offered on a non-discriminatory basis for immediate provision to the owner or legal representative of the owner empowered to consent to use of the property of such individual dwelling units.

(3) During the period of construction of the Cable Television System during the sixty (60) day period following filing of the Notice of Completion, all elements and components thereof, and all equipment and studio facilities required by the Franchise Ordinance shall be subject to inspection by the City thereof, for the purpose of determining whether the System and related facilities comply with the Franchise and the provisions of the Franchise Regulatory Ordinance. The Grantee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence of nonexistence of such compliance.

(4) The Grantee shall offer to install, make operational, and render cable communications services to all dwelling units within the City in accordance with this Ordinance within twelve (12) months of the date of execution of this agreement awarding a franchise.

**Section 44. Letter of Credit.**

(1) Grantee shall file with its acceptance of the franchise and at all times thereafter until the filing of a Final Notice of Completion, maintain in full force and effect, an irrevocable letter of credit or other appropriate security in lieu of said letter of credit such as a bank account subject to an agreement for the exercise of prejudgment attachment or immediate nonjudicial foreclosure by the Grantors and further to provide for prior approval of all disbursements from said account in a manner acceptable to the Grantors in proper form which has been approved by the City Attorney, which shall be in an amount equal to 110% of the greater of the Grantee's estimate of the total cost of construction of the Cable Television System within the Franchise Area consisting of the City of Newport,

(2) Neither the provisions of this Section, any letter of credit and/or bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under the franchise or for damages, either to the term of the franchise, whether for failure to pay a premium or otherwise, without thirty (30) calendar days advance written notice mailed by the surety to the City Clerk. The form of the letter of credit and/or bond and surety shall be subject to the approval by the City Attorney.

**Section 45. Removal.**

Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchases the Cable Television System, the Grantee shall remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost, expense and liability, any underground cable or conduit by trenching or opening of the streets along the

extension thereof or otherwise which is ordered to be removed by the Mayor based upon a determination, in the sole discretion of the Mayor, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Mayor to remove cable or conduit shall be mailed to the Grantee. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Mayor or assignee of the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the Franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City or an assignee purchase the System, the Grantee, at its sole expense and liability, shall, unless relieved of the obligation by the City, remove from the streets all above ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee.

The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the Franchise.

**Section 46. Purchase of Cable System by City.**

The Grantor retains the right to purchase the cable system either through negotiation or

through condemnation proceedings. Nothing in this Franchise shall be deemed to affect the City of Newport’s power of condemnation.

**Section 47. Severability.**

If any section, subsection, sentence, clause, phrase, or material portion of this Ordinance 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.

**Section 48. Applicable Law.**

Notwithstanding anything to the contrary herein, the terms of this Franchise shall be governed in accordance with the terms of the Cable Communications Policy Act of 1984 (the “Cable Act”) Pub. L. No. 98-549, 47, USC Section 521 et seq. (Supp. III 1985), as the same may be amended from time to time. In the event of a conflict between terms of this Ordinance, or other ordinances of the City, and the Cable Act, the Cable Act shall control wherever it preempts.

**Section 49. Notices.**

All notices and other communications hereunder shall be in writing and deemed to have been duly given if delivered by hand or delivery service providing proof of delivery or if mailed (first class or certified, return receipt and postage prepaid) to the following respective addresses:

Wayne Antcliff, President  
Concept Communications Corporation  
PO Box 810  
Newport, WA 99156

to the City:

City of Newport  
PO Box 546  
Newport, WA 99156

or to such other address(es) as the Grantee or the City may specify in a notice delivered in accordance with the terms hereof.

**Section 50. Effective Date.**

In the interest of the peace, health and safety of the people of the City, this Ordinance shall

be in full force and effect upon its passage by the Council, approval of the Mayor and publication as required by law.

Passed by the City Council of the City of Newport, Washington this 1st day of June, 1993.

