



## **Agenda Report 2014-08-11-03**

Date: August 1, 2014

To: John Kovash, Mayor  
Members, West Linn City Council

From: Megan Thornton, Assistant City Attorney

Through: Kirsten Wyatt, Assistant City Manager *KW*

Subject: Ordinance Granting a Franchise to Clackamas County for Dark Fiber Optic Cable Network

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### **Purpose**

This Ordinance grants a nonexclusive franchise to Clackamas County to construct dark fiber optic cable broadband infrastructure and authorizes the City Manager to sign a franchise.

### **Question(s) for Council:**

Does the Council wish to grant a nonexclusive franchise to Clackamas County for dark fiber optic cable broadband infrastructure?

### **Public Hearing Required:**

None required.

### **Background & Discussion:**

Clackamas County ("County") approached the City about entering into a franchise agreement for the construction of dark fiber optic cable in June. The County would like to obtain a franchise so that it can provide dark fiber optic cable ("dark fiber") to the West Linn Wilsonville School District by utilizing the City's rights of way to house the cable. The dark fiber is fast, secure, and reliable, which could be a significant benefit to residents and to the City when the dark fiber becomes available to City buildings.

This franchise is only for the construction of the dark fiber infrastructure; the proposed franchise does not give the County authority to provide a service, such as internet, over the dark fiber network. The County charges a fee of approximately \$3,000 per year for a connection to the dark fiber. Other service providers utilize the County's dark fiber to provide services, and those providers would be required to get their own franchise with the City.

The proposed franchise with the County is for a ten year term, with one renewal term of ten years, for a total possible length of 20 years. The franchise does not include compensation as a percentage of revenue, but instead, the County agrees to provide the City with connections to the dark fiber network. Although there are significant costs to the City to construct the physical connections necessary to connect city buildings to the dark fiber, which means it may take four years or more to construct the necessary connections, provision of connections without cost during the term of the franchise will make constructing the connections more feasible.

### **Related City Policies**

City Charter Chapter VIII, Ordinances: ordinance adoption process.

**Budget Impact:**

There are potential cost savings in the long term if city buildings get connected to the dark fiber; however, there are substantial construction costs to make that connection. The franchise does not require the City to expend funds.

**Council Options:**

1. Move to approve First Reading and set the matter for Second Reading.
2. Move to approve First Reading, and if unanimous, move to approve Second Reading and adopt the ordinance.
3. Postpone consideration of the proposed ordinance.

**Staff Recommendation:**

Staff recommends adoption of “An Ordinance Granting a Nonexclusive Franchise to Clackamas County to Construct Dark Fiber Optic Cable Broadband Infrastructure, Approving the Form of a Franchise Agreement, and Authorizing Signature of the Agreement.”

**Potential Motion:**

**Council:** *Move to approve First Reading of “An Ordinance Granting a Nonexclusive Franchise to Clackamas County to Construct Dark Fiber Optic Cable Broadband Infrastructure, Approving the Form of a Franchise Agreement, and Authorizing Signature of the Agreement,” and set the matter for Second Reading.*

*If the motion passes unanimously, the Council may: Move to approve Second Reading for “An Ordinance Granting a Nonexclusive Franchise to Clackamas County to Construct Dark Fiber Optic Cable Broadband Infrastructure, Approving the Form of a Franchise Agreement, and Authorizing Signature of the Agreement,” and adopt the ordinance.*

**Attachments:**

1. Ordinance 1629

**ORDINANCE NO. 1629  
WEST LINN, OREGON**

**AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CLACKAMAS COUNTY TO  
CONSTRUCT DARK FIBER OPTIC CABLE BROADBAND INFRASTRUCTURE, APPROVING THE  
FORM OF A FRANCHISE AGREEMENT, AND AUTHORIZING SIGNATURE OF THE AGREEMENT**

**WHEREAS**, Clackamas County, Oregon, desires to construct broadband infrastructure by installing dark fiber optic cable throughout the City of West Linn; and

**WHEREAS**, the dark fiber optic cable can be utilized to connect public buildings, such as schools, police and fire stations, libraries, and medical facilities; and

**WHEREAS**, there are significant benefits to the City and its residents once connected to the County's dark fiber optic cable, such as providing a fast, secure, and reliable connection; and

**WHEREAS**, the City has the authority to control the use of rights of way within the City and to obtain reasonable compensation for the use of rights of way pursuant to West Linn Municipal Code 9.020; and

**WHEREAS**, the West Linn Municipal Code provides that franchises shall be granted by an agreement approved by Council under an ordinance and that individual franchises do not need to be included in the Municipal Code.

