

INTERGOVERNMENTAL AGREEMENT
MID-WILLAMETTE VALLEY CABLE REGULATORY COMMISSION

THIS AGREEMENT is between the CITY OF SALEM, an Oregon municipal corporation ("City"), and MARION COUNTY, a political subdivision of the State of Oregon ("County") herein referred to as "Jurisdictions." This Agreement is made pursuant to ORS 190.003 to ORS 190.110, the general laws and Constitution of the State of Oregon and the laws and charters of the Jurisdictions. This Agreement supersedes all previous intergovernmental agreements of the same title between the City and the County.

1. General Purposes.

1.1 The Jurisdictions have formed a joint Cable Regulatory Commission (Commission). The Jurisdictions have entered into cable franchise agreements. It is their intent to construct, operate and maintain a unified cable communication system to provide public, educational and government access to the cable system. The construction, operation and maintenance of such a unified system serves the public interest in that the individual boundaries of the Jurisdictions do not coincide with the needs of the citizens of the Jurisdictions for a unified cable communications system. In particular, the service areas of public and private agencies such as schools and banks cross jurisdictional boundaries. Local origin public, educational and government programming and an institutional network, require a uniform compatible system throughout the franchise area. In addition, a joint system provides a more competitive environment which will promote state of the art technology in local area communication systems. A more competitive system will promote a maximum possible public, educational and government access.

1.2 To further this public interest and these purposes, the Commission will exercise any and all of the following powers and responsibilities as delegated from time to time by the Jurisdictions: monitor, regulate and supervise the acquisition, installation, operation and maintenance of a joint cable communication system, either by purchase, lease, license or combination thereof. The Commission will also serve as an advisory body to the Jurisdictions on matters relating to cable communications and represent the Jurisdictions on regional, state or national cable communication matters.

2. Definitions.

2.1 "*Cable Communications System*" or "*System*" (also referred to as "*Cable Television System*," "*Cable System*," "*CATV System*" or "*Community Antenna TV System*") means a facility which crosses or uses public rights-of-way, and provides cable service to multiple subscribers within a community by means of a set of closed transmission paths and associated signal generation, reception and control equipment. Such term does not include:

2.1.1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2.1.2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way;

2.1.3. A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

2.1.4. Any facilities of any electric utility used solely for operating its electric utility system.

2.2 "Cable Company" means any person who is obligated by a franchise agreement to provide for construction, operation and maintenance of a cable communications system operated on a unified basis within the territories of the parties of this Agreement.

2.3 "Person" means an individual, partnership, association, joint stock company, trust, corporation or organizational entity.

3. Commission Creation and Powers.

3.1 A Joint Commission, the "Mid-Willamette Valley Cable Regulatory Commission" is created to carry out the purposes set forth in this Agreement. The Commission is vested with all the powers, rights and duties necessary to carry out these purposes that are vested by law in each Jurisdiction, its officers and agencies, subject only to the limitations contained in this Agreement.

3.2 Except as provided in Article 4 of this Agreement, the Commission shall have authority to act on behalf of the Jurisdictions and in its own right to oversee and regulate any cable communications system operated pursuant to the franchise agreements entered into by the Jurisdictions, to the extent that the Jurisdictions have assigned such responsibilities to the Commission. The Commission shall have authority to carry out all delegated functions and duties possessed by the Jurisdictions either as reserved in the franchise agreements, or as otherwise provided by law relating to such agreements, subject to the specific provisions of this Agreement.

3.3 County shall provide staff and legal support to the Commission, administer its policies, and oversee operation of the system by those engaged to perform such functions, as detailed in the Commission's Bylaws.

4. Powers Retained by Jurisdictions.

4.1 Full Authority. In the following areas, the Jurisdictions reserve the authority to act on their own behalf. Each Jurisdiction agrees to make a good faith effort to weigh the impact of such actions on the overall operation and continuity of the system,

and each Jurisdiction agrees to take no action in those areas without prior consideration of the matter by the Commission.. The matters subject to this full power authority are:

4.1.1. Revocation, termination, extension, amendment or renewal of a franchise agreement;

4.1.2. Any decision to "buy out" a cable company's interest in a system;

4.1.3 Any action regarding the adoption of any legislation by the Jurisdictions, the amendment of this Agreement, or the making of any additional cable communications franchise agreement; and

4.1.4. Any decision considering a change of ownership or control of the system or the cable company.

4.1.5. Any sanctions to be imposed on a cable company for failure to comply with the terms of the franchise agreement;

4.1.6. Adoption, amendment or repeal of regulations governing the operation of the system; and

4.1.7. Proposed change in equipment, system design, services, capital expenditures, staffing levels, marketing programs or similar commitments made by the cable company in the franchising process and incorporated in a franchise agreement, where the change proposed is to substitute an "equal to or better" alternative or is otherwise authorized by the franchise agreement.