**Ordinance No. 908**

AN ORDINANCE GRANTING TO **NORTHERN LIGHTS, INC.**, AN IDAHO CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR A TERM OF 20 YEARS, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO OWN, HOLD, CONSTRUCT, OR OTHERWISE ACQUIRE, AND TO MAINTAIN AND OPERATE, A NATURAL GAS TRANSMISSION AND DISTRIBUTION SYSTEM IN AND SUPPLY GAS TO **NEWPORT, WASHINGTON**, AND ITS INHABITANTS, AND FOR SUCH PURPOSES TO OWN, HOLD, CONSTRUCT OR OTHERWISE ACQUIRE AND TO MAINTAIN AND OPERATE WITHIN THE PRESENT AND FUTURE CORPORATE LIMITS OF **NEWPORT, WASHINGTON**, MAINS, PIPES, CONDUITS, SERVICES AND OTHER NECESSARY APPLIANCES, WORKS AND STRUCTURES AND ALSO TO LAY, TAKE UP, REPAIR, REPLACE, RENEW, EXTEND, MAINTAIN AND OPERATE GAS MAINS, PIPES, CONDUITS AND SERVICES, IN, UPON, OVER, UNDER, ALONG, THROUGH AND ACROSS ALL STREETS, AVENUES, ALLEYS, HIGHWAYS AND OTHER PUBLIC PLACES IN **NEWPORT, WASHINGTON**, AS THE SAME NOW EXIST OR MAY HEREAFTER BE EXTENDED, LAID OUT OR ESTABLISHED, AND PRESCRIBING THE TERMS AND CONDITIONS THEREOF; PRESCRIBING THE TIMES AND CONDITIONS FOR COMMENCEMENT AND COMPLETION OF CERTAIN WORK HEREUNDER; PRESCRIBING THE METHOD AND MANNER OF PROTECTION OF WORK UNDERTAKEN, CARRIED ON, OR DONE BY THE GRANTEE HEREUNDER IN THE STREETS, AVENUES, ALLEYS, HIGHWAYS AND OTHER PUBLIC PLACES IN SAID CITY AND FOR THE REPAIR

OF DAMAGES BY GRANTEE OR ITS PIPES AND MAINS OR BY GAS ESCAPING THEREFROM AND FILING OF BOND, AND FOR GRANTEE'S INDEMNIFYING SAID CITY FOR ALL LOSS OR DAMAGE SUFFERED BY THE CITY CAUSED BY WORK UNDERTAKEN, CARRIED ON, OR DONE BY THE GRANTEE HEREUNDER, REQUIRING THE GRANTEE TO CONFORM TO CERTAIN CITY ORDINANCES; PROVIDING FOR THE FORFEITURE OF THIS FRANCHISE AND GRANT, AND THE GROUNDS, MANNER, TERMS AND CONDITIONS THEREOF; PROHIBITING THE ISSUANCE OF ANY CAPITAL STOCK ON ACCOUNT OF THIS FRANCHISE AND GRANT OR THE VALUE THEREOF; PROVIDING FOR THE ACCEPTANCE OF THIS FRANCHISE AND GRANT BY THE GRANTEE, AND THE TIME, MANNER AND EFFECT THEREOF; RESERVING RIGHTS TO SECURE SAFETY, WELFARE, AND SERVICE; DEFINING THE WORDS "CITY," "COUNCIL," AND "GRANTEE" AS USED HEREIN; FORBIDDING THE LEASE, ASSIGNMENT OR OTHER ALIENATION OF THIS FRANCHISE AND GRANT OTHERWISE THAN BY MORTGAGE OR TRUST DEED EXECUTED FOR THE PURPOSE OF OBTAINING MONEY FOR CORPORATE OBJECTS; PROVIDING FOR SEPARABILITY AND CONDITIONS THEREOF AND FOR THE PUBLICATION OF THIS ORDINANCE, AND SPECIFYING THE DATE ON WHICH IT SHALL TAKE EFFECT.