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**Section 1. Grant of Franchise.** The City of West Linn grants Clackamas County (the "County") a nonexclusive franchise under which the County may place and maintain facilities in rights of way and certain other public places within the City of West Linn.

**Section 2. Terms of Agreement.** The agreement between the City of West Linn and the County attached as Exhibit A and incorporated by this reference is approved and provides the terms of the franchise.

**Section 3. Signature Authority.** The Council authorizes the City Manager to sign a franchise agreement substantially in the form of Exhibit A on behalf of the City.

**Section 4. Codification.** This ordinance shall not be codified in the West Linn Municipal Code.

**Section 5. Effective Date.** This Ordinance and the Franchise, attached as Exhibit A, become effective 30 days after Council passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the 11th day of August, 2014, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOHN KOVASH, MAYOR

ATTEST:

\_\_\_\_\_  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

DRAFT

**FRANCHISE AGREEMENT  
FOR BROADBAND INFRASTRUCTURE**

**City:** City of West Linn, an Oregon municipal corporation  
**Franchisee:** Clackamas County, a political subdivision of the State of Oregon, its successors and assigns  
**Term:** **Ten (10) year initial term with one (1) ten (10) year renewal**

**RECITALS**

1. Clackamas County Broadband Express installs and maintains dark fiber optic cable.
2. Clackamas County is extending dark fiber optic cable throughout the County to make its network available to public agencies and private telecommunications companies through lease agreements.
3. The County desires to extend its dark fiber network through the City of West Linn.
4. The City believes it is advantageous to the City and its residents to allow opportunities for additional fiber network providers to install infrastructure to increase competition.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS.**

- 1.1. Emergency: a situation involving, or where the failure of Franchisee to act would result in:
  - 1.1.1. an unscheduled outage affecting one or more customers, or
  - 1.1.2. danger to public safety.
- 1.2. Facilities: Franchisee's lines, anchors, wires, cables, conduits, laterals, and other tangible components, fixtures and equipment necessary for the operation of Franchisee's dark fiber optic cable network.
- 1.3. Franchise: this Franchise Agreement as fully executed by the City and Franchisee and adopted by the City Council pursuant to an enacting ordinance.
- 1.4. Public rights of way ("Public ROW"): area upon, over, along, and across the surface of, and the space above and below the streets alleys, roads, highways, sidewalks, bridges, other public ways that the City has jurisdiction over, and public utility easements that are designated for providers of utility services and regulated under the West Linn Municipal Code.

**2. GRANT OF FRANCHISE.**

- 2.1. The City grants to Franchisee a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate a dark fiber optic cable network ("dark fiber network") within the City's Public ROW. Franchisee has the right to install, repair, maintain, upgrade and operate its Facilities. This Franchise is not exclusive, and nothing in this Franchise shall prevent the City from granting others rights and privileges to utilize the Public ROW.
- 2.2. All Facilities currently within the Public ROW, or installed during the Term, are covered by this Franchise and are deemed lawfully placed. The City may require relocation of Facilities in accordance with Section 8.

3. **TERM.** The Franchise Term (“Term”) shall be ten (10) years, beginning on the effective date of the implementing Ordinance. After the expiration of the initial ten year term, the Franchise shall automatically renew for an additional ten (10) year term unless either party gives notice to the other party of its intent to terminate the Franchise ninety (90) days before the Franchise expires.
4. **CHARTER AND GENERAL ORDINANCES APPLY.**
  - 4.1. To the extent authorized by law, this Franchise is subject to the Charter of the City of West Linn and the City’s general ordinance provisions, including the applicable provisions of the West Linn Municipal Code, Community Development Code, and Public Works Standards, and state statutes and regulations in existence during the Term.
  - 4.2. This Franchise shall not be construed to give Franchisee any credit or exemption from any nondiscriminatory, generally applicable:
    - 4.2.1. business tax, or other tax levied now or in the future,
    - 4.2.2. tax on Franchisee's taxable real or personal property, or
    - 4.2.3. permit fees or inspection fees required as a condition of construction for any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.
5. **FRANCHISEE’S WORK IN PUBLIC ROW.** Nothing in this Franchise shall waive the requirements of the various codes and ordinances of the City regarding permits, permit fees, business licenses, fees generally applicable to other similar businesses operating within the City, or the manner of construction unless the Franchise language specifically states otherwise.
6. **CITY AUTHORITY OVER PUBLIC ROW.** Nothing in this Franchise shall in any way be interpreted to prevent, or in any way limit, the City from:
  - 6.1. modifying or performing any work in its Public ROW,
  - 6.2. granting other franchises for use of Public ROW,
  - 6.3. adopting general ordinances regulating the use of or activities in the Public ROW, or
  - 6.4. exercising its rights, privileges or property interest in its Public ROW, whether currently owned or acquired in the future.
7. **CONSTRUCTION, MAINTENANCE, AND REPAIR OF PUBLIC ROW.**
  - 7.1. Franchisee shall perform work in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted by the City, or any other authority having jurisdiction over Public ROW. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City that own or maintain facilities that may be affected by the proposed excavation or construction.
  - 7.2. Franchisee shall obtain all necessary permits for excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City. The plans will be evaluated by the standards applied to the construction of other similar facilities in the City.
  - 7.3. Franchisee may excavate or construct, as approved by the City, in any Public ROW for the purpose of placing, erecting, laying, maintaining or repairing Facilities. Franchisee shall repair and replace the excavated portion of the Public ROW in accordance with the West Linn Public Works Standards to at least the same condition that it was in prior to excavation. If Franchisee fails to restore the Public ROW to at least the same

