

ORDINANCE NO. 1227

AN ORDINANCE GRANTING CALIFORNIA OREGON BROADCASTING, INC., AN OREGON CORPORATION D/B/A CRESTVIEW CABLE COMMUNICATIONS, THE RIGHT AND PRIVILEGE TO OPERATE A CABLE SYSTEM IN, ALONG, UPON, ACROSS, ABOVE, OVER, AND/OR UNDER THE PUBLIC RIGHT-OF-WAYS WITHIN THE CITY OF PRINEVILLE

WHEREAS, California Oregon Broadcasting, Inc., an Oregon corporation d/b/a Crestview Cable Communications (“Grantee”), provides and operates a certain cable system within the Prineville incorporated limits in accordance with the terms and conditions of a certain franchise established under Ordinance No. 986 and thereafter extended (the “Original Franchise”); and

WHEREAS, the latest extension of the Original Franchise expires on January 1, 2017; and

WHEREAS, by the passage of this Ordinance No. 1227 (this “Ordinance”), the City of Prineville, an Oregon municipal corporation (“Grantor”), grants to Grantee the right and privilege to operate a cable system within the Prineville incorporated limits, subject to the terms and conditions contained in this Ordinance.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE ORDAIN AS FOLLOWS:

1. DEFINITIONS.

Unless defined elsewhere in this Ordinance, capitalized terms contained in this Ordinance have the meanings assigned to them in the attached Appendix A.

2. GRANT OF AUTHORITY.

2.1 Grant of Authority. Subject to the terms and conditions contained in this Ordinance, Grantor grants to Grantee the right and privilege to place, erect, lay, maintain, and operate the Facilities in, upon, over, and under the Right-of-Way for the purpose of constructing, operating, and maintaining the Cable System within the Franchise Area. Grantee will enter into, onto, over, and under the Right-of-Way only for the purposes described in the immediately preceding sentence. Notwithstanding anything contained in this Ordinance to the contrary, nothing contained in this Ordinance will (a) abrogate the right of Grantor to perform any public works or public improvements of any description; (b) constitute a waiver of any codes or ordinances of general applicability promulgated by Grantor; and/or (c) waive or release Grantor’s rights in and to the Right-of-Way.

2.2 Franchise Non-Exclusive. The Franchise is and will be construed as a non-exclusive franchise. Grantor reserves the right to grant franchises, licenses, permits, and/or other similar rights to other persons to use and/or place, erect, lay, maintain, and/or operate in upon, over, and/or under the Right-of-Way for similar or different purposes allowed under this Ordinance.

2.3 Oversight of Franchise. In accordance with applicable Laws, Grantor will have the right to oversee, regulate, and periodically inspect the construction, operation, and

maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Grantee's compliance with the provisions of this Ordinance.

2.4 Technical Standards. Grantee will comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76, as amended. Grantor will have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules and any other applicable Laws.

2.5 Building Maintenance. Grantee will maintain the Building, at Grantees cost and expense, in good and presentable repair, condition, and appearance, and in compliance with the Laws. Grantee will not cause or permit any excessive waste, rubbish, and/or debris to be stored or located at the Building.

3. FACILITIES LOCATION, RELOCATION, AND REMOVAL

3.1 Location of Facilities. For any new construction of Facilities where existing utility services are located underground within the particular Right-of-Way, Grantee, with permission from Grantor to occupy such Right-of-Way, must locate its Facilities underground. Grantor will determine whether to provide Grantee permission to occupy the Right-of-Way within thirty (30) days after Grantee's written request. Whenever utility services are located or relocated underground within a particular Right-of-Way, Grantee will relocate its Facilities underground concurrently with the other affected utilities to minimize disruption of the Right-of-Way. Subject to the terms and conditions contained in this Ordinance, Grantee's cables, wires, appliances, and conductors may be strung upon poles or other fixtures above ground, or at the option of Grantee, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. Notwithstanding anything contained in this Ordinance to the contrary, but subject to applicable Laws, Grantor will have the authority to prescribe (a) which Right-of-Ways will be used by Grantee for the Facilities, and (b) the location of the Facilities within the Right-of-Way.