The City Council of the City of Newport, Washington, do ordain as follows:

**SECTION 1:** Northern Lights, Inc., a corporation organized and existing under and by virtue of the laws of the State of Idaho, having on February 17, 1998 duly filed with the City Council of the City of **Newport, Wash-**

**ington**, a written application for a non-exclusive franchise for a term of 20 years, to own, hold, construct, or otherwise acquire, and to maintain and operate, a gas system in and supply gas to the City of **Newport, Washington**, and its inhabitants, and for such purposes to own, hold, construct, or otherwise acquire, and to maintain and operate within the present and future corporate limits of the City of **Newport, Washington**, mains, pipes, conduits, services and other necessary appliances, works and structures and also to lay, take up, repair, replace, renew, extend, maintain and operate gas mains, pipes, conduits, and services in, upon, over, under, along, through and across all streets, avenues, alleys, highways and other public places in the City of **Newport, Washington**, as the same now exist or may hereafter be extended, laid out or established in form, tenor and effect identical with this ordinance, this ordinance having been published in accordance with Washington law.

The City of **Newport, Washington**, does hereby grant to Northern Lights, Inc., a corporation, its successors and assigns, a non-exclusive franchise for a term of 20 years, to own, hold, construct, or otherwise acquire and to maintain and operate, a gas system in and supply gas to the City of **Newport, Washington**, and its inhabitants, and for such purposes to own, hold, construct, or otherwise acquire, and to maintain and operate, within the present and future corporation limits of the City of **Newport, Washington**, mains, pipes, conduits, services and other appliances, works and structures and also to lay, take up, repair, replace, renew, extend, maintain and operate gas mains, pipes, conduits and services, in, upon, over, under, along, through and across all streets, avenues, alleys, highways and other public places in the City of **Newport, Washington**, as the same now exist or may hereafter be extended, laid out or established; provided, however, that the location of all such conduits, pipes, mains, and other appliances or services, in, along or under said streets, alleys, highways or public places shall at all times be subject to control and regulation of the City.

**SECTION 2:** The franchise and grant herein and hereby made to said Grantee, its successors and assigns, is for a term of 20 years from the date this ordinance becomes effective unless sooner abandoned, revoked, terminated, or amended under other provisions herein. In the event significant technological innovations or advancements in the natural gas transmission and distribution industry occur, the City and Grantee agree to conduct good faith negotiations and discussions on the best manner of taking advantage of those advancements. Upon agreement between the parties concerning the necessary adjustments to the Grantee's franchise obligations, Grantee shall implement those changes.

This franchise and grant are conditioned upon the acceptance and approval by all government agencies, including but not limited to the WUTC and FERC, of any and all applications for permits, licenses, waivers, or other documentation necessary for Grantee to exercise its rights under this franchise and grant. It is also conditioned upon acceptance by Grantee's members of the plan to offer natural gas services in addition to the services Grantee already provides. If Grantee is unable to obtain said approvals and acceptances after reasonable efforts by Grantee, but in no event longer than the time periods specified in Section 3 herein, unless Grantor agrees in writing to extend the time periods, then said franchise and grant shall be forfeited and neither Grantor nor Grantee shall have any right to seek damages of any type against the other for failure of Grantee to obtain the necessary approvals and acceptances.

**SECTION 3:** Work under this franchise shall be commenced in good faith within not more than 24 months from the date of the final passage of this ordinance and if not so commenced within said time this franchise shall be forfeited. Distribution mains sufficient to make merchantable gas available to a substantial majority of the inhabitants of the City of **Newport, Washington** requesting services, and to a substantial majority of the areas of the City of **Newport, Washington** requesting services, shall be installed and completed, and

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such gas in sufficient quantities to supply the same shall be made available within 36 months, subject to such supply being available from the gas transmission line. The natural gas service to be furnished by Grantee to the public and the City hereunder and all rates and charges therefor and all regulations, policies, and conduct of the Grantee applicable thereto shall at all times be fair and reasonable and be subject to all rules, regulations, and orders that may be lawfully prescribed by the regulatory body of the State of Washington having jurisdiction thereof. The City recognizes that Grantee's rates and charges will be set by the members of Grantee through its Board of Directors and not under the regulation of any government entity. Work under this franchise shall be completed within 36 months from the date of final passage of this ordinance unless such time be extended by resolution of the Council, and if not so completed within said time, said exclusive franchise shall be forfeited. Provided, that the limitations and provisions of this section shall not apply to repairs, maintenance, operation, alterations, additions, replacements or extensions, nor to any work not required by the provisions of this ordinance. Grantee shall provide the City of Newport with an accurate map, plans and specifications showing the location and depth of all pipes and equipment and shall provide the City with all such other information as may be requested by the Mayor, the Public Works Field Supervisor or their designees. Grantee will come in, locate and mark pipes and equipment upon the request of City, without charge.