condition that it was in prior to excavation, the City shall give Franchisee written notice that the Public ROW must be restored by a specific date, not to exceed thirty (30) days from the date of the written notice. The City reserves the right to make necessary repairs and charge the cost to Franchisee if Franchisee fails to restore the Public ROW within the applicable timeframe. The City Engineer may also excuse Franchisee from restoring the Public ROW if the work is part of a coordinated project requiring another person to restore the Public ROW.

7.4. Franchisee shall construct and maintain its Facilities so that the Facilities do not interfere with City sewer systems, water systems, stormwater systems, or other City facilities.

## **8. RELOCATION OF FACILITIES.**

### **8.1. Permanent Relocation Required by City.**

8.1.1. *Relocation of Same Facilities.* This subsection covers permanent relocation of overhead Facilities that will remain overhead, and underground Facilities that will remain underground. The City shall have the right to require Franchisee to change the location of Facilities located in the Public ROW when it is necessary for any public project or public improvement in the Public ROW, and, unless otherwise agreed, the expenses of relocation shall be paid by Franchisee. The City agrees to provide a suitable location in the Public ROW, if such space is available, as mutually agreed, for Facilities, to accommodate and permit relocation and upgrade of Facilities in order to maintain sufficient service.

8.1.2. *Undergrounding Required.* As permitted by, and in accordance with City ordinance and any applicable law, administrative rule, or regulation, the City may require Franchisee to convert any overhead Facilities to underground Facilities at the same or different locations. Any such underground relocation shall be consistent with applicable long-term development plans or projects of the City, or as approved by the City. The expense of relocation or removal shall be paid by Franchisee. However, if the City requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation that is necessary or convenient for a public project, the subsequent relocation shall be at the expense of the City.

8.1.3. *Notice.* Except in the event of a public Emergency, City shall provide a minimum of ninety (90) days written notice to remove/relocate Facilities. If Franchisee fails to remove or relocate any such Facilities within ninety (90) days after the date established by the City, the City may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations.

8.2. Temporary Relocation at Request of City. This subsection covers temporary relocation of overhead Facilities that will remain overhead, as well as underground Facilities that will remain underground. The City may require Franchisee to temporarily remove and relocate Facilities by giving a minimum of sixty (60) days written notice to Franchisee. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, or a temporary construction easement that allows the Franchisee to place its Facilities on the easement in order to maintain sufficient service until such time as the Franchisee moves its Facilities to their permanent

location. The cost of temporary removal or relocation of Facilities that is necessary or convenient for public projects, as well as cost of replacing Facilities in their permanent location, shall be paid by Franchisee. However, if the City requests a subsequent relocation of all or part of the same Facilities less than two years after the initial relocation, that is necessary or convenient for a public project, the subsequent relocation shall be at the expense of the City.

**8.3. Permanent and Temporary Relocation at Request of Third Party.**

In the event that any relocation of Franchisee Facilities is requested by or is to accommodate a third party, Franchisee shall seek reimbursement from the third party and not from the City. Such relocation shall be approved by the City. Third party shall provide a minimum of ninety (90) days written notice to relocate Facilities. If Franchisee fails to remove or relocate any such Facilities within ninety (90) days, the third party may cause or effect such removal or relocation, performed by a qualified contractor, in accordance with applicable local, state and federal laws and regulations.