3.2 Relocation of Facilities. Except in the case of an Emergency, within thirty (30) days after Grantor's request Grantee will, at Grantee's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way whenever Grantor has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) the construction, repair, installation, and/or maintenance of any Grantor or other public work or improvement; (c) the operations of Grantor or other governmental entity in or upon the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities; and/or (d) the removal, relocation, change, and/or alteration is pursuant to a beautification, streetscape, and/or other Grantor improvement project. If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, or development the costs of such moving or relocation work will be borne by the requesting private individual, entity, developer, or development. Nothing contained in this Ordinance will be construed in any way to prevent Grantor from sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any Right-of-Way in and/or upon which Facilities are or will be placed; provided, however, all such work and/or improvements will be done if possible so as not to obstruct and/or prevent the free use of the Facilities. If an Emergency occurs, Grantee will, at Grantee's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the

Right-of-Way within seventy-two (72) hours after Grantor's request. Grantor acknowledges that an emergency relocation may result in temporary installation.

3.3 Moving Aerials. Notwithstanding anything contained in this Ordinance to the contrary, whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise Grantee's aerial cables, wires, and/or other apparatus to permit the passage of any building, machinery, and/or other object moved over any Right-of-Way (a "Temporary Adjustment"), Grantee will perform the Temporary Adjustment on the date set out in the written notice from the owner or contractor mover desiring to move such building, machinery, and/or other object, which notice shall have been received by Grantee at least seven (7) days prior to the Temporary Adjustment date (the "Move Notice"). The Move Notice will (a) bear the approval of Grantor, (b) detail the route of movement of the building, machinery, and/or object, (c) provide that the costs incurred by Grantee in making the Temporary Adjustment will be borne by the contractor-mover, (d) provide that the contractor-mover will indemnify and hold Grantee harmless for, from, and against any and all damages, claims, or causes of action whatsoever caused directly or indirectly from the Temporary Adjustment, and (e) if required by Grantee, will be accompanied by cash deposit or a good and sufficient bond to pay any and all such costs as estimated by Grantee.

4. CONSTRUCTION, INSTALLATION, AND OPERATION

4.1 Facilities. Facilities will not interfere with Grantor's water mains, sewer mains, gas mains, and/or other municipal uses of any Right-of-Way. Facilities will be erected and located so not to unreasonably interfere with the public's use of the Right-of-Way. Grantee will maintain, at Grantee's expense, all Facilities in good and safe order and condition.

4.2 Excavation Work. Subject to the terms and conditions contained in this Ordinance, Grantee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, repairing, renewing, and/or maintaining poles (or other supports or conduits), wires, appliances, and/or auxiliary apparatuses.

4.3 Permits and General Obligations. Grantee will be responsible for obtaining, at its own cost and expense, all permits, licenses, and/or other forms of approval or authorization necessary to construct, operate, maintain, and/or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System will be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by Grantee for use in the Cable System in accordance with the terms and conditions of this Ordinance will be located so as to minimize the interference with the proper use of the Right-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

4.4 Construction Work. Except in the case of an Emergency, prior to Grantee commencing (or causing any person to commence) any Construction Work within the Franchise Area Grantee will (a) file with Grantor maps, materials, documentation, "as-built" site plans, and any other information or documentation requested by Grantor concerning the proposed Construction Work (including, without limitation, the location of any utilities), (b) obtain all necessary construction

permits concerning the proposed Construction Work, and (c) obtain Grantor's prior written consent. All Construction Work will be subject to the supervision of Grantor's engineer or other representative appointed by Grantor. If Grantee is required to perform any Construction Work due to the occurrence of an Emergency, Grantee will comply with Section 4.4 (a), (b), and (c) as soon as practicable (but in no event later than thirty (30) days after the occurrence of the Emergency). Grantee will conduct its operations and will perform all Construction Work, including, without limitation, any excavation and/or restoration work, in accordance with the following: (w) all Construction Work will be completed in a safe manner, taking into account all applicable traffic control rules and procedures; (x) all Construction Work will be completed so as to minimize disruption of the Right-of-Way; (y) all Construction Work will be completed in accordance with this Ordinance and any and all applicable Laws; and (z) all Construction Work will be completed in a good workmanlike manner. Grantor will be permitted to inspect any and all Construction Work and demand correction of any incomplete or improper Construction Work.

