

**CITY OF PORTLAND  
Comcast**

**Washington Park – Children's Museum**

**LICENSE AGREEMENT FOR FIBER OPTIC CABLE INSTALLATION**

This License Agreement is made effective the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Portland, Oregon (the CITY) and Comcast (the HOLDER).

**RECITALS**

WHEREAS, the CITY owns certain property known as Washington Park (the Property) which is located in Portland, Oregon, a public park site on which the CITY has constructed, operates and maintains recreational improvements, for the public's use and enjoyment; and

WHEREAS, HOLDER desires to construct, operate and maintain certain Facilities and improvements (HOLDER'S Facilities) on a portion of the CITY'S Property.

WHEREAS, HOLDER acknowledges that the paramount use of the Property is for the public's use and enjoyment as a park and recreation facility and that the construction, operation, and maintenance of HOLDER'S Facilities shall not adversely affect the Property's paramount use; and

WHEREAS, CITY is willing to grant a License Agreement to HOLDER for use of a portion of the Property on the terms and conditions set forth herein.

NOW, THEREFORE, the CITY and HOLDER, in consideration of payment hereinafter stipulated and the mutual covenants hereinafter contained, hereby agree as follows:

**1. DEFINITIONS**

As used in this License Agreement:

*"Facilities"* means HOLDER'S Facilities consisting of subsurface telecommunications devices and hardware, including fiber optic cables, lines, ducts, conduit, access points, boxes and associated equipment, devices and hardware. As used in this definition of Facilities, "duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable; "conduit" means a structure containing one or more ducts; and "access point" means an opening (hand hole) that may be entered for purposes of installing and maintaining other components of the Facilities.

*"License Agreement area"* means that specific portion of the Property that is available for HOLDER'S use under the terms and conditions of this License Agreement and which is illustrated in Exhibit A-1. The parties agree that the length of HOLDER'S installed conduit will be 670 Lineal Feet and hand hole of 12 square feet.

"Park" means that portion of the Property on which the CITY maintains and operates recreational facilities and related improvements, whether existing as of the date of this License Agreement or established thereafter, for the public's use and enjoyment.

"Property" means that real property owned by the CITY, commonly referred to as Washington Park, specifically located at 4015 SW Canyon Road, Portland, County of Multnomah, State of Oregon. The legal description of. All real property impacted by this License Agreement is within the State of Oregon. The property and surrounding vicinity is illustrated in Exhibit A-2.

## 2. PERMITTED USES

CITY hereby grants a License Agreement to HOLDER, upon the conditions, covenants, and agreements hereinafter set forth, to use the License Agreement area within the Property for the purposes of installing, operating, maintaining and inspecting HOLDER'S Facilities. This License Agreement conveys to HOLDER the right of ingress and egress to and from, and access on and along the License Agreement area with the right to use existing and future roads, for the permitted uses described above.

## 3. EFFECTIVE DATE: TERM

The term of the License Agreement be 5 years commencing on the Effective Date and terminating at 11:59 p.m. on \_\_\_\_\_, (expiration date), unless sooner terminated under the provisions of this License Agreement.

## 4. OPTION TO RENEW

Holder is given two five-year options to renew this License Agreement commencing on the expiration of the original term. The License Agreement's term shall automatically be extended unless Holder terminates it at the end of the then-current Renewal Term by giving City written notice of the intent to terminate at least six (6) months prior to the end of the then-current Renewal Term. If Holder has at any time during the License Agreement term failed to cure any default in accordance with the provisions of this License Agreement in its performance of any of the terms and conditions of this License Agreement, then the option to renew the term shall be voidable by the City upon written notice to Holder.

## 5. COMPENSATION AND PAYMENTS

A. Under the separate Non-Park Use Permit, HOLDER shall pay CITY a one time fee of \$1,000 to cover the cost of inspection of construction. HOLDER shall also pay for all Multnomah County document recording fees, if any.

B. As compensation for the benefits and privileges under this License Agreement and in consideration of permission to use the Property, HOLDER shall pay as an Annual Use Fee to the City of Portland Bureau of Parks and Recreation, an amount per total linear conduit foot of HOLDER'S Facilities installed within the License Agreement Area equal to \$3.62 per linear foot and \$3 per square foot for the handhold. The first year rent payment equals \$2,461.40. The

Holder has agreed to make a lump sum payment for the first five years of the Agreement equaling \$12,307. The rent in year six is \$4.30 per linear foot and \$3.57 per square foot for the handhold. The rent for year six is \$2,923.84 and the holder will make a lump sum payment for the second five year option of \$14,619.20.

C. Annual Rent Adjustment. On July 1 of each year for the term of the agreement, annual rent shall increase to an amount equal to one hundred three and one-half percent (103.5%) of the annual rent payable with respect to the immediate preceding year. To determine annual rent adjustment, portions of a cent shall be rounded up to the next cent if a half cent or more, and rounded down to the next cent if less than a half cent.

Annual rent schedule: July 1, 2009 – June 30, 2010 = \$3.50  
July 1, 2010 – June 30, 2011 = \$3.62  
July 1, 2011 – June 30, 2012 = \$3.75

D. HOLDER'S Annual Use Fee payable under Section 5-B of this License Agreement shall be paid to the City of Portland Bureau of Parks and Recreation no later than 45 days after the Effective Date of the License Agreement, and no later than 45 days after the Effective Date of this License Agreement, for each year of the term of this License Agreement.

## **6. OPERATION AND MAINTENANCE OF THE FACILITIES, AND RESTORATION OF THE CITY'S PROPERTY**

### A. General

#### (1) Compliance with Applicable Laws and Regulations

HOLDER shall operate and maintain its Facilities in accordance with all applicable federal, state, and municipal or county laws, orders, rules, and regulations existing on the date of this License Agreement or enacted thereafter and shall assume all costs, expense, and responsibility in connection therewith.

#### (2) Manner of Performance

HOLDER shall operate and maintain its Facilities in an orderly and workmanlike manner. The safety of the general public shall be of paramount importance.

#### (3) Permits

HOLDER is responsible for determining the existence of, securing and paying for all permits and government fees, licenses, and inspections necessary for the proper operation and maintenance of HOLDER'S Facilities.

#### (4) Interference

HOLDER'S Facilities shall be operated and maintained in a safe, clean and proper manner so as not to endanger the general public, materially interfere with the public's use and enjoyment of the Park, Trail, or Property, or interfere with any improvements on the Property. Generally, inspection or maintenance work shall occur during daylight hours. Unless an emergency occurs,

no work shall occur on weekends. However, this provision shall not be interpreted to limit HOLDER'S hours of operation during initial construction of the Facilities.

(5) Maintenance of Records

HOLDER shall keep accurate maps and records, including the approved as built construction plans and specifications, of its Facilities located on the Property and shall provide to the CITY a copy of such maps and records, upon CITY'S reasonable request. Maps shall be on a scale whatever standard scale the CITY adopts for general use. HOLDER shall also provide such maps in an electronic format acceptable to the CITY.

(6) HOLDER'S Agreement With Adjacent Property Owners

HOLDER shall secure and be responsible for maintaining any necessary agreement with adjacent property owners.

B. Construction and Maintenance

(1) Plans and Specifications

(a) Construction and maintenance of HOLDER'S Facilities on the Property shall be performed strictly in accordance with the plans attached to this License Agreement as Exhibit B and with the CITY'S Park and Recreation Construction Standards, or as approved in writing by the CITY. Only those Facilities permitted by this License Agreement shall be established on the Property. HOLDER shall strictly adhere to any limitations or restrictions on construction or maintenance methods or techniques as set forth in the approved plans and the CITY'S Park and Recreation Construction Standards. HOLDER shall not construct or install additional Facilities on the Property without specific written approval of the CITY, which written approval shall not be unreasonably withheld and, if given, may constitute a separate agreement.

(2) Schedule

(a) HOLDER shall submit as part of its approval plan the contractor or subcontractor who will perform the work. The contractor or subcontractor is subject to written approval of the City which shall not be unreasonably withheld.

(b) HOLDER shall not commence or undertake any maintenance until City has issued written approval of the maintenance schedule, which approval shall not be unreasonably withheld.

(c) HOLDER shall notify CITY immediately of any changes to the approved schedule. Such changes shall be subject to the prior written approval of the CITY, which approval shall not be unreasonably withheld.

(3) Confining Maintenance Activity and Warning Public

(a) HOLDER shall be responsible for maintaining all Facilities established by it on the Property, and shall perform such maintenance in a manner and at such frequency as necessary to keep the Property safe and to protect against injury to Property users and damage to the Property and

adjoining properties. HOLDER shall post signs to warn the public of a hazard created by its maintenance activities.

(b) Generally, HOLDER shall avoid disturbing the Property and any improvements thereon while maintaining HOLDER'S Facilities. To the extent any disturbance does occur, HOLDER shall restore such disturbed areas in accordance with the requirements set forth herein under Section D, "Restoration." During maintenance work, HOLDER and its contractors and subcontractors shall confine all maintenance activity, including access and storage, within the License Agreement area. HOLDER shall notify CITY forty-eight (48) hours prior to beginning any maintenance in the License Agreement area. HOLDER shall provide any safety devices reasonably deemed necessary by CITY to protect the safety of users of the Property.

(c) Any fence, if authorized by CITY to be erected by HOLDER, shall be maintained and kept in good repair by HOLDER during the term of this License Agreement. In the event HOLDER shall take down any installed fence of CITY, or any fence on an abutting property required for the maintenance of the Facilities, HOLDER shall construct and maintain, at HOLDER'S sole expense, temporary fencing for the duration of the maintenance work and shall restore or replace the installed fence in a timely manner to the satisfaction of the CITY.

(d) During any maintenance period, including any non-working hours, HOLDER shall secure the License Agreement area with appropriate barricades.

#### (4) Excavation

(a) HOLDER shall not make or begin any excavation or other activity on the Property without first submitting a Construction Management Plan and a Tree Protection Plan to the CITY and obtaining the written permission of the CITY to proceed. In addition, HOLDER shall determine information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person or entity having the right to bury underground facilities on the Property.

(b) HOLDER shall not make or begin any excavation or other subsurface activity on the Property without having all underground facilities located by suitable markers or other means by the owners of such underground facilities or other qualified or authorized persons.

(c) Obtaining the information required by subparagraphs (4) (a) and (4) (b) of this Section does not excuse Holder from conducting all excavation or other subsurface activity in a careful and prudent manner.

(d) In the event of any damage to or dislocation of any underground facility in connection with the excavation or other subsurface activity, HOLDER shall immediately notify the owner of such facility and shall immediately cease all work in the affected area until repairs are complete. Any such incident shall be reported to the CITY, and no further excavation or subsurface activity shall be done until permission is granted by the CITY. HOLDER may resume excavation or subsurface activity once the incident is corrected and upon prompt and reasonable approval by the CITY of a work restart.

(e) All excavation or other subsurface activity made by HOLDER shall be properly safeguarded for the prevention of accidents. All excavated or tunneled areas shall be filled in or otherwise adequately secured at the end of each workday.

#### (5) Inspection of HOLDER'S Work

(a) The construction and maintenance of HOLDER'S Facilities is subject to CITY inspection at all places and all reasonable times to ensure strict compliance with the terms of this License Agreement.

(b) CITY inspections are for the sole benefit of the CITY and do not constitute or imply acceptance of any work as conforming with the requirements of this License Agreement. The presence or absence of a CITY inspector does not relieve HOLDER from any contract requirement, nor is the inspector authorized to change any term or requirement of this License Agreement without the written authorization of the CITY.

#### C. Vehicle Parking and Access Road Conditions

All HOLDER'S personnel and personnel of HOLDER'S contractors or subcontractors and vendors supplying equipment to HOLDER or HOLDER'S contractors or subcontractors shall use the existing designated parking lot for vehicle parking. Only that equipment essential to the initial construction or maintenance of HOLDER'S Facilities shall access the License Agreement Area. Following construction, HOLDER shall restore the road to a condition at least as good as existed before construction.

#### D. Restoration

(1) HOLDER shall, as soon as practicable after the completion of any maintenance activities, restore all areas, including trail, fences, landscaping, signage, etc., disturbed during such activities. HOLDER shall restore these areas as nearly as reasonably practical to their condition, grade and level existing immediately prior to HOLDER'S construction or maintenance activities. Any such restoration work shall be performed to the satisfaction of the CITY.

(2) Disturbed areas must be backfilled and compacted consistent with the original conditions. Where subsoil is tamped, the disturbed area shall be filled to level in kind. Seeding required for restoration, if any, shall be of a mixture approved by the CITY. Any subsequent settling of disturbed areas shall be repaired in kind. HOLDER shall be responsible for any erosion that may occur as a result of HOLDER'S use of the License Agreement area, and HOLDER shall restore

any eroded area until stabilized. HOLDER shall comply with applicable erosion control plans for the area.

(3) If the disturbed area is on a part of any sidewalk, trail or road in use by the public, HOLDER shall immediately restore the disturbed area with a temporary patch until the required surface treatment can be permanently restored in accordance with the requirements of this License Agreement.

(4) HOLDER shall compensate CITY for adequately documented damages that result from its activities on the License Agreement area.

(5) In the event HOLDER fails to restore any areas in a timely manner as determined by the CITY, the CITY may undertake, after written demand to HOLDER and ten (10) days notice to commence restoration and reasonable time to complete, such restoration and require HOLDER to reimburse the CITY for all costs incurred by the City.

**6. ABSENCE OF WARRANTIES; LIMITATION OF RIGHTS CONFERRED; AUTHORITY TO GRANT ADDITIONAL RIGHTS; AND ACCEPTANCE OF PROPERTY CONDITION**

A. The rights or privileges herein granted to HOLDER are subject to any rights or interests held by others in and to the Property as of the date of this License Agreement. The CITY makes no representations or warranties, express or implied, concerning the extent of such outstanding rights held by others and shall have no responsibility for conflicts with others as a result of this License Agreement.

B. Any rights granted under this License Agreement shall not limit the CITY'S authority to grant additional rights or interests within the License Agreement area. Should the CITY grant additional rights within the License Agreement area to some other individual or entity, the CITY will require any interference with HOLDER'S rights to be minimized, and will require that HOLDER'S facilities be restored, at no expense to HOLDER, to as good or better condition as existed before any permitted construction occurred.

C. HOLDER warrants that HOLDER has inspected the Property and accepts it in its present condition. The CITY makes no representation or warranties, express or implied, concerning the condition of the Property and shall have no responsibility for repairs and maintenance of the Property at any time.

**7. HOLDER'S CONTINUED USE**

Nothing in this License Agreement shall be construed to prevent the CITY from repairing, altering, relocating, or constructing existing and additional recreational facilities, including but not limited to walkways, trails, roads, on the Property. The CITY shall do such work, insofar as practicable, in a manner not to obstruct, injure, or prevent the free use and maintenance of HOLDER'S Facilities. CITY agrees to cooperate and coordinate construction plans with HOLDER and to use its best efforts to accomplish any alterations, relocations, or construction of

the recreation facilities, walkways, trails, roads and Property in a manner least intrusive to the privileges of HOLDER under this License Agreement.

#### **8. CLAIMS AND LIENS FOR LABOR AND MATERIAL AND TAXES**

The HOLDER shall fully pay for all materials joined or affixed to and labor performed upon said Property of the CITY in connection with the construction, operation, maintenance, repair, or removal of the Facilities, and shall pay all taxes, including, but not limited to, any applicable property taxes, assessments, use and occupancy taxes, charges for public utilities, excesses and levies, levied on the License Agreement area that arise out of HOLDER'S construction, maintenance, or operation of any Facilities.

#### **9. INDEMNIFICATION**

HOLDER shall indemnify and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) HOLDER's entry, use or occupancy of the Park, (ii) any failure of HOLDER to comply with the terms of this License Agreement or any violation of law or ordinance, and (iii) the acts or omissions of HOLDER, its officers, directors, agents and employees or invitees; provided, however, the HOLDER shall not be liable for claims caused by the sole negligence of the City, its officers, directors, agents and employees. HOLDER shall, at its own cost and expense, defend any and all suits which may be brought against HOLDER or City, their officers, directors, agents and employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City or HOLDER, their officers, directors, agents and employees in any such action or actions, including any appeals, in which they may be party defendants.

City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of HOLDER or to any person in or upon the Park including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

City or its officers, directors, agents and employees shall not be liable for any latent defect at the Park. In addition to the indemnity provided above, HOLDER agrees to indemnify, defend and hold harmless City, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.



HOLDER, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons in, upon or about the Park from any cause other than the City's sole negligence, and HOLDER waives all claims in respect thereof against City.

## 10. INSURANCE

### A. Liability Insurance

HOLDER shall maintain public liability and property damage insurance that protects the HOLDER and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the HOLDER's work under this License Agreement. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled or terminated prior to completion of the License Agreement, the HOLDER shall provide a new policy with the same terms. The HOLDER shall maintain continuous, uninterrupted coverage for the duration of the License Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the HOLDER.

HOLDER shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance certifying the coverage required under this License Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this License Agreement by the City.

HOLDER and all employers working under this License Agreement shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The HOLDER shall maintain workers' compensation insurance coverage for the duration of this License Agreement. In the event the HOLDER's workers compensation insurance coverage is due to expire during the term of this License Agreement, the HOLDER shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the HOLDER shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

HOLDER shall require all contractors or subcontractors working pursuant to this License Agreement to meet the same indemnification and insurance requirements that are required of HOLDER. All required Certificates of Insurance are attached to this License Agreement.

#### **11. WAIVER OF BREACH**

The waiver by the CITY of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the HOLDER shall in no way impair the right of the CITY to avail itself of any subsequent breach thereof.

#### **12. PROHIBITED USES; HAZARDOUS SUBSTANCES**

A. HOLDER shall not store flammable, explosive, or other Hazardous Substances in or on the License Agreement area.

B. The HOLDER shall not cause or authorize any conduct on the License Agreement area that would cause the License Agreement area or the Property, or any part thereof, to be contaminated by a Hazardous Substance as defined in ORS 465.200(15) or as it may be amended. In the event of a leak, spill, or release of a Hazardous Substance on the Property or the threat of or reasonable suspicion of the same, caused or authorized by HOLDER or its contractors or subcontractors, HOLDER shall immediately undertake all emergency response necessary to contain and remove the Hazardous Substance and shall undertake within a reasonable time all necessary investigatory, remedial and/or removal action in accordance with applicable regulatory standards. The CITY shall have the right to approve all investigatory, remedial and removal procedures and the company (ies) and/or individual(s) conducting removal procedures. Within 30 days following completion of such investigatory or remedial and/or removal action, HOLDER shall provide the CITY with a certification acceptable to the CITY that all such contamination has been remediated.

C. In removing or altering HOLDER'S Facilities, HOLDER shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards applicable at the time.

#### **13. TERMINATION BY THE CITY FOR CAUSE**

A. HOLDER shall maintain the License Agreement area in the condition required pursuant to the terms of this License Agreement. If the HOLDER'S Facilities remain in an unsatisfactory condition for thirty (30) days after written notice has been given to the HOLDER of the unsatisfactory condition, and the HOLDER has failed to take such steps as are necessary to restore its Facilities to satisfactory condition, or to commence restoration and complete it within a reasonable period of time, or should the HOLDER otherwise fail, neglect or refuse to do, keep, observe and perform each and all of the material terms, provisions, and conditions of this License Agreement, the CITY, at the CITY'S sole discretion, may:

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(1) Repair or contract for the repair of the Facilities or the CITY'S Property, or do or contract for other work required by this License Agreement to be done by the HOLDER, and the HOLDER will payor reimburse the CITY for all such reasonable costs and charges incurred or necessitated by such work. Either of said actions may be taken by the CITY without prejudice to or impairment of any right to action for damages or otherwise which the CITY may have against the HOLDER. In the event the HOLDER fails to payor reimburse the CITY for any such costs or charges within ninety (90) days following receipt of any bill, the CITY may terminate this License Agreement.

(2) Send a second notice terminating HOLDER'S rights under this License Agreement should HOLDER'S failure as described in Section 13.A fail to be completely rectified, as determined by the CITY, within ninety (90) days of the date of the second notice.

B. Should HOLDER fail to use the License Agreement area on a regular weekly basis or abandon the Facilities or remove the Facilities constructed on the License Agreement area without an intention to resume use thereof within a reasonable time, this License Agreement shall terminate forthwith at the election of the CITY. Upon such abandonment or removal, HOLDER shall execute and record a reconveyance and release of this License Agreement, in a form acceptable to CITY, whereupon this License Agreement and all rights and privileges mutually granted shall be fully canceled and terminated.

#### **14. HOLDER'S RIGHTS ON TERMINATION**

A. In the event of termination of this License Agreement, the HOLDER shall be without recourse or redress of any character against the CITY by reason thereof.

B. Termination of this License Agreement shall not relieve or release HOLDER from any liability or obligation which may have been incurred or assumed by HOLDER hereunder prior to termination, nor shall termination prejudice or impair any right of action for damages or otherwise which the CITY may have against the HOLDER.

#### **15. REMOVAL OF FACILITIES UPON TERMINATION OF LICENSE AGREEMENT**

Within ninety (90) days after the termination of this License Agreement, the HOLDER shall, at the HOLDER'S sole expense, remove the Facilities and shall restore, to the satisfaction of the CITY, the Property to a good and useable condition suitable for park use; and if the HOLDER fails so to do, the CITY may do such work of removal and restoration at the cost and expense of the HOLDER. The CITY may, at its option, upon termination, at the entire cost and expense of the HOLDER, remove the HOLDER'S Facilities and restore the Property to a good and useable condition suitable for Park use, or it may permit the HOLDER to do such work of removal and restoration under the supervision of the CITY. In the event of the removal by the CITY of the Facilities of the HOLDER and of the restoration of the Property as herein provided, the CITY shall in no manner be liable to the HOLDER for any damage sustained by the HOLDER for or on account thereof and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the CITY may have against the HOLDER. CITY may, at its sole discretion, allow the Facilities to remain on the Property, in which event

HOLDER shall be deemed to have relinquished all right, title, and interest thereto and the Facilities shall be and become the property of the CITY.

#### 16. NOTICES

Notices required under this License Agreement shall be deemed to be properly served if delivered in writing by certified mail with return receipt requested to the following addresses or such other places as the parties reasonably designate:

To CITY:

City of Portland Attn: Property Manager, Parks and Recreation 1120 SW 5th Avenue, Room 1302 Portland, Oregon 97204-1933

To HOLDER:

Comcast Attn: Mike Madler 9605 SW Nimbus Ave, Beaverton, OR 97008

#### 17. SUCCESSORS AND ASSIGNS

Neither this License Agreement nor any of HOLDER'S Facilities located in the License Agreement Area shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of CITY as expressed by Ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with HOLDER. HOLDER shall give written notice to CITY of any transfers to entities under such common control within 10 days of such transfers. The CITY'S granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. HOLDER may assign the rights granted under this License Agreement, either in whole or in part, subject to the terms of this License Agreement, and subject also to CITY'S written consent, which consent shall not unreasonably be withheld as determined by the Director of Portland Parks and Recreation and/or his designee.

#### 18. CONSTRUCTION BOND

Prior to start-up of work at the Property, HOLDER shall post a faithful performance bond running to the City of Portland's Bureau of Parks and Recreation with good and sufficient surety approved by the CITY, in the sum of \$100,000. The bond shall be conditioned that HOLDER shall well and truly observe, fulfill and perform each term and condition under Section 5 of this License Agreement and it shall cover potential damages to the Park during construction of HOLDER'S Facilities. Potential damages shall include, but not be limited to, settling, contamination of water or soils, or damage to the access road or parking lot. HOLDER shall keep the bond in full force and effect at all times during the term of initial construction of its FACILITIES and for a one-year period after final CITY approval of the initial construction of HOLDER'S Facilities. At the end of the one-year period, CITY shall release the bond if the CITY is satisfied with the condition of the License Agreement Area and the Property as impacted by HOLDER'S construction. The bond to be posted shall be subject to the reasonable approval of the CITY'S Attorney as to its adequacy under the requirements of this Section.

#### **19. PRE-CONSTRUCTION MEETING**

Prior to start-up of work at the License Agreement Area, HOLDER shall schedule and conduct a formal pre-construction meeting at the License Agreement Area of all contractors and subcontractors, if any. The meeting shall be arranged so that the CITY shall have a representative of its Park and Recreation Bureau at the meeting and HOLDER will have its construction project manager at the meeting, and inspection and inventory of existing facilities within the Park will be conducted to introduce personnel, establish pre-construction conditions, and facilitate future communication during the initial construction.

#### **20. LANDSCAPE RESTORATION**

Restoration shall be made to conditions equal to or better than those pre-existing the HOLDER'S work. CITY, at its sole discretion, may elect to complete necessary repairs. HOLDER agrees to pay reasonable costs of repairs performed by the City.

21. ENTIRE AGREEMENT

This License Agreement contains the entire agreement between the CITY and the HOLDER and supersedes all prior written or oral discussions or agreements.

IN WITNESS WHEREOF, the parties hereto execute this License Agreement.

HOLDER:

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

Printed Name & Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ 2011, by (name), \_\_\_\_\_ (title) of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_ (state)

My Commission expires \_\_\_\_\_

GRANTOR: CITY OF PORTLAND, PARKS AND RECREATION BUREAU

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nick Fish, Commissioner in Charge

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_ 2011, by Nick Fish, Commissioner in Charge, City of Portland Bureau of Parks and Recreation.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

Approved as to form:

**APPROVED AS TO FORM**

City Attorney  
*Amela Menges*  
CITY ATTORNEY



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/19/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. TWO LOGAN SQUARE PHILADELPHIA, PA 19103-2797 Attn: Comcast.Certs@marsh.com Fax: 212-948-0360	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:														
05194 -ALL-GAWU-10-11                      COMCA   BEAVE   OR   NO   NO															
INSURED COMCAST CABLE COMMUNICATIONS MGMT LLC 9605 SW NIMBUS AVE BEAVERTON, OR 97008	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER B : ACE Property And Casualty Ins Co</td> <td>20699</td> </tr> <tr> <td>INSURER C : Indemnity Ins Co Of North America</td> <td>43575</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : ACE American Insurance Company	22667	INSURER B : ACE Property And Casualty Ins Co	20699	INSURER C : Indemnity Ins Co Of North America	43575	INSURER D :		INSURER E :		INSURER F :	
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**COVERAGES**                      **CERTIFICATE NUMBER:** CLE-003180953-01                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			XSL G25521699	12/01/2010	12/01/2011	EACH OCCURRENCE	\$ 4,900,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 4,900,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> \$100,000 SIR						PERSONAL & ADV INJURY	\$ 4,900,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 25,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$ 6,000,000
								\$
A	AUTOMOBILE LIABILITY			ISA H08631293	12/01/2010	12/01/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 10,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS							\$
<input type="checkbox"/> NON-OWNED AUTOS				\$				
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/>	OCCUR	XOO G24875313	12/01/2010	12/01/2011	EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/>	CLAIMS-MADE				AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE							\$
	<input type="checkbox"/> RETENTION \$							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WLRC46142287 (AOS)	12/01/2010	12/01/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	WLRC46142263 (CA)	12/01/2010	12/01/2011	E.L. EACH ACCIDENT	\$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			WLRC46142275 (MN)	12/01/2010	12/01/2011	E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
				SCFC46142299 (WI)	12/01/2010	12/01/2011	E.L. DISEASE - POLICY LIMIT	\$ 2,000,000

**APPROVED AS TO FORM**  
*Imela Henry*  
**CITY ATTORNEY**

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 THE CITY OF PORTLAND, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED AS RESPECTS TO GENERAL LIABILITY POLICY AND AUTOMOBILE LIABILITY POLICY WHERE REQUIRED BY WRITTEN CONTRACT WITH THE NAMED INSURED. \$100,000 PER OCCURRENCE SELF INSURED RETENTION APPLIES ONLY TO THE ABOVE GENERAL LIABILITY POLICY.

<b>CERTIFICATE HOLDER</b>  CITY OF PORTLAND BUREAU OF PURCHASES TECHNOLOGY CONTRACTS MANAGEMENT 1120 SW FIFTH AVENUE, ROOM 750 PORTLAND, OR 97204	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Donna Clappitt <i>Donna Clappitt</i>
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