

MASTER INTERGOVERNMENTAL AGREEMENT

Contract No. [REDACTED]

This Master Intergovernmental Agreement ("Master Agreement") is between the **City of Portland**, an Oregon home rule municipality (the "City"), and the **Mt. Hood Cable Regulatory Commission**, an Oregon intergovernmental entity (the "MHCRC"). This Master Agreement between the City and the MHCRC is authorized under ORS 190.010 et seq. and under City Charter Section 2-105. This Master Agreement may refer to the City and the MHCRC either individually as a Party, or collectively as the Parties.

Recitals

1. In 1981, the Portland City Council (the "Council") created the Portland Cable Regulatory Commission to regulate, administer and enforce the City's cable communications franchise agreements, and to advise the City Council on cable communications policy and proposed franchises. Portland City Code Chapter 3.115.
2. In January 1993, the Council approved a merger of the Portland Cable Regulatory Commission and the Multnomah Cable Regulatory Commission by an intergovernmental agreement among Portland, Gresham, Troutdale, Fairview, Wood Village and Multnomah County. Ordinance No. 166168 ("IGA"), which created the Mt. Hood Cable Regulatory Commission ("MHCRC"). In approving the merger, the Council noted that establishing a unified commission would benefit the region by providing cost effective consolidated services, rather than parallel operating regulatory systems. Simultaneous with merging the cable regulatory commissions, the Council approved a services agreement with the MHCRC under which the City agreed to provide a full range of administrative support to the MHCRC, including financial accounting, legal and procurement services.
3. Under the Portland City Code and the IGA, the MHCRC exercises the City's regulatory powers and contractual authority over cable franchisees operating within Portland. The cable franchises with Comcast provide for communications network assets and infrastructure (the "Institutional Network" or "I-Net") to be provided by the cable franchisee as part of the public benefits obligations. The I-Net is an advanced, fiber based communications network connecting government, educational and community institutions that is capable of carrying video, data and voice applications.
4. The cable franchises also provide for the franchisees to pay PEG/I-Net fees to fund the capital costs of local governments' and educational institutions' uses of the I-Net. The IGA Section 9.D(3) authorizes the MHCRC to collect the PEG/I-Net fees on behalf of the City and the other parties to the IGA. In accordance with the MHCRC/City services agreement and as provided in Portland City Code 5.04.520, which created the MHCRC Fund, PEG/I-Net fees

payments are made to the MHCRC Fund through the City of Portland, with distribution of those funds subject to oversight and control by the MHCRC.

5. The total amount of available PEG/I-Net funds are included in the MHCRC's annual budget, as subject to review and approval by the governing bodies of the jurisdictions including the Portland City Council. Ordinance No. 172056.
6. As part of its responsibilities for overseeing the I-Net, the MHCRC facilitates partnerships and network planning, and manages funds to provide for capital costs related to the I-Net and its use by public agencies. The I-Net provides fiber connectivity to almost 290 public facilities and serves over 20 public agencies throughout Multnomah County (including the Cities of Gresham, Portland and Troutdale, Multnomah County, County public libraries, Multnomah Educational Service District, eight K-12 public school districts, Mt. Hood Community College, public access providers, Courts, Home Forward, and Metro.) Under the cable franchise agreements, Comcast owns and provides the core I-Net facilities and infrastructure, and the City maintains the edge network infrastructure and provides I-Net services to public agencies. Through 2010, over \$6 million in initial network capital assets had been invested in the I-Net, with approximately \$4 million in additional funding for network upgrades.
7. In May, 2000 the Council directed the Bureau of General Services -Communications and Networking Division (now the Bureau of Technology Services, Communications Division) to implement the Integrated Regional Network Enterprise ("IRNE") to provide high bandwidth, reliable and secure telecommunications services for the City. Resolution No. 35888. The IRNE also serves other local jurisdictions, state and federal agencies, educational institutions and public safety providers in the region.
8. The Council approved the interconnection of the I-Net to the City's IRNE network in 2002, to provide regional broadband services options to local governments, schools and public agencies throughout Multnomah County. Ordinance No. 176579. In 2010, the Council approved an extension of the I-Net/IRNE Interconnection Agreement through June, 2011, to coordinate with completion of cable franchise renewal negotiations. Ordinance No. 184228. In 2011, the City Council approved an agreement with Comcast of Illinois/Ohio/Oregon, LLC and Comcast of Oregon II, Inc. for the provision of services on the I-Net and the continued interconnection of IRNE to the I-Net. Ordinance No. 185005.
9. The IRNE/ I-Net interconnect serves to provide high bandwidth, fiber-based infrastructure throughout Multnomah County at a relatively low cost. The interconnect of the two networks enables I-Net users to connect to the IRNE, and to receive data services from the City's Communications Division, through a technical interface between the two networks.
10. Under prior cable franchises, Comcast retained a portion of the PEG/I-Net fees to provide for reimbursement of capital costs related to performance of work on the I-Net by the City's Communications Division. Under the current cable franchises, the MHCRC collects the full amount of the PEG/I-Net fees and, therefore, is responsible for distributing the funds to provide