**SECTION 4:** Grantee shall secure a permit for any opening it shall make in the streets, alleys, and public places in the City and shall be subject to all applicable ordinances. Franchisee must file all permit applications deemed necessary by the Public Works Director, including filing detailed plans, specifications and profiles of the intended work, pay all permit fees, and receive such appropriate permits from the City prior to commencing any work in the City limits; provided, however, that in the event of an emergency, Franchisee may do the work immediately so long as a permit is

obtained by Franchisee as soon as practicable thereafter. Applications for right-of-way permits shall be presented to the Public Works Department, which applications will require plans, blueprints, cross-sections, or further detailing of any work to be performed, at the Public Works Director's discretion. All materials and equipment used for restoration work shall be approved by the City. Franchisee agrees to pay the City all reasonable costs and expenses associated with the examination, inspection, and supervision connected with installation or restoration work. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the City may designate for such purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and services. Whenever the City shall pave or repave any street or shall change the grade or line of any street or public place or shall construct or re-construct any conduit, watermain, sewer or water connection or municipal public works or utilities, it shall be the duty of the Grantee when so ordered by the City to change its main, services and other property in the streets or public places at the Grantee's expense and without cost to the City so as to conform to the established grade or line of such street or public place and so as not to interfere with the conduits, sewers and other mains as constructed or reconstructed. Whenever the City grants a permit for an excavation in a street, alley or other public ground and the work contemplated by the permit may expose gas pipes, mains and appurtenances of the Grantee, the City shall promptly furnish a copy of the permit to Grantee, and the Grantee will pay the reasonable administrative and related costs.

The exercise of privileges by this franchise shall be subject at all times to the police power of the City over its streets and alleys and shall at all times be subject to all ordinances, regulations and specifications of the City including those relating to work and construction in the public streets and relating to material, type, character and method of construction or of repair of the public streets and alleys. The

Grantee shall not unnecessarily or unreasonably obstruct the use of or damage any street or alley, and shall within a reasonable time and as early as practicable upon the completion of any construction or repair work, restore all municipal streets and alleys to the same order and condition as they were before the excavation was made insofar as reasonably possible. The Grantee shall be responsible for any obstruction or any defect in any street, alley, or other public place caused by it in the operation and maintenance of its properties occurring at any time and shall promptly remove any such obstruction or defect at its own expense. Any such obstruction or defect which, after proper notice to Grantee demanding removal or repair as the case may be, is not promptly removed or repaired by the Grantee, may be taken care of by the City, and the costs thereof shall be charged against Grantee. In the event payment is not made within thirty (30) days, the Grantor can declare a default under Section 6 herein.

**SECTION 5:** The Grantee shall conform to all present general ordinances now existing, including those concerning the safety, welfare and accommodation of the public, and to any further general ordinances relating thereto or to franchise fees which shall be validly put into effect by the City by its legislative police power. This franchise shall be subject to the right of the City to make all reservations which shall be necessary to secure in the most ample manner, the safety, welfare and accommodations of the public, including among other things, the right to pass and enforce ordinances to protect the public from danger and inconvenience in the operation of any work or the business authorized by the grant of this franchise, and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service and accommodations to the inhabitants of the City of **Newport, Washington**.

