

**ORDINANCE NO. 370-2021**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE SERVICE FRANCHISE  
TO COMCAST OF OREGON I**

**WHEREAS**, the City of Hubbard has the authority to regulate and franchise cable television services; and

**WHEREAS**, under federal law, a cable operator must have a franchise to provide cable services within the City; and

**WHEREAS**, Comcast of Oregon I has requested a cable franchise agreement from the City to provide cable services within the City; and

**WHEREAS**, the City finds that the terms and conditions in the proposed franchise are reasonable to meet the future cable-related community needs and interest and are in the best interest of the City.

**NOW, THEREFORE**, the City of Hubbard ordains as follows:

Section 1. The City hereby grants Comcast of Oregon I a non-exclusive franchise attached as Exhibit A.

Section 2. In order to enable timely provision of services to residents of the city, an emergency is declared and this ordinance will take effect immediately upon its adoption.

Whereupon, the Mayor declared the motion to be carried and the Ordinance adopted.  
Passed and approved by the City Council of the City of Hubbard this \_\_\_\_ day of \_\_\_\_\_, 2021, by the following votes:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

\_\_\_\_\_  
Charles Rostocil, Mayor and/or  
James Audritsh, City Council President

ATTEST:

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Vickie Nogle, Director of Administration/City Recorder

APPROVED BY THE CITY ATTORNEY:

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Beery, Elsner & Hammond, LLP

# **"EXHIBIT A"**

## **Ordinance No. 370-2021**

### **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Hubbard, Oregon (hereinafter, "City," "Franchising Authority," or "Grantor") and Comcast of Oregon I (hereinafter, "Grantee").

The City, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System (as defined herein) on the terms and conditions set forth herein.

### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act").

1.1. "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s).

1.2. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.

1.3. "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.4. "Cable System" means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for

purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.5. “City” means the City of Hubbard, a municipal corporation, or its duly appointed and/or authorized representative, and all the territory within its boundaries, as such may change from time to time.

1.6. “Grantee” means Comcast of Oregon I, Inc., and its lawful successors, transferees, or assignees thereof.

1.7. “Grantor” means the City, a municipal corporation in the State of Oregon and/or its authorized representative or agents.

1.8. “Gross Revenue” means, and will be construed broadly to include, all amounts in whatever form and from all sources directly or indirectly derived by the Grantee and/or an Affiliate from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles (“GAAP”). Without limitation and by way of example, Gross Revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, revenues from non-cable services, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Grantor acknowledges that Grantee may calculate Gross Revenue in a manner consistent with GAAP where applicable; however, Grantor reserves its right to challenge Grantee's calculation of Gross Revenue, including but not limited to Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain in writing and document the source of any change it deems required by GAAP, FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item. Such identification, and the related written explanation and source documentation provided, shall include sufficient detail to allow the City to evaluate the validity of Grantee's interpretation(s).

1.9. “Franchise Area” means the area within the legal jurisdictional boundaries of the City of Hubbard as the City is now or may change during the term of this Agreement.

1.10. “Public Rights of Way” include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use

such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).

## **SECTION 2 - Grant of Authority**

2.1. Grantor hereby grants to the Grantee nonexclusive authorization, but not the obligation, to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed and as described by this Agreement.

2.2. Term of Franchise. The term of the Franchise granted hereunder and all rights, privileges, obligations, and restrictions pertaining thereto shall be 10 years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Sections 546 and 626 of the Cable Act, as amended. Further, Grantee and Grantor agree that at any time during the term of the then-current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

2.4. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of Grantor to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by Grantor, or (C) be construed as a waiver or release of the rights of Grantor in and to the Public Ways.

## **SECTION 3 - Construction and Maintenance of the Cable System**

3.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from Grantor (which shall not be less than ten (10) business days) and at its own cost and expense, protect

or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, Grantor shall notify Grantee of such funding and make available such funds to the Grantee.

3.2. Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Grantor to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.3. Undergrounding and Beautification Projects. In those areas of the Franchise Area where all of the transmission or distribution facilities of the respective public utilities providing communications and electric services are underground, then the Grantee shall likewise construct, operate and maintain its Cable System underground in accordance with Hubbard Municipal Code Section 13.05.140 "Undergrounding of cable lines" and provided that such underground locations are capable of accommodating the Grantee's Cable System without significant technical degradation of the Cable System's signal quality. In those areas of the Franchise Area where the transmission or distribution facilities of the respective public utilities providing communications and electric services are both aerial and underground, then the Grantee may, with prior approval of the Grantor not be to unreasonably withheld, construct, operate and maintain its transmission and distribution facilities, or any part thereof, aerially where communication lines are aerial. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.4. Strand Mounted WiFi Facilities. Subject to the provisions of this Franchise, applicable safety and electrical codes, and required permits and authorizations, Grantee may be allowed to place strand mounted WiFi facilities on its own cable strung between existing utility poles. All strand mounted WiFi facilities shall be installed and deployed consistent with applicable City standards and procedures. To the extent Grantee performs work in the Public Rights of Way associated with the installation, maintenance, construction, repair or upgrade of these strand mounted WiFi facilities, prior to commencing such work Grantee is required to (1) obtain the appropriate permits and authorizations and (2) provide Grantor with written evidence of

necessary permits and authorizations. Such strand mounted facilities must be operated as part of the Cable System granted by this Franchise. The deployment of these strand mounted WiFi facilities shall not be considered small wireless facilities.

#### **SECTION 4 - Customer Service Standards; Customer Bills; and Privacy Protection**

4.1. Customer Service Standards. Grantee shall comply with the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.

4.2. Privacy Protection. The Grantee shall comply with all federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto, as may be applicable.

#### **SECTION 5 - Oversight and Regulation by Grantor**

5.1. Franchise Fees. The Grantee shall pay to Grantor a franchise fee in an amount equal to five percent (5%) of annual Gross Revenue, as defined above, received from the operation of the Cable System to provide Cable Service to residential and business subscribers (if any) in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other Cable Service provider providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

#### **SECTION 6 - Enforcement and Termination of Franchise**

6.1. Notice of Violation or Default. In the event Grantor believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

6.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of Grantor's written notice: (A) to respond to Grantor, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify Grantor of the steps being taken and the projected date that the cure will be completed.

6.3. Public Hearings. In the event the Grantee fails to respond to the Grantor's



notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of City that is scheduled at a time that is no less than ten (10) business days therefrom. Grantor shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

## **SECTION 7- Competitive Equity**

### **7.1. New Cable Service Provider.**

7.1.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Cable Service provider enters into any agreement with the Franchising Authority to provide video services to subscribers in the City, the Franchising Authority, upon written request of the Grantee, shall within sixty (60) days after the Grantee's written request develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other Cable Service providers, taking into account the terms and conditions under which other Cable Service providers are allowed to provide video services to subscribers in the City.

## **SECTION 8 - Miscellaneous Provisions**

8.1. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

8.2. **Notice.** All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:



To Grantor:

City of Hubbard, Oregon  
3720 Second S  
PO Box 380  
Hubbard, Oregon 97032

To the Grantee:

Comcast of Oregon I  
11308 SW 68<sup>th</sup> Pkwy  
Tigard, Oregon 97223  
Attn: Government Affairs

with a copy to:

Comcast Cable  
Attn.: Government Affairs Department  
1701 JFK Blvd, 49<sup>th</sup> Floor Philadelphia,  
PA 19103

8.3. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of Grantor and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations on the parties that are different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

8.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

8.5. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by Grantor and the Grantee, which amendment shall be authorized on behalf of Grantor through the adoption of an appropriate resolution or order by Grantor, as required by applicable law.

8.6. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

8.7. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantor or Grantee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

The Effective Date of this Agreement shall be March 9<sup>th</sup>, 2021.

COMCAST OF OREGON I, INC.

CITY OF HUBBARD

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
As Its:

Charles Rostocil  
As Its: Mayor