4.5 Restoration of Property. If Grantee disturbs and/or causes another to disturb any Right-of-Way, Grantee will, at Grantee's cost and expense, replace or restore the Right-of-Way to a condition substantially similar to that which the Right-of-Way existed prior to the disruption as soon as practicable and without unreasonable delay. If Grantee fails to timely replace or restore any Right-of-Way to a condition substantially similar to that which the Right-of-Way existed prior to the disruption, Grantor will have the right (but not the obligation) to cause the replacement or restoration to be made at the expense of Grantee. Grantee will pay Grantor any and all costs and expenses incurred by Grantor to replace or restore the Right-of-Way in accordance with this Section 4.5 immediately upon Grantor's demand.

4.6 Safety Requirements. Grantee will, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries, and/or nuisances. All work undertaken on the Cable System will be performed in substantial accordance with applicable Laws. The Cable System will not unreasonably endanger or interfere with the safety of persons or property in the Franchise Area.

4.7 Trimming of Trees and Shrubbery. Subject to the terms and conditions contained in this Ordinance, Grantee will have the authority to trim or cut trees and/or other natural growth located in the Right-of-Way if necessary to prevent contact with the Facilities. All cutting and trimming will be done at Grantee's sole cost and expense. Grantee will trim and/or cut trees according to ANSI A300 Part 1, pruning standards. Trees and shrubs will not be removed without Grantor's prior written authorization. Grantee will not damage roots of any tree by compacting or filling on or around its base or make excavations in the soil within a foot of the tree's roots unless appropriate measures are taken to prevent the exposed soil from drying out. Grantee will not top trees or shrubs (i.e.: cut back limbs of a tree or shrub within the tree's or shrub's crown to such a degree as to remove the natural canopy and/or disfigure the tree or shrub). The root system of any live or dead tree, shrub, and/or other vegetation that is removed will be at a depth of not less than twelve inches (12") below the ground surface. After any excavation or grinding work the ground will be restored to a smooth and level surface. Any required grinding of a stump will be completed contemporaneously with the removal of the tree or shrub. All "pruning" will be performed in a careful and systematic manner so as not to damage other parts of the plant or tree as a whole.

5. GENERAL SERVICE OBLIGATIONS

5.1 General Service Obligation. Grantee will make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one mile of the existing Cable System. Subject to the density requirements, Grantee will offer Cable Service to all new homes or previously un-served homes located within one hundred twenty-five (125) feet of Grantee's distribution cable, provided however, Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge will be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

5.2 System Capacity. During the term of this Ordinance, the Cable System will be capable of providing a minimum of eighty-five (85) channels of video programming (analog and digital) with satisfactory reception available to its Customers in the Franchise Areas.

5.3 Service to School Buildings. As a voluntary initiative for the term of this Ordinance, Grantee will provide at no cost, one "Basic" and "Expanded Basic" service or its equivalent in a digital tier, if necessary, and standard installation at one outlet to each public school and public library, not including "home schools," located in the Franchise Area within one hundred twenty-five (125) feet of Grantee's distribution cable. Grantor will provide to Grantee a list of all school building addresses from time to time as necessary.

5.4 Service to Municipal Buildings. As a voluntary initiative for the term of this Ordinance, Grantee will provide at no cost one "Basic" and "Expanded Basic" service or its equivalent in a digital tier, if necessary, and standard installation at one outlet to each Municipal Building located in the Franchise Area within one hundred twenty-five (125) feet of Grantee's distribution cable. Grantor will provide to Grantee a list of all Municipal Building addresses from time to time as necessary.

5.5 Restoration of Service. If the Cable System and/or Facilities, or any part thereof, is partially or wholly destroyed, inoperable, and/or incapacitated, Grantee will use due diligence to restore the Cable System to satisfactory service within the shortest practicable time.