5. Commission Members.

5.1. The Governing Body. The governing body of the Cable Regulatory Commission shall be a body consisting of two members of the Common Council of the City of Salem and one member of the Marion County Board of Commissioners.

5.2. Quorum and Voting. A majority of the duly appointed and qualified members of the Commission shall constitute a quorum; provided, however, that Commissioners appointed by both Jurisdictions are among that majority. If a member of the Commission is unable to attend a Commission meeting, the member of the Commission that is unable to attend may appoint another member of the governing body of the Jurisdiction of which the Commissioner is a member to serve in the Commissioner's absence (a "Substitute Commissioner"). No action shall be taken by the Commission except on a majority vote of a quorum of the Commission (including any Substitute Commissioners); provided, however, that if only one Jurisdiction is represented at a duly

called meeting of the Commission, the Commissioners present shall constitute a quorum for the transaction of emergency business. The Commission shall include in its bylaws a definition or designation of "emergency business."

5.3 Term of Office and Succession. Commissioners shall be appointed by the governing body of the Jurisdiction they represent, and serve at the pleasure of their respective governing bodies for so long as they remain qualified. A Commissioner who ceases to be a member of the governing body of the Jurisdiction which appointed that Commissioner shall also cease to be a Commissioner of the Cable Regulatory Commission. That person's seat is vacant, and that person is no longer a qualified Commissioner. A vacancy on the Commission shall be filled by the governing body of the Jurisdiction whose position on the Commission became vacant.

6. Meetings, Bylaws, Officers.

6.1. Meetings to be Public. Meetings of the Commission shall be conducted pursuant to the Oregon Public Meetings law.

6.2. Bylaws. The Commission shall adopt bylaws governing its procedures and including:

6.2.1. Whether regular meetings will be held and if so, their frequency;

6.2.2. The method and manner of calling special meetings;

6.2.3. The method and term of election of officers and appointment of staff;

6.2.4. What constitutes "emergency business"; and

6.2.5. The procedures for execution of written and legal documents.

6.3. Officers. One of the Commissioners appointed by the City of Salem, shall be designated by the City as Chair of the Commission. The Vice-Chair shall be the Commissioner appointed by the County. The Chair or the Vice-Chair, in the Chair's absence, shall preside at all meetings, call special meetings, and determine the order of business consistent with the Commission's Bylaws.

7. Receiving and Distributing Funds.

7.1. The Commission shall comply with applicable state and local laws as to budget preparation and for audit of its books and records. All books and records shall be open to inspection by either member Jurisdiction or its designate.

7.2 The Commission shall receive from the Jurisdictions all franchise fee payments provided for in this Agreement. The Jurisdictions shall each charge a

franchise fee of 5 percent of the cable companies' gross revenues. Each Jurisdiction shall remit to the Commission 40 percent of the franchise fees it collects. Payments due the Commission shall be monthly in arrears on or before the last day of the following month.

7.3 All fee payments and any other revenue received by the Commission from whatever source shall be included in its budget as resources. The Commission shall have authority to apply revenues to any lawful use thereof, subject to the terms and conditions of the Agreement and the franchise agreements pertaining to the system from which the revenues are derived. This paragraph is not intended to allow the use of franchise fees for any purpose in violation of any applicable law, ordinance, rule or other regulation.

7.4 The Jurisdictions shall remit 100% of Public, Educational, and Government ("PEG") fees collected from a cable franchisee to the Commission for the provision of PEG services pursuant to the franchises of the Jurisdictions.

8. Effective Date.

8.1. This Agreement shall become effective upon its adoption by both Jurisdictions.

9. Duration and Termination.

9.1. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, until terminated as provided in Section 9.3.

9.2. Withdrawal. Either Jurisdiction may withdraw from this Agreement effective July 1 of any year provided that it gives written notice to the other Jurisdiction not later than the preceding March 31. Except as provided in the subsection, neither Jurisdiction shall withdraw from this Agreement without the written consent of the other Jurisdiction. Upon withdrawal, the Jurisdiction so withdrawing shall have no further obligation to pay any portion of cable franchise fees collected; and shall have no claim to any part of the assets of the Commission, except as provided in Section 9.4. Withdrawal by a Jurisdiction shall result in termination of this Agreement, and the rights of both parties shall be governed by the provisions of Section 9.4.

