

## **ORDINANCE NO. 229-14**

### **AN ORDINANCE GRANTING TO EASTERN OREGON TELECOM, LLC, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF IRRIGON, OREGON**

#### **THE CITY OF IRRIGON ORDAINS AS FOLLOWS:**

##### **Section 1: Definitions.**

**City:** The City of Irrigon, Oregon.

**Franchisee:** Eastern Oregon Telecom, LLC

**Gross Revenues:** Revenues received by Franchisee from the use of its Telecommunications Network within the City for the provision of Telecommunications Services and to provide television services using the internet protocol suite ("IPTV") should the franchisee choose to provide within the City, less net un-collectibles, and excluding proceeds or monies received by Franchisee from (a) the sale of bonds, securities or stocks, or (b) mortgages or other evidence of indebtedness. Gross Revenue will mean all local access revenue earned or derived by Grantee from the provision of Telecommunications Services within the City as defined under ORS 221.515, ORS 759.003, and ORS 403.105 (6)(a).

**Rights-of-way:** the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including rights-of-way held in fee, or by virtue of an easement or dedication.

**Telecommunications:** the transmission of information, between or among points specified by the user, without change in the form or content of the information as sent or received.

**Telecommunications Network:** infrastructure owned by Franchisee utilizing one or more facilities located within the City's rights-of-way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to Telecommunications Service.

**Telecommunications Service:** the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, without regard to the facilities used.

**Television Services (IPTV):** a system through which television services are delivered using Internet Protocol Suite over a packet-switched network instead of through traditional formats.

**Section 2: Grant of Franchise.** The City hereby grants to Franchisee in accordance with City of Irrigon Ordinance No. 165-06, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and franchise to erect, construct, operate, repair and maintain in, over, under, upon, along, and over the City's rights-of-way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and

equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications Network within the City. Before Franchisee may use or occupy any bridge, Franchisee shall first obtain permission from the City to do so and shall comply with any special condition(s) the City imposes for the public safety and health purposes on such use or occupation provided such special condition(s) is administered consistent with the provisions of City of Irrigon Ordinance No. 165-06, Section 6 of this franchise, Oregon statute and federal law. All facilities maintained by the Franchisee within the City on the date of acceptance of this ordinance shall be deemed covered by and in full compliance with this ordinance, and their location at such time hereby is approved; provided, however, that should any such facilities not be in compliance with all applicable specifications and standards set by federal, state or local statutes and regulations in effect on the date of acceptance of this franchise, Franchisee shall within a reasonable time period take actions necessary to bring such facilities into compliance with such regulations unless the City specifically waives the requirement as to a particular defect or class of defects.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other rights-of-way, by franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

#### Section 4: Term and Termination.

(a) This Franchise shall become effective after its enactment, upon the date the Franchisee files with the City Recorder an unconditional acceptance of all provisions of this Franchise. If the Franchisee fails to file such written acceptance within the thirty days after the date the Franchise is enacted, then this Franchise shall be of no further force or effect. If accepted by the Franchisee, the right, privilege, authority and franchise herein granted, and the obligations herein assumed, shall be effective between the Parties as of August 1, 2014 (the "Effective Date") and continue for a period of five (5) years, with an automatic renewal for one additional five (5) year period, unless sooner terminated as provided by this ordinance. Thereafter, this Franchise shall continue in full force and effect on a year-to-year basis until validly canceled or terminated as provided herein, or a new franchise agreement is negotiated between the parties.

(b) This Franchise shall not continue beyond the initial five (5) and additional five (5) year periods from Effective Date unless renewed by formal Resolution of the City Council for an additional ten (10) year period, ninety (90) days before the end of the period. Upon termination or expiration of the Franchise, and absent the grant of a new franchise to Franchisee, Franchisee shall, within one year, remove all its facilities from the City's rights-of-way. During such period, Franchisee shall remit to the City any payments due under this Franchise, as if this Franchise were in full force and effect. Should Franchisee fail to remove its facilities within such one year, or the City allows such facilities to be abandoned in place, the City may do so, and Franchisee shall immediately remit to the City the costs of such removal.



## Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from:

(i) modifying or performing any work in its rights-of-way, or granting other franchises for use of rights-of-way, or of adopting general ordinances regulating use of or activities in the rights-of-way consistent with applicable law and City of Irrigon Codes, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its rights-of-way, whether now owned or hereinafter acquired;

(ii) exercising with regard to this Franchise and the Franchisee, all authority to manage its rights-of-way or otherwise exercise its police powers now or hereafter granted to the City by federal or state statutes or the City charter.

(b) The Telecommunications Network Services shall be placed so that it does not interfere unreasonably with the use by the City and the public of the streets and bridges and in accordance with any specifications adopted by the City governing the location of facilities consistent with State and federal law.

The City may by resolution require the Franchisee to move or relocate any of its telecommunications network whenever:

(1) The movement or relocation is for the public convenience or necessity.

(2) The City finds the movement or relocation necessary for the construction, installation or maintenance of any public work or improvement, including works and improvements by state and other public agencies.

The Franchisee shall bear the expense of any movement or relocation of its telecommunications network required pursuant to this section as it relates to the public welfare and safety. If the movement or relocation is for any other reason or for the benefit of a third party, other than the City for the purposes above, such third party shall bear the expense and Franchisee shall have the right to require payment prior to commencement of the work. If the Franchisee fails to comply with any requirement of the City made pursuant to this section, within a reasonable time designated by the City, the City may remove or relocate the telecommunications network at the expense of the Franchisee. The City shall, however, use reasonable care to avoid unnecessary interruption in service and shall comply with all state and federal laws, rules and regulations, and applicable and lawful City charter, Code, Ordinances, and Resolutions.

(c) The compensation required by Section 11 of this ordinance to be paid by the Franchisee to the City shall be a credit against all rights-of-way charges and all license, occupation, business or excise taxes that the City may now or hereafter impose upon the Franchisee. Nothing contained in this franchise shall give the Franchisee any credit against (1) any ad valorem property tax now or hereafter levied against Franchisee's real or personal property

within the City, (2) against any local improvement assessment or (3) reimbursement or indemnity paid to the City unrelated to this Agreement.

Except as otherwise required by law, and subject to the requirements of Irrigon Ordinance No. 165-06, and Section 6 herein, nothing in this ordinance shall be construed to limit the right of the City to require the Franchisee to pay charges imposed by the City in connection with the issuing of a permit, making of an inspection, or performing any other regulatory service for or in connection with the Franchisee or its facilities, whether pursuant to this Franchise or any ordinance or resolution now in effect or hereafter adopted by the City, subject to ORS 221.515.

**Section 6: Competitively Neutral Application.** The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

**Section 7: The Telecommunications Network** shall at all times be maintained in a safe, substantial and workmanlike manner.

The location, construction, extension, installation, maintenance, removal and relocation of the Telecommunications Network shall conform to:

- (a) The requirements of state and federal statutes and regulations adopted pursuant thereto in force at the time of such work.
- (b) Such reasonable specifications in force at the time of such work as the City may from time to time adopt consistent with applicable state and federal statutes and regulations.

For the purpose of carrying out Section 7, the City may provide such specifications relating thereto as may be necessary for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time upon mutual agreement between parties.

The City reserves the right to determine the location of any construction, extension or relocation of any of the Telecommunications Network in order to avoid conflict with other facilities, and the Franchisee shall not continue with any construction, extension or relocation of any of its main service facilities upon notification by resolution of the City that the City disapproves of the location.

If required by the City, the Franchisee shall file with the City maps showing the location of any construction, extension or relocation of any of the Telecommunications Network and shall obtain from the City approval of the location and plans prior to commencement of work. The City may require the Franchisee to obtain a permit before commencing construction, extension or relocation of any of its Telecommunications Network.