for capital costs related to the I-Net and its use, in accordance with the MHCRC's approved annual budget and with the cable franchises. The need for the City's Communications Division to be reimbursed for its capital costs related to the I-Net and its use is on-going and recurring. The MHCRC anticipates having funds available in future years to reimburse these I-Net capital costs. The City's Communications Division has the technical knowledge and skills to perform this work and provides these services on a cost reimbursement basis.

11. The execution of multiple intergovernmental agreements and amendments to existing agreements for establishing specific contracts for the City's Communications Division to provide these routine services would be more efficiently managed and involve less administrative burden if structured as a single agreement, with MHCRC reimbursing the City's Communications Division for specific projects. Therefore, the MHCRC and the City want to enter into this Master Agreement to provide for reimbursement of the Communications Division capital costs related to I-Net work approved by the MHCRC.

NOW THEREFORE, THE PARTIES AGREE:

1. Effective Date and Duration.

1.1 This Master Agreement is effective March 17, 2015.

1.2 The duration of this Master Agreement is perpetual and shall continue from year to year, subject to withdrawal or termination by either Party as provided in this Master Agreement.

2. Project Representatives.

2.1 Each Party has designated a Project Manager to serve as its formal representative for purposes of this Master Agreement. All notices, reports, notes, and other communications required under or relating to this Master Agreement shall be occur between the respective Project Managers.

2.2 The City's Project Manager for this Master Agreement shall be:

Elizabeth (Beth) Fox
City of Portland. Bureau of Technology Services, Communications
3732 SE 99th Ave, Portland, Oregon 97266
Phone: 503 823-5233
Email: beth.fox@portlandoregon.gov

The City Project Manager may be such other person as may be designated in writing the City's Chief Technology Officer.

2.3 The MHCRC's Project Manager for this Master Agreement shall be:

Julie S. Omelchuck
MHCRC/Office for Community Technology
PO Box 745, Portland, OR 97207-0745
Phone: 503.823.5385
Email: julieo@mhcrc.org

The MHCRC's Project Manager may be such other person as may be designated in writing by the Manager for the City's Office for Community Technology or their successor.

3. Amendments. The provisions of this Master Agreement shall not be altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties, subject to approval as to form by the Parties' respective counsel. The Chief Administrative Officer may authorize any Amendment of this Master Agreement on behalf of the City.

4. Work Order Process and Cost Reimbursement.

4.1 The MHCRC's Project Manager and the City's Project Manager shall work cooperatively to identify I-Net infrastructure and other capital projects required to fulfill the needs of I-Net users. The City shall implement capital projects on behalf of the MHCRC related to fulfilling the City's role as the I-Net services provider to public agencies and facilities.