5.6 New Developments. Grantor, in accordance with applicable code requirements, will use its commercially reasonable efforts to provide Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of the Cable System's transmission and distribution Facilities. Grantor will make commercially reasonable efforts to require the developer, as a condition of issuing the permit, to provide Grantee access to open trenches for deployment of the Facilities and at least ten (10) days' written notice of the date the trenches will be open. The developer will be responsible for the digging and backfilling of all trenches. Grantee will be responsible for engineering and deployment of labor applicable to such Facilities.

5.7 No Discrimination. Neither Grantee nor any of its employees, officers, directors, shareholders, agents, representatives, contractors, subcontractors, and/or consultants, nor any other person, will discriminate or permit discrimination between or among any persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It will be the right of all persons to receive all available services provided on the Cable System so long as such person's financial or other obligations to Grantee are satisfied. Nothing contained herein will prohibit Grantee from offering bulk discounts, promotional discounts, package discounts, and/or other such pricing strategies as part of its business practice.

5.8 Cable Rates, Fees, and Charges. All rates, fees, charges, deposits, and associated terms and conditions imposed by Grantee for any Cable Service will be in accordance with applicable FCC's rate regulations and any other applicable Laws. Before any new or modified rate, fee, and/or charge is imposed, Grantee will follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under applicable Laws.

5.9 Customer Service Standards. Grantor adopts the customer service standards set forth in 47 CFR §76.309 of the FCC's rules and regulations, as amended. Grantee will comply in all respects with the customer service requirements established by the FCC.

5.10 Customer Bills. Customer bills will be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (a) is not misleading, and (b) does not omit material information. Notwithstanding the immediately preceding sentence, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)), as amended.

5.11 Privacy Protection. Grantee will comply with all applicable federal and state privacy Laws, including, without limitation, Section 631 of the Cable Act (47 U.S.C. § 551), as amended.

6. FRANCHISE FEES

6.1 Franchise Fee. In consideration of the rights, privileges, and franchise granted by Grantor to Grantee under this Ordinance, Grantee will pay Grantor a franchise fee equal to five percent (5%) of Grantee's annual Gross Revenues (the "Franchise Fee(s)"). If any changes and/or modifications to the Laws occur (legislatively or through judicial interpretation) after the Effective Date that require or enable Grantor to modify the scope, calculation method, and/or amount of the Franchise Fee, Grantor and Grantee will amend this Ordinance to comply or respond to such changes and/or modifications within ninety (90) days after Grantor's provision of written notice to Grantee. Without otherwise limiting the generality of the immediately preceding sentence, Grantee acknowledges and agrees that Grantor may elect to increase the Franchise Fee amount as then may be allowed under applicable laws.

6.2 Payment of Franchise Fee. Payment of the Franchise Fees will be made on a monthly basis and will be due fifteen (15) days after the last day of the immediately preceding month. The first monthly payment of the Franchise Fee is due on or before February 15, 2017. Each Franchise Fee payment will be accompanied by a report prepared by Grantee showing the basis for

the computation of the Franchise Fees paid during that period. Grantor's acceptance of any payments under this Section 6.2 will not constitute a waiver by Grantor of any Grantee breach under this Ordinance.

6.3 Maintenance of Books, Records, and Files. During the term of this Ordinance, and for a period of three (3) years thereafter (or such longer period as may be required under applicable Laws), Grantee will maintain adequate books, records, and files concerning the Cable System and the Franchise. Grantee's books and records will include, without limitation, any records required to be kept in a public file by Grantee under the rules and regulations of the FCC, which public file will be available for public inspection during normal business hours.

6.4 Inspection of Books and Records. Upon ten (10) days' prior written notice to Grantee, Grantor may review such Grantee books, records, documentation, and information Grantor reasonably determines necessary or appropriate to audit Grantee's payment of the Franchise Fees and/or ascertain Grantee's compliance with this Ordinance. Grantee will cooperate with Grantor in conducting any inspection and/or audit and will correct any discrepancies affecting Grantor's interest in a prompt and efficient manner, including, without limitation, payment of any unpaid Franchise Fees. Grantor will bear the cost of any audit provided no irregularities amounting to an underpayment of three percent (3%) or more are found. If Grantor discovers any irregularities amounting to an underpayment of three percent (3%) or more, Grantee will bear the cost of Grantor's audit and shall immediately pay to Grantor the amount of the underpayment.