**9. EMERGENCY REPAIRS.** Franchisee may conduct emergency work at any time; however, Franchisee must provide the City Engineer with written or oral notice of emergency work as soon as reasonably possible, and no later than five (5) business days, after the emergency work has commenced. If permits are required by City, Franchisee shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the Emergency. In any event, within thirty (30) days of beginning emergency repairs or construction, Franchisee shall provide the City Engineer with a map in electronic, read-only format of the general location of excavations, repaving, and new facilities.

**10. REMOVAL OF FACILITIES.** If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Facilities and shall provide Franchisee sixty (60) days to comment on such requirement to remove Facilities. Following consideration of any such comments, the City Manager may issue an order requiring removal of Facilities within nine (9) months after such order is declared.

**11. INSURANCE.** Franchisee shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Franchisee's ownership and use of Facilities and the Public ROW:

11.1. Commercial Liability. Commercial General Liability insurance covering all operations by or on behalf of Franchisee for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate.

11.2. Automobile Liability. Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than Two Million Dollars (\$2,000,000.00) per accident.

11.3. Workers' Compensation Liability. Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00). With the exception of Workers' Compensation and Employers Liability coverage, Franchisee shall name the City as an additional insured on all applicable policies. All insurance policies shall provide that they shall not be



canceled or modified unless thirty (30) days prior written notice is provided to the City. Franchisee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.

11.4. Index for Minimum Coverage. Franchisee is responsible for ensuring that its insurance coverage satisfies the increased minimums of this subsection. The minimum coverages required in subsections 11.1 through 11.3 shall be automatically adjusted to track percentages of statutory increases to the City's exposure under the Oregon Tort Claims act. On July 1, 2015, and every July 1 for each subsequent year this Franchise is in effect, Franchisee shall ensure it has insurance coverage in the amount stated in subsections 11.1 through 11.3, increased in accordance with State law by the lesser of:

11.4.1. Three percent (3%), or

11.4.2. The percentage increase, if any, in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

11.5. In Lieu of Insurance. Franchisee is responsible for ensuring that its insurance coverage satisfies subsections 11.1 through 11.3 and the increased minimums in subsection 11.4. In lieu of the insurance policies required by this Section, Franchisee shall have the right to self-insure any and all of the coverage in this Section. If Franchisee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section and in a form acceptable to the City. Franchisee shall provide proof of self-insurance to the City before this Franchise takes effect and upon future request by the City.

**12. TRANSFER OF FRANCHISE.** Franchisee may not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its consent in a duly passed ordinance. Prior to any proposed transfer, Franchisee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this Franchise. Upon obtaining consent of the City Council, this Franchise shall bind such third party. This Section does not prohibit:

12.1. the use of Franchisee's property as collateral for financing purposes in the ordinary conduct of Franchisee's, or an affiliate of Franchisee's, business;

12.2. the sale of tangible assets of the Franchisee in the ordinary conduct of Franchisee's business; or

12.3. a transfer to a transferee that is a parent of Franchisee, an affiliate of Franchisee, has a majority of its beneficial ownership held by Franchisee or a parent of Franchisee and whose primary business is .

**13. INDEMNIFICATION.** To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a direct and proximate result of any willful, intentionally tortious, negligent, or malicious acts and/or omissions of Franchisee, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. Franchisee shall not

indemnify the City for negligent acts of the City that are outside the scope of this Franchise. The obligations imposed by this Section shall survive termination of this Franchise.

#### **14. COMPENSATION.**

14.1. In consideration for permission to use the Public ROW of the, the Franchisee shall provide the City with **X** number of connections to the Franchise Facilities for a cost of zero (\$0) per month upon request. City and Franchisee acknowledge that there may be years for which the City will request zero or a reduced number of connections; however, such a waiver shall not preclude the City from requesting connections in subsequent years. The compensation under this section shall not be in lieu of any general applicable ordinance or resolution imposing a fee or charge for use of the Public ROW.

14.2. If prior to expiration of this Franchise negotiations for a new franchise agreement are not completed, the compensation shall survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise.

**15. ANNEXATION.** Upon the annexation of any territory to the City, the rights granted in this Franchise shall extend to the annexed territory. All Facilities owned, maintained, or operated by Franchisee located within any Public ROW of the annexed territory shall be subject to all of the terms of this Franchise.

#### **16. RIGHT TO INSPECT.**

16.1. Records. Franchisee shall provide, upon request, maps of the Franchisee's Franchise Facilities, and any other related information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way and determining compliance with the terms of this Franchise. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

16.2. Construction. Any work completed by Franchisee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location and in accordance with City requirements and standards according to Franchisee's permit issued by the City. Non-conforming work will be corrected with work conforming to the applicable standards at no cost to the City. If Emergency work has been completed by Franchisee in the Public ROW, and the City determines such work was not completed in a City approved location or in accordance with City requirements and standards, the City shall notify Franchisee and provide Franchisee with sixty (60) days after the Emergency has passed to reperform the work in a City approved location.

#### **17. TERMINATION.**

17.1. In addition to any other rights provided for in this Franchise, the City reserves the right to terminate this Franchise in the event that Franchisee materially violates any material provision of this Franchise, including, but not limited to:

17.1.1. Failure to maintain the liability insurance or self-insurance required under Section 11;

17.1.2. Failure to provide copies of requested information or the right to inspect construction under Section 16; or

- 17.1.3. Failure to substantially comply with the construction requirements of Section 7.
- 17.2. Notice and Opportunity to Cure. The City shall provide Franchisee thirty (30) days prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Franchisee cures the basis for termination or if Franchisee initiates efforts satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its remedy rights. If Franchisee fails to cure the basis for termination or if Franchisee does not undertake and/or maintain efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section or Section 18.3.

## **18. MISCELLANEOUS PROVISIONS.**

- 18.1. Acceptance. Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, Franchisee shall file with the City Recorder its written unconditional acceptance or rejection of this Franchise. If Franchisee files a rejection, or fails to file a written unconditional acceptance within thirty (30) days, this Franchise shall be null and void.
- 18.2. Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or enacted in the future. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law. Nothing contained in this Section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.
- 18.3. Remedies and Penalties not Exclusive. All remedies and penalties under this Franchise, including termination, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recovery or enforcement by any other remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any City ordinance or resolution and to avail itself to any and all remedies available at law or in equity. Failure to enforce any term, condition or obligation of this Franchise shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise. A specific waiver of a particular breach of any term, condition or obligation of this Franchise shall not be a waiver of any other, subsequent or future breach of the same or any other term, condition or obligation of this Franchise.
- 18.4. Authority. The parties acknowledge that the persons executing this Franchise on behalf of each entity have the legal power, right, and actual authority to bind their respective entities to the terms and conditions of this Franchise.
- 18.5. Nonwaiver. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.
- 18.6. Attorney's Fees. In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may

adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

- 18.7. Governing Law. The provisions of this Franchise shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Franchise must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.
- 18.8. Notice. All notices shall be made in writing and may be given by personal delivery, by mail, or facsimile transmission. Notices sent by mail should be addressed as follows:

<b>City of West Linn</b>	
Attn: Finance Department	<b>Copy to:</b> Public Works Department
22500 Salamo Road	Address: 22500 Salamo Road
West Linn, OR 97068	West Linn, OR 97068
Phone: 503-657-0331	Phone: 503-722-5500
Fax: 503-650-9041	Fax: 503-656-4106

  

<b>Clackamas County, Franchisee</b>	
Manager, Clackamas Broadband Express Clackamas County Technology Services	<b>Copy to:</b> Chief Information Officer Clackamas County Technology Service
121 Library Court Oregon City, OR 97045	121 Library Court Oregon City, OR 97045
Phone: 503-722-6656	Phone: 503-655-8322
Fax: 503-655-8255	Fax: 503-655-8255

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, certified mail, return receipt requested. In all other instances, notice shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to receive notice by giving written notice pursuant to this paragraph.

- 18.9. Severability. In the event any provision or portion of this Franchise is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Franchise shall remain in full force and effect and shall in no way be affected or invalidated thereby.
- 18.10. Captions. The captions to sections of this Franchise are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning or interpretation of any section or provision of this Franchise.
- 18.11. Complete Agreement; Amendment. This Franchise and attached exhibits, if any, constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Franchise shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no unspecified understandings, agreements, or representations, oral or

written, regarding this Franchise. Franchisee by the signature of its authorized representative, acknowledges that he has read this Franchise, understands it and agrees to be bound by its terms and conditions.

**INTENDING TO BE BOUND**, the parties executed this Franchise on the date(s) shown below.

**CLACKAMAS COUNTY**

**CITY OF WEST LINN**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Chris Jordan, City Manager*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

DRAFT