**SECTION 6:** Upon a breach or failure of the Grantee to comply with any of the terms, limitations or conditions of this franchise and grant, the City reserves the right to declare a termination and forfeiture hereof, provided,

however, the City shall first give the Grantee written notice of the matters in respect of which Grantee is claimed to be in default, such written notice to be given by personal service or by registered mail to said Grantee at Sandpoint, Idaho. Should Grantee fail to remedy said default within a reasonable time from the date of receipt of such notice, such reasonable time to depend upon the exigencies surrounding the matter set forth in said notice, then and in that event said City may declare the termination and forfeiture of this franchise and grant; and provided, further, that no breach or failure resulting from said acts of God, fire, earthquakes, the elements, or any other causes beyond the Grantee's control which could not have been reasonably anticipated and prevented by the Grantee, shall create a termination or forfeiture of this franchise and grant, or any of the provisions thereof.

**SECTION 7:** Within 60 days after the day on which this franchise and grant takes effect, the Grantee shall file a written acceptance thereof in the office of the City Clerk, and said acceptance shall be attached hereto and also entered on the journal of the Council. The Grantee, by the acceptance of this franchise and grant, agrees to maintain and operate a gas system in the City of Newport, Washington, and furnish a substantial majority of the residents of Newport requesting gas service with an adequate supply of gas and comply with the terms of this franchise and grant.

**SECTION 8:** Whenever in this franchise and grant the word "City" is used it shall be construed to mean the City of **Newport, Washington**, as it now exists or may hereafter exist; the word "Council" shall be construed to mean the City Council of the City of **Newport, Washington**, as well as any successor legislative body of the City of **Newport, Washington**; and the word "Grantee" shall be construed to mean the Grantee herein named and Grantee's successors and assigns. The franchise hereby granted shall not be sold, leased, assigned, or otherwise alienated without the express consent of the City, expressed by ordinance of the City Council passed for that pur-

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pose, and no rule of estoppel shall be invoked against the City in case it shall assert the invalidity of any attempted transfer in violation of this section. Such consent shall not be unreasonably withheld. The consent of the City is hereby expressly given to the mortgaging of the gas utility property and facilities of the Grantee within the City, under any presently outstanding or future mortgage or mortgages given to secure any bonds or other bona fide indebtedness of the Grantee, and the purchaser at any foreclosure sale, if approved by the WUTC or other state utilities regulatory body, may operate the properties under this franchise upon complying with the applicable provisions of the City charter, ordinances, regulations, and this franchise. The City reserves the right to invoke any or all provisions of this franchise upon the Grantee's successors, assigns, judgment creditors, or distributees of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new franchise.

**Section 9:** In the event natural gas at any time shall cease to be available to Grantee for distribution and sale hereunder, Grantee reserves the right to surrender this franchise and in the event of such surrender, forfeiture, or any expiration or termination of this franchise, or in any of such events, Grantee reserves the right to salvage all of its plant, works and facilities.

**Section 10:** If any part or parts of this ordinance shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any other part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid. The Council of the City of **Newport, Washington**, declares that it would have passed the remaining parts of this ordinance if it had been known that such other part or parts thereof would be declared unconstitutional or invalid.

**SECTION 11:** The Grantee shall at all times fully defend, indemnify and hold the City, its agencies, boards, officers, agents, officials and employees harmless from any and all claims, accidents, losses, damages and liabilities arising from or by reason of any intentional or negligent act, occurrence, or omission of the Grantee, singularly or jointly with others, its representatives, permittees, or employees, in the construction, operation, use or maintenance of any of the Grantee's gas utility property or facilities and/or enjoyment of any privileges granted by this franchise, or because of Grantee's performance of franchise obligations. Such indemnity shall include costs of negotiation or defense, any other costs incurred, and reasonable attorney's fees.

Grantee shall not be responsible for damages determined to arise out of the City's sole negligence or, in the case where damages are determined to arise out of concurrent negligence of the parties, Grantee's liability shall extend to damages determined to arise beyond the extent of Grantee's concurrent negligence only so far as permitted by law.

Whenever any judgment is recovered against the City or any other indemnity for any such liability, loss, costs, or expenses, such judgment shall be conclusive against the Grantee, not only as to the amount of such damage, but as to its liability, provided the Grantee has reasonable notice or actually knew of the pendency of such suit.