Subject to the provisions of this ordinance, the Franchisee may make necessary excavations for the purpose of installing, maintaining and operating its Telecommunications Network. Except in emergencies, prior to making an excavation in the traveled portion of any street and bridge when required by the City, in an untraveled portion of any street or bridge, the Franchisee shall obtain from the City approval of the excavation and of its location.

Except as provided in this section, when any excavation is made by the Franchisee, the Franchisee shall promptly restore the affected portion of the street or bridge to the same condition in which it was prior to the excavation. The restoration shall be done in strict compliance with City specifications, requirements and regulations in effect at the time of such restoration. If the Franchisee fails to restore promptly the affected portion of a street or bridge to the same condition in which it was prior to the excavation, the City may make the restoration and the cost of making the restoration, including the cost of inspection, supervision and administration, shall be paid by the Franchisee.

The City may require that any excavation made by the Franchisee in any street or bridge be filled and the surface replaced by the City and that the cost thereof, including the cost of inspection, supervision and administration, shall be paid by the Franchisee.

The City may require the Franchisee to deposit with the City, prior to the excavation of any street or bridge, cash or adequate security, at the option of the Franchisee, to assure payment of the cost of filling any excavation in any street, bridge or public place, and restoring the affected portion thereof, including the cost of inspection, supervision and administration.

#### Section 8: Insurance.

(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within thirty (30) days of the effective date of this Franchise, Franchisee shall provide the City with evidence of insurance, with the City of Irrigon as an additional insured, executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible to indemnify the City as required by Section 10.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

- (1) workers' compensation insurance for all subject workers in compliance with ORS 656.017 and Irrigon Ordinance No. 165-06 (\$1,000,000);

(2) comprehensive general liability insurance with a combined single limit, or the equivalent, of not less than \$3,000,000 for each accident, and \$3,000,000, for each occurrence of bodily injury and \$3,000,000 for property damage, and automobile liability of not less than \$1,000,00 for each person and \$3,000,000 for each accident, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise; provided, however, that if at any time during the term of this Franchise the amounts herein provided are less than those provided under the Oregon Tort Claims Act, or any successor statute, Franchisee will increase the amounts of coverage to amounts not less than those provided under such Act or successor statute.

#### Section 9: Transfers and Change in Control.

(a) This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing by resolution, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give the City written notice of the proposed transfer.

- (i) The Franchisee shall have sixty (60) days to give notice of a transfer to the City
- (ii) Franchisee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment by the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(b) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a telecommunications system of the Franchisee or any affiliate of the Franchisee. The telecommunications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise. The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is telecommunications system operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee, or to a successor of Franchisee due to a merger or acquisition.

Section 10: Indemnification. Except as otherwise expressly provided in this ordinance, the Franchisee shall indemnify, protect and save the City, its officers, employees and agents, harmless



against any claim for injury or damage, and all loss, liability, cost or expense, including court costs and attorney's fees, growing out of or resulting, directly or indirectly, from the occupation or use of the streets or bridges by the Franchisee under this franchise. However, if the claim, loss, liability, cost or expense is the result of in whole or in part the negligence, gross negligence or intentional act of the City, this subsection shall not require the Franchisee to indemnify, protect and save the City or its officers, employees and agents harmless to the extent of the negligence, gross negligence or intentional act of the City, its officers, employees and agents. This indemnity shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Franchisee and City, but in such case limited to the amount of the claim for which City is entitled to indemnification

#### Section 11: Compensation.

(a) Franchise Fee. In consideration of use of the streets and rights-of-way of the City for the construction, operation, and maintenance of a telecommunications system within the Franchise area, the Franchise shall pay to City during the term of this Franchise an amount equal to five percent (5%) of the Franchisee's Gross Revenues generated within the City of Irrigon ("Franchise Fee") (Irrigon Resolution No. 06-23).

(b) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than forty-five (45) days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(c) Interest; No Accord. Late franchise fee payments will be subject to late fees calculated on the basis of the lesser of nine percent (9%) per annum or the highest amount allowable under applicable law of the amount past due. No acceptance of any payment shall be construed as 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 City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and verification by City.