9.3. Termination. This Agreement, and the Cable Regulatory Commission which it creates, may be terminated by either of the following occurrences: 1) Mutual written agreement by both Jurisdictions; 2) Withdrawal of a Jurisdiction as provided in Section 9.2. Upon termination, all assets of the Commission shall be distributed as follows:

9.4. Distribution of Assets. Each Jurisdiction shall be entitled to a *pro rata* share of the net assets of the Commission, if any, based upon the ratio of its fee

contributions during the twelve months preceding the effective date of termination to the total of all such contributions made by both Jurisdictions entitled to share in the distribution of assets.

9.4.1. Each Jurisdiction shall notify the other Jurisdiction not later than 30 days after the effective date of termination if it desires to have any of the capital equipment belonging to the Commission. If the other Jurisdiction does not request the same item of equipment, the Jurisdiction which claimed it shall have it, and its value shall be deducted from its share of the Commission's assets. If the Jurisdictions cannot agree as to the value of equipment so distributed, the value shall be determined by binding arbitration as follows: Each Jurisdiction shall appoint one individual to act as arbitrator. The arbitrators thus selected shall, between themselves, select one additional arbitrator. The arbitrator thus selected shall be an attorney at law. The panel of arbitrators shall determine among themselves the time and place of a hearing at which either Jurisdiction may be heard regarding the value of the equipment at issue.

9.4.2. Except as to equipment subject to paragraph 9.4.1. of this section, all assets of the Commission shall be liquidated. Equipment and supplies shall be disposed of according to the rules adopted by Marion County for the disposition of surplus property.

9.4.3. The Commission shall manage the liquidation and distribution of its assets in a manner approved by the Jurisdictions; provided that the sale or auction of surplus property shall be administered by Marion County.

10. General Terms:

10.1. Severability. The terms of this Agreement are severable and a determination by any tribunal having jurisdiction over the subject matter of this Agreement that result in the invalidity of any part, shall not affect the remainder of the Agreement.

10.2. Fixed Asset Inventory. The Commission shall maintain a fixed asset inventory of all capital equipment and fixtures purchased with funds provided by or otherwise acquired for the benefit of the Cable Regulatory Commission. Upon request, the Commission will provide either Jurisdiction with a fixed asset inventory list within 30 days of the request.

10.3 Acquisition of Real Property. The Commission may provide funds to the Jurisdictions for the acquisition of real property associated with this Agreement in accordance with applicable law. The proportion of ownership in real

property acquired using Commission funds between the Jurisdictions shall be consistent with the distribution of assets set forth in section 9.4 above.

10.4. Interpretation. The terms and provisions of this Agreement shall be liberally construed in accordance with its general purposes.

10.5. Adding Member Units of Government. Additional cities and counties may be added as Jurisdictions under this Agreement and be entitled to participation on the Commission. Such additions shall be made only by written amendment as provided in Section 10.5.

10.6. Amendments. The terms of this Agreement may be amended only in writing, authorized by and signed on behalf of the governing bodies of all member Jurisdictions.

IN WITNESS WHEREOF, the Jurisdictions have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

MARION COUNTY:

CITY OF SALEM:



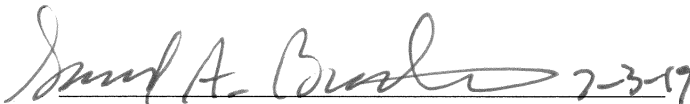
Chair

7-3-19

Date

City Manager

Date



Commissioner

Date

Not Present At Meeting

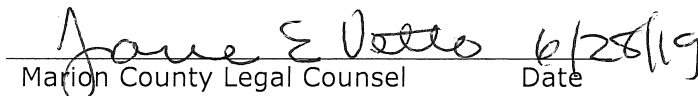
Commissioner

Date



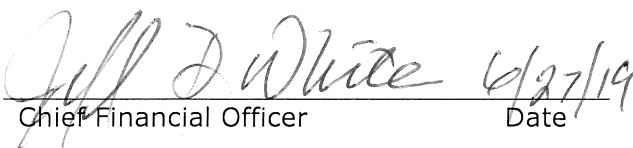
Marion County Contracts

Date



Marion County Legal Counsel

Date



Chief Financial Officer

Date