Grantee waives all claims for loss, liability, and/or damages against the City of Newport, its agencies, officers, agents, officials or employees, arising out of or in connection with the Grantee's enjoyment of franchise rights and privileges, or because of Grantee's performance or franchise obligations. No action, error or omission, or failure to act by the City in connection with administering its rights or duties related to this franchise shall be asserted by the Grantee, directly, indirectly, or by way of seeking indemnification, against the City, its agencies, boards, officers, agents, officials or employees, except where required by law.

It is not the intent of this franchise to acknowledge, create, imply, or expand any duty or liability of the City without respect to

its role as franchising authority, in the exercise of its police power or for any other purpose. Any City duty, nonetheless deemed created, shall be a duty to the general public and not to any specific party, group or entity.

Grantee will keep the City as an additional insured on insurance policies to cover liability, damages, causes of action, allegations of such, and all losses including any deductible, from a reputable insurance company or companies reasonably satisfactory to the City and supplying copies of said coverage in an amount of not less than one million dollars (\$1,000,000.00) in accord with Section 12.

**SECTION 12:** Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, as a part of the indemnification previously provided in Section 11, but without limiting the foregoing, Grantee shall file with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including commercial liability insurance, personal injury liability, owners and contractors personal injury liability, broad form property damage, contractual liability, automobile liability (owned; non-owned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the Grantee and their capacity as such, their officers, agents and employees. The City and said City and officers, agents and employees shall be named as additional insured, and the policy or policies shall be of no less than one million dollars (\$1,000,000.00) annual aggregate limit per occurrence, but shall never be less than the City's insurance coverage. The insurance policy or policies shall contain contractual liability insurance naming the Grantee and City, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions.

The policy or policies of insurance shall be maintained by the Grantee and in full force and effect during the entire term of this franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether

at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Clerk.

**SECTION 13:** In the event RCW 35.21.860, as now existing or hereafter adopted or amended, is revoked, or other laws, statutes, rules or regulations are adopted which authorize the City to impose a franchise fee or other charge upon the gas distribution business, then Franchisee agrees to enter into good faith negotiations with the City regarding amending this franchise to provide for the inclusion of a franchise fee; provided, however, that if the City and the Franchisee are unable to reach an agreement within ninety (90) days, this franchise shall terminate.

**SECTION 14:** Franchisee agrees to pay a fee or charge to recover the actual and necessary administrative expenses incurred by the City which are directly related to receiving and approving this franchise. In addition, Franchisee shall pay the City all administrative costs incurred by the City in the approval of permits or in the supervision, inspection or examination of all work by Franchisee in the City limits.

**SECTION 15:** Franchisee shall prepare and file with the City an emergency management plan for responding to any spill or other emergency condition. The plan shall designate responsible officials and emergency twenty-four (24) hour on-call personnel and the procedures to be followed when responding to an emergency. After being notified of an emergency, Franchisee shall cooperate with the City and make every effort to respond as fast as practical with action to minimize damage and to protect the health and safety of the public. Franchisee agrees to provide training to firefighters when reasonably requested, at least once per year. In addition, Franchisee will make available to the City of Newport, a gas leak sniffing or leak detection unit for use by City officials.

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**SECTION 16:** Promptly upon receipt of the City's invoice therefore, the Grantee shall pay all publication costs in connection with the adoption of this ordinance.

**SECTION 17:** All notices and other communications hereunder shall be in writing and deemed to have been duly given if delivered by hand or delivery service providing proof of delivery or if mailed (first class or certified, return receipt and postage prepaid) to the following respective addresses:

Northern Lights, Inc.	and	City of Newport
P.O. Box 310		200 So. Washington
Sandpoint, ID 83864		Newport, WA
		99156

or to such other address(es) as the Grantee or the City may specify in a notice delivered in accordance with the terms hereof.

**SECTION 18:** This ordinance, upon its passage and approval, and within 1 days thereafter, shall be published in one issue of the Newport Miner, a weekly newspaper of said City, and shall take effect on the 30th day after its passage and approval according to law.

Passed the City Council of the City of **Newport, Washington**, this 17th day of March 1998.