7. INSURANCE AND INDEMNIFICATION

7.1 Insurance. Grantee, at its cost and expense, will obtain and keep in full force and effect during the term of this Ordinance, the following insurance coverage and their respective minimum limits: (a) workers' compensation insurance within statutory limits; (b) employer's liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) comprehensive general liability insurance with limits of not less than \$3,000,000 for bodily injury or death to each person, \$3,000,000 for property damage resulting from any one accident, and \$3,000,000 for all other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Inland and its employees with a limit of \$1,000,000 for each person and \$3,000,000 for each accident. Each liability insurance policy Grantee is required to obtain and maintain under this Section 7.1 will name Grantor and its officers, representatives, agents, and employees as additional insureds. Grantee will not cancel, modify, and/or reduce in amount or scope the insurance coverage required to be maintained under this Ordinance without first providing Grantor thirty (30) days' prior written notice. All insurance Grantee is required to obtain and maintain under this Section 7.1 will be issued only by insurance companies licensed in Oregon. Prior to Grantor's execution and acceptance of this Ordinance, upon renewal of each insurance policy and at any other time thereafter within thirty (30) days after Grantor's written request, Grantee will provide Grantor with certificates of insurance evidencing Grantee's compliance with this Section 7.1.

7.2 Indemnification. Grantee will defend, indemnify, and hold Grantor, and each employee, officer, agent, and representative of Grantor, harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, losses, and expenses, including, without limitation,

reasonable attorney fees, resulting from or arising out of the following: (a) the acts or omissions of Grantee and/or its affiliates officers, directors, shareholders, members, managers, employees, agents, contractors, and/or subcontractors in the construction, operation, maintenance, repair, and/or removal of the Facilities in the Right-of-Way and/or in providing or offering Cable Services over the Facilities whether such acts or omissions are authorized allowed, or prohibited by this Ordinance; and/or (b) Grantee's breach and/or failure to perform any Grantee representation, warranty, covenant and/or obligation under this Ordinance. Grantee's indemnification obligations provided in this Section 7.2 will survive the termination of this Ordinance.

8. TERM AND TERMINATION

8.1 Term of Franchise. Unless sooner terminated or extended as provided in this Ordinance, this Ordinance (and the Franchise granted hereunder) will be in full force and effect for a period of five (5) years, commencing January 1, 2017, and ending December 31, 2021. Upon expiration of this Ordinance, the Grantee shall have the option to renew the Franchise granted pursuant to this Ordinance for one additional term of five (5) years. To exercise this option, the Grantee must make written application to Grantor on or before June 30, 2021, and be in compliance with the terms of this Ordinance. The provisions of the Franchise renewal will be negotiated in good faith by the Grantor and Grantee. Any renewal of the Franchise will be governed by and comply with the provisions of Section 626 of the Cable Act, as amended (11 U.S.C. § 546). This Ordinance may be terminated at any time by the mutual written agreement of Grantor and Grantee.

8.2 Termination for Cause. Notwithstanding anything contained in this Ordinance to the contrary, but subject to the notice and cure rights provided in Section 8.3, Grantor may terminate this Ordinance (and the Franchise granted hereunder) by notice to Grantee upon the occurrence of any of the following events: (a) Grantee fails to comply with any applicable Laws relating to the operation of the Cable System and/or use of the Right-of-Way; and/or (b) Grantee breaches and/or otherwise fails to perform any Grantee representation, warranty, covenant, and/or obligation contained in this Ordinance.

8.3 Notice of Default. No party act or omission will be considered a default under this Ordinance unless and until the defaulting party has received thirty (30) days' prior written notice from the non-defaulting party specifying with reasonable particularity the nature of the default the non-defaulting party believes exist (the "Default Notice"). Commencing from the defaulting party's receipt of the Default Notice, the defaulting party will have thirty (30) days within which to cure or remedy the default (the "Cure Period") before the defaulting party will be deemed in default of this Ordinance.