4.2 Once the details of an I-Net capital project are finalized, the City's Project Manager shall provide an I-Net capital project description, implementation timeframe and a price quotation ("Quotation") to the MHCRC Project Manager for project costs, including one-time charges, fees, installation charges, construction charges, and any other cost for which the City intends to seek reimbursement. The MHCRC Project Manager shall indicate acceptance of the project Quotation by providing notice in writing by electronic mail.

4.3 Reimbursement to the City by the MHCRC shall occur on a project by project basis, upon receipt by the MHCRC of an invoice from the City. Upon completion of an I-Net capital project, the City shall submit an invoice to the MHCRC, on City letterhead and signed and dated by an authorized representative of the City. The MHCRC's Project Manager shall review and approve invoices. The total requested reimbursement amount shall be no more than the I-Net project Quotation accepted by the MHCRC Project Manager, plus any additional capital costs directly related to the I-Net project totaling no more than five percent (5%) of the project's accepted Quotation. The MHCRC shall pay all invoices to which no dispute exists within thirty (30) days of receipt of the invoice.

4.4 The invoice shall include documentation, satisfactory to the MHCRC, for all capital costs for which the City is seeking reimbursement, including copies of paid receipts or other evidence of actual costs incurred by the City. The MHCRC Project Manager may require additional documentation of any cost in order to verify relationship of the cost to the project's accepted Quotation. If the MHCRC Project Manager finds that the invoice is not in accordance with this

Master Agreement, the MHCRC Project Manager shall notify the City's Project Manager of the reasons for the disallowance. The City's Project Manager may revise the invoice and resubmit in response to the reasons identified in the disallowance.

4.5 The City's Project Manager shall immediately provide notice in writing by electronic mail to the MHCRC Project Manager when the City anticipates or realizes any deviation in the I-Net project that may result in the City's inability to implement an I-Net project as originally submitted in the project Quotation. The City's notice shall identify the reasons for the deviation. If the MHCRC and the City wish to proceed with a modification to the I-Net project, the City's Project Manager shall submit a revised I-Net project Quotation to the MHCRC Project Manager in accordance with Section 4.2 of this Master Agreement.

4.6 I-Net projects implemented under this Master Agreement are not required to be coterminous with the expiration of this Master Agreement, but shall survive the expiration of such until completion. In these cases all provisions of this Master Agreement shall be considered active and in full force until the applicable existing project(s) reach conclusion. In no case shall a new project be undertaken by the MHCRC or the City after the expiration date of this Master Agreement.

5. Disputed Charges.

In the event the MHCRC disputes any costs contained in an invoice from the City for an I-Net project, the MHCRC shall notify the City in writing of disputed charges immediately when discovered but no later than forty-five (45) days following the date of receipt of the invoice. The Parties shall meet and resolve the disputed charges in a timely manner. Both Parties agree to investigate any disputed amounts in an expedited fashion in an effort to resolve and settle the dispute prior to seeking any other remedies. Charges not disputed within forty-five (45) days from the date of receipt of the City's invoice shall be due and payable and no longer subject to dispute.

6. Early Termination.

6.1 This Master Agreement may be terminated by mutual consent of the Parties. Termination by mutual consent shall be in written form stating the effective date of Termination. Either Party may terminate from this Master Agreement and prevent the incurrence of any obligations to perform in the ensuing year by filing a written notice of termination with the other Party by November 1 of any year, effective at the end of that current fiscal year (June 30). The withdrawing Party's obligation to perform under this Master Agreement shall continue until the end of that fiscal year.

6.2 Either Party may terminate this Master Agreement in the event that the other Party fails to comply with all applicable federal, state and local laws and regulations. In the event that either Party wishes to terminate under this Section 6.2, written Notice to Cure shall be given to the other Party at least ninety days (90) in advance, or longer if mutually agreed, to allow time

for the Parties to comply with the applicable regulations, statutes or laws. In the event that either Party has failed to comply with the applicable regulations, statutes, or laws by the end of the ninety (90) day or agreed upon notification periods, the non-breaching Party may terminate this Master Agreement immediately and no additional notice shall be required.

6.3 Except as otherwise provided by this section either Party may terminate this Master Agreement in the event of a breach or threatened breach of this Master Agreement by the other Party. Prior to such termination, however, the Party seeking termination shall give the other Party written Notice of Breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within the cure period as specified by the non-breaching Party, or, within fifteen (15) days of the Notice of Breach, offered an acceptable plan to cure the breach, then the Party giving the notice may terminate this Master Agreement at any time thereafter by giving a written notice of termination.

7. **Indemnification.** Subject to the limitations and conditions of the Oregon Constitution, Article XI, Section 6, and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the Parties agree to indemnify and hold one another harmless from any loss, damage, injury, claim, or demand arising from their respective activities in connection with this Master Agreement. Neither Party shall be liable for any loss, damage, claim, or demand arising from the negligence of the other Party or its agents, officers, contractors or employees.

8. **Access to Records.** As public bodies subject to the Oregon Public Records law, the Parties shall maintain all records pertaining to this Master Agreement in accordance with the requirements of Oregon law during and following termination of this Master Agreement. Upon reasonable written notice, each Party shall have access to the books, documents and records of the other Party, which are related to this Master Agreement, for the purpose of examination, copying, and audit.

9. **Compliance with Laws.** In connection with each Party's activities under this Master Agreement, the MHCRC and the City shall comply with all applicable federal, state and local laws and regulations.

10. **Venue.** This Master Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the Parties arising under this Master Agreement or out of work performed under this Master Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

11. **Notice.** Any notice provided for under this Master Agreement shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) or sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or

immediately if personally served. For service by electronic mail, service will be deemed effective at the beginning of the next business day. Notices shall be addressed as follows, or to such other address as the receiving party may specify in writing:

If to the MHCRC:	Julie S. Omelchuck, Program Manager
	Mt. Hood Cable Regulatory Commission
Office address:	111 SW Columbia St., Suite 600
	Portland, OR 97201
Mailing Address:	PO Box 745
	Portland, OR 97207-0745
	Email: julieo@mhcrc.org

If to the City:	Elizabeth (Beth) Fox, Communications Manager
	Bureau of Technology Services
	City of Portland
	3732 S.E. 99th Avenue
	Portland, OR 97266-2505
	Email: beth.fox@portlandoregon.gov

12. Severability. If any provision of this Master Agreement is declared by a court of law to be illegal or in conflict with any law, the validity of the remaining terms, conditions and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if this Master Agreement did not contain the particular provision held to be illegal or invalid.

13. Subcontracting and Assignment. The Parties shall not subcontract or assign any part of this Master Agreement without the prior written consent of the other Party. Prior notice of at least one hundred and twenty (120) days is required and the Parties shall not be obligated to approve or otherwise agree with any proposed assignment or subcontracting arrangement. Unapproved subcontracts or assignments shall be void and of no force and effect. In the event an assignment or subcontracting arrangement is approved, the Party assigning or subcontracting shall remain obligated for full performance of its obligation under this Master Agreement, and the other Party shall incur no obligation other than its obligations under this Master Agreement. Any approved assignee or subcontractor shall be required to agree to fulfill all the assigned or subcontracted obligations of the assigning or subcontracting Party.

14. Force Majeure. The Parties shall not have breached this Master Agreement by failure to perform a substantial obligation under this Master Agreement if the failure to perform arises out of causes beyond their control and without their fault or neglect, including without limitation: fire; flood; epidemic; volcanic eruption; quarantine restrictions; strike; freight embargo; unusually severe weather; riot; acts of God, sovereign or public enemy; or war. In the event delay or default arising from these causes reasonably prevents successful performance of this

Master Agreement, the Parties may terminate this Master Agreement, without penalty, upon written agreement, or the Parties may make mutually acceptable revisions to this Master Agreement to allow it to continue as modified. Under no circumstances will failure to pay be deemed a Force Majeure event.

15. Non-Waiver. The Parties shall not be deemed to have waived any breach of this Master Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

16. Independent Contractors. The Parties shall each be responsible for any of their own federal, state and local taxes applicable to payments under this Master Agreement. The work performed by the City under this Master Agreement is work for hire, and any employees and subcontractors used by the City in performing this work are not employees or subcontractors of the MHCRC and shall not be eligible for any benefits from the MHCRC, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

17. Non-Appropriations.

17.1 It is the intent of the MHCRC to continue this Master Agreement for an indefinite term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) the MHCRC agrees to include in its budget request appropriations sufficient to cover its obligations under this Master Agreement; b) the MHCRC agrees to use all reasonable and lawful means to secure these appropriations; c) the MHCRC agrees it shall not use non-appropriations as a means of terminating this Master Agreement in order to acquire functionally equivalent products or Services from a third party. The MHCRC reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

17.2 It is the City's intent to continue this Master Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) The City agrees to include in its budget request appropriations sufficient to cover its obligations under this Master Agreement; b) The City agrees to use all reasonable and lawful means to secure these appropriations; c) The City agrees it shall not use non-appropriations as a means of terminating this Master Agreement. The City reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

17.3 In the event that insufficient funds are appropriated to continue payments under this Master Agreement and either Party has no other funding source lawfully available to it for such purpose, the Parties may agree to terminate particular Quotations or agree to suspend work under this Master Agreement until available funding sources are identified, or that Party may terminate this Master Agreement by giving the other Party not less than thirty (30) days prior written notice without penalty. Upon termination and to the extent of lawfully available funds, the terminating

Party shall be obligated to remit all amounts due and all costs reasonably incurred by the other Party through the date of Termination.

18. Captions. Captions or headings are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Master Agreement.

19. Choice of Venue. This Master Agreement shall be governed construed in accordance with the laws of the State of Oregon, without regard to any choice of law provisions that it may otherwise contain. Any litigation between the City and the MHCRC that arises out of or relates to the performance of this Master Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon, Multnomah Division.

20. Severability. If any term or provision of this Master Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Master Agreement did not contain the particular term or provision held to be invalid.

21. No Third Party Beneficiary. The MHCRC and the City are the only Parties to this Master Agreement and as such, are the only Parties entitled to enforce its terms. Nothing contained in this Master Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

22. Entire Agreement. This Master Agreement consists of these terms and conditions and any Quotations added from time to time pursuant to Section 4. This Master Agreement shall take precedence over any specific Quotations. There are no other contract documents unless specifically referenced or incorporated in this Master Agreement, or added or deleted by written Amendment to this Master Agreement. This Master Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements. No waiver, consent, modification or change of terms of this Master Agreement shall bind either Party unless in writing and signed by both Parties and approved by the Portland City Attorney's Office as to form. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

23. **Electronic Execution.** The Parties agree that they may execute this Master Agreement and any Amendments to this Master Agreement by electronic means, including the use of electronic signatures and scanned documents.

IN WITNESS WHEREOF, the Parties hereto have caused this Master Agreement to be executed as of the Effective Date.

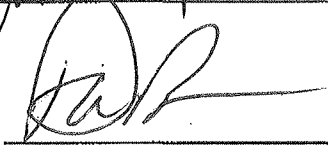
CITY OF PORTLAND (CITY):

Approved as to form:

Signed: 

Office of City Attorney

Date: June 2, 2015

Signed: 

Chief Technology Officer

By: Dan Bauer

(Printed name)

Date: 6/2/15

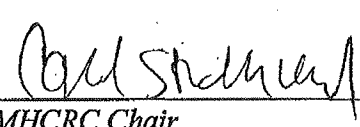
MT. HOOD CABLE REGULATORY COMMISSION (MHCRC):

Approved as to form:

Signed: 

MHCRC Counsel

Date: 3/17/15

Signed: 

MHCRC Chair

By: Carol Studenmund

(Printed name)

Date: March 16, 2015