#### Section 12: Right to Inspect Records.

(a) In order to verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The information or a signed statement verifying that no such information exists, along with any further directly related data which may be required by the City to adequately understand the information, shall be furnished by the Franchisee to the City within thirty days of when the City provides notice requesting such information, at the Franchisee's cost and expense. The City may inspect general maps of facilities built within the City and realated data at any time during business hours upon at least sixty (60) days prior written notice.

### Section 13: Right to Perform Franchise Fee Audit or Review; Default.

(a) In addition to all rights granted under Section 12, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than three (3) years after the date on which franchise fees for any period being audited or reviewed were due and is limited to one audit or professional review per time period. The cost of any such audit or review shall be borne by the City, except that if it is established that the Franchisee has made underpayment of 4% or more of the total Franchise fees due during the year or years subject to the audit required by this Franchise, then the Franchisee shall, within 30 days of being requested to do so by the City, reimburse the City for the full cost of the audit or review. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by Oregon law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder. City will review all documents in Franchisee's office and will not remove any documents, records or cds from a local Franchisee offices or City may request certified documents if Franchisee office is too far outside local commuting distance. Any such audit or review shall be conducted during normal business hours and shall be conducted only after 30 days advance written notice to Franchisee.

Section 14: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's rights-of-way, provided such inspections be done in the presence of Franchisee and does not impede Franchisee's business operations.

Section 15: Right to Require Removal of Property. At the expiration of the Franchise, or upon forfeiture or abandonment or revocation as provided for herein, the City shall have the right to require the Franchisee to remove, at Franchisee's own expense, all or any part of the telecommunications system from rights-of-way within the Franchise area. If the Franchisee fails to do so within one (1) year after receipt of notice from the City, the City may perform the work and collect the cost thereof from the Franchisee. Notwithstanding the other provisions of this Section, the Franchisee, by written notice to the City, may elect to abandon underground cable in place, in which event the Franchisee shall have no further obligation hereunder as to the abandoned cable; except that the City may nevertheless, by written notice within thirty (30) days of the abandonment notice, require the Franchisee to remove cable, at Franchisee's own expense, as deemed necessary by the City to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

### Section 16: Limited Waiver of Sovereign Immunity; Venue.

(a) The City may have sovereign or other immunities that might prevent or impair enforcement or enjoyment of the terms of this Franchise. Without making a general waiver, limitation or modification of such sovereign or other immunity, the City hereby expressly



grants, in favor of Franchisee, a limited, non-assignable waiver of its immunities for claims arising under this Franchise, it being the intent of the parties that the waivers herein provided shall result in the terms and conditions of this Franchise being enforced in a competitively neutral manner.

(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the Circuit Court for Morrow County, Oregon; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Pendleton, Oregon, with the parties stipulating to trial in Pendleton, Oregon.

(c) Notwithstanding any applicable statute of limitations or other law, these limited waivers of sovereign immunity shall expire when all obligations under this Franchise have been fully and completely performed, or the passage of twenty-four months from the termination of this Franchise, whichever is later.

Section 17: Limitation of Liability. Neither party shall be liable for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. 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, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. 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.

Section 19: Revocation. In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, under the following circumstances:

- (1) The failure of the Franchisee, after 60 days written notice and demand in writing, to perform promptly and completely each and every material term, condition and obligation imposed upon it under or pursuant to this ordinance;
- (2) the Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (3) the Franchisee is found to have engaged in fraud or deceit upon the City or any other persons;
- (4) the Franchisee fails to obtain and maintain any permit required by any federal or state regulatory body for the construction, maintenance and operation of its telecommunications system; provided, however, that the Franchisee shall be allowed a reasonable time to cure failure to obtain any permit, and that such permit is material to the operation of Franchisee's telecommunications system or the City's management of its rights-of-way; or

- (5) the Franchisee fails to maintain the full amount of its insurance as required under the terms of this Franchise.
- (6) the Franchisee abandons all facilities within the City Right-of-Way consistent with Ordinance No. 165-06.

Section 20: Notice. Any notice provided for under this franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; or (2) sent overnight by commercial air courier. Notice shall be sent to the following address, or such other address as each party may specify in writing:

City Manager City of Irrigon P.O. Box 428 Irrigon, OR 97844 Phone: (541) 922-3047 Facsimile: (541) 922-9322	To the Franchisee: Eastern Oregon Telecom, LLC PO Box 848 Hermiston, OR 97838 Facsimile: (541) 564-4342
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Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein or one business day after shipment by commercial air courier.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. The provisions of this Franchise are severable; if any section, subsection, sentence or clause shall be found by a court of competent jurisdiction to be invalid, unconstitutional or is clearly and specifically preempted by federal or state laws, the remaining sections, subsections, sentences, or clauses shall remain in full force and effect, unless the effect of such invalidity, unconstitutionality or preemption effects a material alteration in the benefit of a party's bargain contained herein. Should any provision be declared invalid or unconstitutional, or be preempted, the parties shall enter into negotiations within ten days of final judgment or effective date of the law regarding any such matter, and make a good faith effort to reform or replace such provision or part thereof with a valid and enforceable provision that comes as close as possible to providing the parties the benefit of its bargain as originally expressed herein.

Section 23: Waiver.

(a) The City is vested with the power and authority to reasonably regulate and manage its rights-of-way in a competitively neutral and non-discriminatory manner and in the public interest. 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.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to



object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

(c) All remedies and penalties under this Franchise, including termination, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise, including termination, are not exclusive and the City and Franchisee reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity.

Section 24. Tree Trimming. The Franchisee may, at its own expense, trim trees, which overhang the streets, bridges and public places in the manner and to the extent necessary to provide adequate clearance and safety for its facilities. However, except in an emergency, no trimming shall be undertaken without giving the adjacent property owner five (5) business days prior notice in order to give them a reasonable opportunity to accomplish the trimming himself at their own expense. All trimming shall be carried on in strict conformity with any regulations heretofore or hereafter established by the City.

Upon request by the Franchisee, the City may perform any tree trimming necessary to provide adequate clearance and safety for the facilities of the Franchisee, and the cost thereof, including the cost of inspection, supervision and administration, shall be paid by the Franchisee.

Section 25. Reservation of Rights. The City reserves the right to exercise, with regard to this franchise and the Franchisee, all authority now or hereafter granted to the City by state statutes. All rights of the City under the City charter are reserved to the City and provisions of the City charter applicable hereto hereby are incorporated by reference and made a part of this franchise.

In entering into this Franchise, neither the City's nor Franchisee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Franchise, neither the City nor Franchisee waive any rights, but instead expressly reserves any and all rights, remedies, and arguments the City or Franchisee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality of any present or future laws, ordinances and/or rules or regulations.

Section 26. Additional Fees. Nothing in this ordinance shall be construed to limit the right of the City to require the Franchisee to pay charges imposed by the City in connection with the issuing of a permit, making of an inspection, or performing any other service for or in connection with the Franchisee or its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or hereafter adopted by the City, in accordance with an consistent with Oregon law, including but not limited to ORS 221.515.

Section 27. Remedies Non-Exclusive. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and each party reserves the right to enforce the penal provisions of any

ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or objection imposed upon the Franchisee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the City or Franchisee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other terms, condition or obligation, or as a waiver of the term, condition or obligation itself.

PASSED by the City Council and approved on 7/15<sup>15</sup>~~17~~, 2014.  
or

APPROVED:

By: Sam Heath  
Mayor

ATTEST:

[Signature]  
City Manager



ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or objection imposed upon the Franchisee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the City or Franchisee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other terms, condition or obligation, or as a waiver of the term, condition or obligation itself.

PASSED by the City Council and approved on 7/15/14 2014.

APPROVED

By Sam Heath  
Mayor

ATTEST

[Signature]  
City Manager

Eastern Oregon Telecom  
[Signature]  
Joseph Franell  
CEO  
7/21/14