8.4 Remedies. If a party breaches or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Ordinance, the non-defaulting party may in addition to any other remedy provided to the non-defaulting party under this Ordinance, pursue any and all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

9. MISCELLANEOUS

9.1 Assignment or Transfer of Franchise. Grantee will not assign, transfer, and/or convey the Cable System and/or the Franchise granted under this Ordinance without Grantor's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. No consent will be required, however, for (a) a transfer in trust by mortgage, hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness, or (b) a transfer to an entity directly or indirectly owned or controlled by Grantee. Within thirty (30) days after receiving a request for consent Grantor will, in accordance with FCC rules and regulations, notify Grantee in writing of the additional information, if any, it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. Notwithstanding anything contained in this Ordinance to the contrary, Grantee will not assign or transfer in any manner whatsoever any interest in or to the Franchise or in any Facilities located within the Franchise Area unless the Grantee, assignee, or transferee agrees in writing (in form and substance reasonably satisfactory to Grantor) to assume and abide by the terms and conditions contained in this Ordinance. Subject to the terms and conditions contained in this Section 9.1, this Ordinance will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

9.2 Severability and Preemption. It is the intent of the parties that this Ordinance may be amended from time to time to conform to any changes or modifications in the Laws. Each party will negotiate in good faith with the other party concerning such proposed amendments, including, without limitation, any amendments to the Franchise Fee. If all or any portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by any federal, state, and/or local legislation, rules, regulations, and/or decisions, the remainder of this Ordinance will not be affected, but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining provision of this Ordinance will be valid and enforceable to the fullest extent permitted by law. If any federal, state, and/or local laws, rules, ordinances, and/or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision will be read to be preempted to the extent and the time required by law.

9.3 Governing Law; Venue. This Ordinance is subject to any and all applicable Laws. Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Crook County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Crook County, Oregon.

9.4 Action by the Parties. In any action mandated or permitted by Grantor or Grantee under this Ordinance, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either Grantor or Grantee is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, or delayed.

9.5 Compliance with Laws. Grantor and Grantee will comply with any and all applicable Laws. The rights and privileges granted by Grantor to Grantee under this Ordinance extend only to the extent of Grantor's right or authority to grant a Franchise to occupy and use such areas for the Facilities.

9.6 Notices. All notices or other communications required or permitted by this Ordinance (a) must be in writing (and signed by the party to be bound); (b) must be delivered to the parties at the addresses set forth in Appendix A, or any other address that a party may designate by notice to the other party; and (c) will be considered delivered (i) upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service (with confirmation of delivery), or (ii) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

9.7 Person and Interpretation. For purposes of this Ordinance, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words “include,” “includes,” and “including” are not limiting. The word “or” is not exclusive. Reference to “days” means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.

9.8 Expenses. Notwithstanding anything contained in this Ordinance to the contrary, Grantee will bear any and all fees, costs, and expenses incurred or arising out of Grantee’s performance of its obligations under this Ordinance. The termination of this Ordinance, regardless of how it occurs, will not relieve a party of any obligations that have accrued before termination.

9.9 Grantee Acceptance. Within thirty (30) days after Grantor’s passage of this Ordinance, Grantee will file with Grantor the written acceptance attached hereto as Exhibit A (the “Acceptance”). If Grantee fails to timely file the Acceptance with Grantor, this Ordinance (and the rights granted to Grantee herein) will be null and void and will be repealed by Grantor in all respects.

9.10 Effective Date. An emergency is declared to exist and this Ordinance shall go into effect on January 1, 2017. This Ordinance replaces and supersedes the Original Franchise in its entirety as of the Effective Date; provided, however, adoption of this Ordinance does not release any claims related to any breach and/or failure to perform a party’s obligations under the Original Franchise. Notwithstanding anything contained in this Ordinance to the contrary, the termination of the Franchise, regardless of how it occurs, will not relieve a party of any obligations that have accrued before termination. This Ordinance will be deemed in full force and effect as of the Effective Date.

Passed by the City Council on December _____, 2016.

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder