



City of Florence
A City in Motion

City of Florence Council Regular Session

Florence Events Center
715 Quince Street
Florence, OR 97439
541-997-3437
www.ci.florence.or.us

- Meeting materials including information on each agenda item are published at least 24 hours prior to the meeting, and can be found of the City of Florence website at www.ci.florence.or.us/council.
- Items distributed during the meeting, meeting minutes, and a link to the meeting video are posted to the City's website at www.ci.florence.or.us/council as soon as practicable after the meeting.
- To be notified of City Council meetings via email, please contact City Recorder Kelli Weese at kelli.weese@ci.florence.or.us.

April 2, 2018

AGENDA

5:30 p.m.

Councilors:

Joe Henry, Mayor

Joshua Greene, Council President Ron Preisler, Council Vice-President
Susy Lacer, Councilor Woody Woodbury, Councilor

With 48 hour prior notice, an interpreter and/or TDY: 541-997-3437, can be provided for the hearing impaired.
Meeting is wheelchair accessible.

Proceedings will be recorded for rebroadcast on Cable Channel 191 and the City of Florence Vimeo Site.

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE

5:30 p.m.

PRESENTATIONS & ANNOUNCEMENTS

- 90x30 Child Abuse Prevention Month Proclamation
- Boys and Girls Club Week Proclamation
- Employee Recognitions
 - Denton Tipler – Promotion to Sergeant

1. APPROVAL OF AGENDA

Joe Henry
Mayor

2. PUBLIC COMMENTS

This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda. Comments will be limited to three (3) minutes per person, with a maximum time of 15 minutes for all items. Speakers may yield their time to others.

Joe Henry
Mayor

ACTION ITEMS

3. CHARTER FRANCHISE AGREEMENT

A. CHARTER FRANCHISE AGREEMENT REPEAL

Consider approval of Ordinance No. 1, Series 2018, an Ordinance repealing Ordinance No. 24, Series 2003 and declaring an emergency.

Megan Messmer
City Project
Manager

B. CHARTER FRANCHISE AGREEMENT

Consider approval of Resolution No. 5, Series 2018, a Resolution granting limited, non-exclusive franchise to Charter Communications to operate and maintain a cable communications system to provide cable services within the City limits of Florence.

4. SINGLE SOURCE AGREEMENT WITH THE AUTOMATION GROUP, INC.

Consider approval of Resolution No. 6, Series 2018, a Resolution authorizing the City Manager to enter into a single source agreement with The Automation Group, Inc. in the amount of \$143,600 for Supervisory Control and Data Acquisition (SCADA) equipment purchase and installation.

Mike Miller
Public Works
Director

REPORT ITEMS

5. ECONOMIC DEVELOPMENT PROGRAM UPDATES

Report on the City's economic development program.

Jesse Dolin
Eco. Devo.
Catalyst

6. CITY MANAGER REPORT

- Angela Brog – Communications Officer - 10 Years of Service

Erin Reynolds
City Manager

7. CITY COUNCIL REPORTS

Joe Henry
Mayor

COUNCIL CALENDAR

All meetings are held at the Florence Events Center (715 Quince Street, Florence Oregon) unless otherwise indicated

Date	Time	Description
April 4, 2018	10:00 a.m.	City Council Work Session <i>Canceled</i>
April 16, 2018	5:30 p.m.	City Council Meeting
April 18, 2018	10:00 a.m.	City Council Work Session <i>Tentative</i>
May 7, 2018	5:30 p.m.	City Council Meeting
May 9, 2018	10:00 a.m.	City Council Work Session <i>Tentative</i>
May 21, 2018	5:30 p.m.	City Council Meeting
May 23, 2018	10:00 a.m.	City Council Work Session <i>Tentative</i>

PROCLAMATION

Office of the Mayor, City of Florence



CHILD ABUSE PREVENTION MONTH **April 2018**

WHEREAS, The public cares deeply about child abuse, and a majority report that child abuse is a very important moral issue to them; and

WHEREAS, Preventing child abuse and neglect is a community problem that depends on involvement among people throughout the community; and

WHEREAS, Child abuse and neglect not only directly harm children, but also increases the likelihood of long-term physical and mental health problems, alcohol and substance abuse, continued family violence and criminal behavior; and

WHEREAS, Child maltreatment occurs when people find themselves in stressful situations, without community resources, and don't know how to cope; and

WHEREAS, Child abuse and neglect can be reduced by making sure each family has the support they need in raising their children in a safe, nurturing environment; and

WHEREAS, Effective child abuse prevention programs succeed because of partnerships created among social services agencies, schools, faith communities, civic organizations, law enforcement agencies and the business community;

NOW, THEREFORE, I, Joe Henry, Mayor of the City of Florence, do hereby proclaim **April 2018, as Child Abuse Prevention Month**, and call upon all citizens, community agencies, faith groups, medical facilities and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the communities in which we live. To learn more about what you can do in your community to reduce child abuse and neglect, please go to www.90by30.com.

Joe Henry, Mayor

PROCLAMATION
Office of the Mayor, City of Florence



BOYS AND GIRLS CLUB WEEK
April 9-12, 2018

WHEREAS, Every child no matter their background, their zip code or circumstances has greatness in them; and

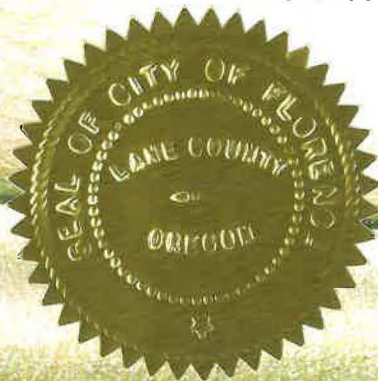
WHEREAS, The young people of Florence, Oregon are tomorrow's leaders and many young people need professional youth services to help them achieve their full potential; and

WHEREAS, The Boys & Girls Clubs of Western Lane County in Florence serves more than 500 young people annually and instills young people with the self-confidence to believe they can succeed at anything they put their mind to, and stand at the forefront of efforts in the areas of academic success, healthy lifestyles, good character and citizenship; and

WHEREAS, The Boys & Girls Club helps ensure young people have a safe, supportive place to spend time and will provide them with quality youth development programs; and

WHEREAS, Florence is proud that our young people across the community are building and planning their futures as members of our CLUB;

NOW, THEREFORE, I, Joe Henry, Mayor of the City of Florence, do hereby proclaim **April 9-13, 2018, as Boys and Girls Club Week in Florence**. Furthermore, I encourage all citizens to join me in recognizing and commending Boys and Girls Clubs in Florence for providing the young people of our communities with comprehensive and effective youth development services. Together, we may give young people and Florence a sense of hope, opportunity, and a sense that anything is possible.



Joe Henry, Mayor

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 1
Meeting Date: April 2, 2018
Department: Mayor & Council

ITEM TITLE: APPROVAL OF AGENDA

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 2
Meeting Date: April 2, 2018
Department: Mayor & Council

ITEM TITLE: PUBLIC COMMENTS

DISCUSSION/ISSUE:

This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda. Comments will be limited to three (3) minutes per person, with a maximum time of 15 minutes for all items. Speakers may not yield their time to others.

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 3
Meeting Date: April 2, 2018
Department: CMO

ITEM TITLE: Falcon Cable Systems Company II, L.P., locally known as Charter Communications, Franchise Agreement

DISCUSSION/ISSUE:

The City of Florence has had a franchise agreement with Falcon Cable Systems Company II, L.P., locally known as Charter Communications, since at least 1983. At the end of each franchise term, a new franchise is negotiated. The most recent franchise agreement was approved by the Florence City Council on December 2, 2003. That agreement and the rights, privileges and authority granted within it contained an initial term of ten (10) years, with an expiration of December 1, 2013. The City has been negotiating a new agreement with Charter since 2013. During negotiations, the 2003 agreement oversees Charter's use of the public right-of-way.

Throughout the franchise agreement negotiations, the City initially utilized the legal services of Lane Council of Governments but has more recently used the City contracted legal services through the Local Government Law Group. Christy Monson has led the negotiations over the past three years, with the assistance of Mark Wolf. The negotiations have included updating the City's requirements per Florence City Code (FCC), including the newly enacted FCC Title 8, Chapter 7: Right of Way Management that governs the use and occupation of the public right of way by communication providers. In addition, Charter has provided revisions based on their corporate policies.

Through FCC Title 8, Chapter 7, the City was able to create a uniform set of standards and requirements for communications providers to follow when occupying the public right-of-way. The City has jurisdiction and exercises regulatory management authority over all City Public Rights of Way pursuant to the City Charter and State law. The City's purpose for exerting its management authority over the Public Rights of Way is to protect and efficiently manage the public's resources, to ensure fair and non-discriminatory access to the public right-of-way, and to protect the public health, safety and welfare. It is the City's desire to authorize private access to use the public right-of-way in making communications services available to residential and commercial citizens in order to improve the livability and quality of life in Florence.

No person may occupy or encroach on a public right-of-way without the permission of the City. The City grants permission to use the public right-of-way through Franchise Agreements and Construction permits. Approval to use the public right-of-way does not grant the user ownership, nor does it obligate the City to maintain or repair any part of the public right-of-way. The City's regulations of private use of the public right-of-way include the public being fairly compensated for the private use. Among the purposes of the City's code is not only to ensure that the public is properly compensated for the private use of City assets and resources, but also to ensure that all similarly-situated Communications Providers are treated similarly and fairly to foster technological growth and innovation.

Below is an overview of the provisions in the franchise agreement with Charter Communications by Section. Much of the language is either derived from the Federal Communications Commission, the Cable Communications Policy Act of 1984, and the Florence City Code. The full agreement is found in Attachment 2, Exhibit A.

1. Definition of Terms
 2. Grant of Franchise
 - Non-Exclusive Franchise – This is a non-exclusive franchise meaning that other users occupying the right of way can provide the same services.
 - Term – Base term per City Code is 5 years. Franchise agreement defines a 10-year term for Charter Communications.
 - Police Powers – Grantee’s rights are subject to the police powers of the Grantor to adopt and enforce ordinances necessary for the safety, health and welfare of the public.
 3. Franchise Renewal
 4. Indemnification and Insurance
 - Grantee agrees to defend Grantor for all claims of injury, losses and expenses, or damages to any Person or property arising out of, related to, or caused by the negligence or wrongful acts, failures to act, or misconduct of Grantee in the construction or operation of the Cable System.
 - Grantee shall maintain insurance as required by City.
 5. Service Obligation
 - No Discrimination Clause
 - Privacy Clause
 6. Service Availability
 - The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area.
 - No Subscriber shall be refused service arbitrarily.
 - Grantee may require a subscriber to share the costs of extending the service to their location if the area does not meet the density requirements.
 - When providing service to new construction, Grantee shall place their equipment underground where other utilities are required to be underground.
 - The City will provide notice of annexed properties to Charter to be included in the service area subject to the franchise agreement.
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7. Construction and Technical Standards
 - Compliance with City Code
 - Construction Standards and Requirements
 - Safety Requirements
 - Technical Requirements and Monitoring
 8. Conditions on Street Occupancy
 - Outlines requirements for grantee when utilizing existing utility poles and facilities, installing new ones, and undergrounding utilities.
 - Requires Grantee to obtain legally required permits and pay fees.
 - Equipment shall be installed to minimize interference with property owners and in safe conditions.
 - Requires restoration of the right-of-way after work is performed.
 - Allows the City to remove facilities and equipment in the event of an emergency without charge for restoration or repair.
 - Allows Grantee to trim trees in the right-of-way if they pose a safety concern.
 - Outlines provisions for the City to require the facilities or equipment to be moved.
 9. Service and Rates
 - Requires customer service phone number for service area.
 - Requires Grantee to provide written instructions and procedures for making inquiries to the Grantee.
 - Confirms Grantee's authority to set service rates.
 10. Franchise Fee
 - Confirms the franchise fee of 5% of Gross Revenue, outlines a payment schedule, establishes a rate of interest for late payments, and audit authority.
 11. Transfer of Franchise
 - Requires City approval for transfer of the franchise.
 12. Records, Reports, and Maps
 - Outlines records that the Grantee is required to retain and allows for an inspection of records by the City.
 13. Public, Education and Government (PEG) Channel
 - Outlines the City's use of the one PEG Channel received from Grantee.
 14. Free Drops and Cable Service
 - Outlines the free cable drops to public buildings.
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15. Enforcement and Revocation

- Authorizes the City in the event of a violation and outlines the procedures to revoke the franchise agreement.

16. Miscellaneous Provisions

- Reservation of rights and compliance with laws for each party.
- Reserves the right for the City to authorize additional non-exclusive franchises for cable system providers within the franchise area.
- Outlines notice and communication requirements between the parties.
- Effective date is the date that Grantee signs the franchise agreement.

In order to update the franchise agreement, staff is requesting that the City Council repeal the ordinance creating the 2003 agreement and approve the resolution for the new agreement. With the creation of the FCC Title 8, Chapter 7, the main regulations relating to telecommunications franchises is established in Code. This removes the need to pass franchises via ordinance. Passing the franchise agreements via resolutions that reference City Code allows for a simplified process for updating an agreement if needed.

If the City Council does not agree with the resolution and new franchise agreement, or wishes staff to continue negotiations, it is recommended that they do not pass Ordinance No. 1, Series 2018 at this time. These two items should be approved in conjunction. If the City Council does approve of the new franchise agreement, then staff recommends passing both Ordinance No. 1, Series 2018 and Resolution No. 5, Series 2018.

FISCAL IMPACT:

The franchise agreement with Charter Communications has a franchise fee of 5% of gross revenues collected by the grantee for telecommunications services provided within the City limit as established by Resolution 5, Series 2018. Franchise fee revenue from franchise agreements support General Fund services such as Streets and Public Safety.

The City receives approximately \$70,000 per year in Cable Franchise Fees from Charter. In FY 2017-18, the City also began receiving Right of Way Use Fees for other telecommunications services provided by Charter beginning this fiscal year.

RELEVANCE TO ADOPTED COUNCIL GOALS:

City Council Goal 5: Financial & Organizational Sustainability – Sustain and improve the City's financial position, City-wide policies, and the infrastructure networks to support current and future needs.

ALTERNATIVES:

1. Adopt Ordinance No. 1, Series 2018, repealing the current Charter Communications franchise, and adopt Resolution No. 5, Series 2018 granting a new non-exclusive franchise agreement to Charter Communications.
2. Request staff to renegotiate terms of the Franchise Agreement.
3. Do not approve Ordinance No. 1, Series 2018, nor Resolution No. 5, Series 2018.

RECOMMENDATION:

Adopt Ordinance No. 1, Series 2018, an Ordinance repealing Ordinance No. 24, Series 2003, an ordinance granting a non-exclusive franchise to Falcon Cable Systems Company II, L.P. to operate and maintain a cable communications system within the City limits of Florence, and declaring an emergency.

Adopt Resolution No. 5, Series 2018, a resolution granting a limited, non-exclusive franchise to Falcon Cable Systems Company II, L.P., locally known as Charter Communications, to operate and maintain a cable communications system to provide cable services within the City Limits of Florence.

AIS PREPARED BY: Megan Messmer, City Project Manager

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other
Comments: *ER Reynolds*

ITEM'S ATTACHED: Attachment 1: Ordinance No. 1, Series 2018
Attachment 2: Resolution No. 5, Series 2018

CITY OF FLORENCE ORDINANCE NO. 1, SERIES 2018

An Ordinance repealing Ordinance No. 24, Series 2003, an ordinance granting a non-exclusive franchise to Falcon Cable Systems Company II, L.P. to operate and maintain a cable communications system within the City limits of Florence, and declaring an emergency.

RECITALS:

1. On December 2, 2003, the Florence City Council adopted Ordinance No. 24, Series 2003, granting a non-exclusive franchise to Falcon Cable Systems Company II, L.P., dba Charter Communications, (hereinafter "Grantee") to operate and maintain a cable communications system within the City limits of Florence.
2. The franchise and the rights, privileges and authority granted within it contained an initial term of ten (10) years, with an expiration of December 1, 2013.
3. The City of Florence (hereinafter "City") and Grantee have been negotiating new franchise terms since 2013.
4. The terms of the 2003 franchise agreement have applied to the use of the right-of-way by Grantee during the franchise negotiations.
5. On March 20, 2017, the Florence City Council passed Ordinance No. 5, Series 2017, amending Florence City Code Title 8 by Adding Chapter 7: Right of Way Management for Governing the Use and Occupation of the Public Right of Way by Communications Providers and Establishing an Application Process, Fees, and Terms for Such Use.
6. Title 8, Chapter 7: Right of Way Management establishes regulations that apply to all Communications Providers who use or occupy the Public Rights of Way to provide Communications Services to Persons within the City, provides general provisions to Communications Providers, and establishes the process for obtaining a franchise agreement.

Based on these findings,

THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. Ordinance No. 24, Series 2003, an ordinance granting a non-exclusive franchise to Falcon Cable Systems Company II, L.P. to operate and maintain a cable communications system within the City limits of Florence, shall be repealed.

2. The negotiated franchise agreement with Falcon Cable Systems Company II, L.P., locally known as Charter Communications, shall be granted by Resolution.
3. This Ordinance shall become effective upon adoption.
4. The City Recorder is authorized to administratively correct any reference errors contained herein or in other provisions of the Florence City Code to the provisions added, amended, or repealed herein.

ADOPTION:

First Reading on the _____ day of April, 2018.

Second Reading on the _____ day of April, 2018

This Ordinance is passed and adopted on the 2th day of April, 2018.

AYES	X	Councilors X, X, X
NAYS	x	
ABSTAIN	x	
ABSENT	x	

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

CITY OF FLORENCE RESOLUTION NO. 5, SERIES 2018

A Resolution granting a limited, non-exclusive franchise to Falcon Cable Systems Company II, L.P., locally known as Charter Communications, to operate and maintain a cable communications system to provide cable services within the City Limits of Florence.

RECITALS:

1. The Florence City Council has the authority under the Florence City Code, its Charter, the Oregon Constitution, and State and Federal law, to grant franchises for the use and occupation of its Rights of Way.
2. Florence City Code (FCC) Title 8, Chapter 7: Right of Way Management, established through Ordinance No. 5, Series 2017, governs the use and occupation of the Public Right of Way by Communications Providers and applies to this Franchise Agreement.
3. Falcon Cable Systems Company II, L.P., locally known as Charter Communications, (hereinafter "Grantee") currently operates a non-exclusive franchise within the City of Florence to operate and maintain a cable communications system.
4. The Grantee's franchise was approved on December 2, 2003, and the rights, privileges and authority granted within it contained an initial term of ten (10) years, with an expiration of December 1, 2013.
5. The City of Florence (hereinafter "City") and Grantee have been negotiating new franchise terms since 2013.
6. The terms of the 2003 franchise agreement have applied to the use of the right-of-way by Grantee during the franchise negotiations.
7. The City finds that Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal, and technical ability of the Grantee is sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community.
8. Having afforded the public adequate notice and opportunity for comment, the City desires to enter into this Franchise with Grantee for the construction and operation of a cable system for cable services on the terms set forth within the Franchise Agreement.
9. The City and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal.

10. Ordinance No. 1, Series 2018, repealed Ordinance No. 24, Series 2003, an ordinance granting a non-exclusive franchise to Falcon Cable Systems Company II, L.P. to operate and maintain a cable communications system within the City limits of Florence, and declaring an emergency.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The terms of the Franchise Agreement with Grantee are shown in Exhibit A.
2. Grantor hereby approves the Franchise Agreement and the terms in Exhibit A.
3. This Resolution takes effect immediately upon adoption.

ADOPTION:

This Resolution is passed and adopted on the 2th day of April, 2018.

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

FRANCHISE AGREEMENT
CITY OF FLORENCE, OREGON

This Franchise Agreement (“**Franchise**”) is between the City of Florence, Oregon, hereinafter referred to as the “Grantor” and Falcon Cable Systems Company II, L.P., locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System” Cable Service and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Council” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the applicable provisions of the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, *et. seq.*
- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.

- E. “Equipment” shall mean any poles, wires, cable, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of the Cable System.
- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- G. “Franchise” or Franchise Agreement shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the Right of Ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- I. “Generally Applicable” or “Generally Applied” shall mean that the City ordinance or rule in question is lawful, non-discriminatory, and is consistently and uniformly applied pursuant to applicable state or federal statutes or regulations.
- J. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Franchise Area including, but not limited to amounts for: Cable Services, premium cable services, advertising, home shopping channels, installation fees and all leased access payments; provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, the Franchise Fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusions available under applicable State law.
- K. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- L. “Service Area” shall mean the area described in subsection 6.1.
- M. “State” shall mean the State of Oregon.
- N. “Right of Way” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which is under the jurisdiction or control of Grantor to the extent Grantor has the right, title, interest and/or authority to grant a Franchise to occupy and use such

Right of Way, and shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

O. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2 **Grant of Franchise**

2.1 Grant. Subject to the terms and conditions of this Franchise Agreement, the Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Right of Way, now in existence and as may be created or established during its terms; all Equipment.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 16.10.

2.3 Police Powers. Notwithstanding any other provision of this Franchise, Grantee's rights are subject to the police powers of the Grantor to adopt and enforce ordinances necessary for the safety, health and welfare of the public ("Police Powers"). The Grantee agrees to comply with the terms of any Generally Applicable local ordinance which is lawfully adopted under Grantor's Police Power Authority.

2.4 Franchise Required. No Cable System shall be allowed to occupy or use the Right of Way of the Service Area or be allowed to operate to provide Cable Service without a Franchise.

SECTION 3 **Franchise Renewal**

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Parties that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act or any such successor statute.

SECTION 4 **Indemnification and Insurance**

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury, losses and expenses, or damages, to any Person or property arising out of, related to, or caused by the negligence or wrongful acts, failures to act, or misconduct of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury, losses and expenses, or damages, including any attorneys fees, to any Person or property as a result of the negligence or wrongful acts, failures to act, or misconduct of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System,

provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

4.2 Insurance.

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$2,000,000 per occurrence C.S.L.

B. The Grantor shall be added as an additional insured for claims arising out of work performed by Charter to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

D. The limits of insurance as provided herein shall be subject to any changes regarding the maximum limits of tort liability for municipalities in the State of Oregon during the term of this Franchise.

SECTION 5
Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6
Service Availability

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area. As used in this Franchise, "Service Area" is any area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee. Grantee need not make an extension to any area which is financially or technically infeasible, if it provides documentation substantiating such infeasibility to Grantor. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence. Grantee may require residents who request service but whose residence is further than one hundred twenty five (125) feet from an existing feeder cable (ie: outside the Service Area) to equally share the cost of an extension of service greater than the standard cost of a service extension of one hundred twenty five (125) feet. Standard installation costs may also be required of such subscribers.

6.3 New Developments Underground. In cases of new construction or new property development, where other utilities are required to be placed underground, Grantee shall place its facilities underground at Grantee's sole expense. If Grantor issues a permit for open trenching to any developer, Grantor agrees to use reasonable efforts encourage developer to coordinate construction and undergrounding schedules for the open trenching such that all utilities in the Right of Way, including Grantee, shall have at least thirty (30) days prior notice of such construction or undergrounding, and of the particular dates on which open trenching will be available for Grantee's installation of Grantee facilities, which shall be constructed, placed or provided at Grantee's sole expense.

6.4 Annexation. The Grantor shall within 30 days after the annexation is complete provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise sixty (60) days from the date of the written notice from the Grantor, subject to the

conditions set forth below and Section 6.1, above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, begin calculating the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice as provided in this Section. Grantor will include such notice in an Excel format or another mutually-agreeable format. If the annexation notice does not comply with this Section, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses, as set forth above. All notices due under this Section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 16 with a copy to the Director of Government Affairs. In any audit of Franchise Fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this Section.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code and Grantor's Generally-Applicable ordinances, rules and regulations adopted pursuant to its lawful Police Powers. In the event of conflict between the NESC and Grantor's ordinances, rules and regulations, the NESC shall prevail.

7.2 Construction Standards and Requirements. All of the Grantee's Equipment, shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced and experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use industry-accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

7.5 Performance Monitoring. Grantee shall test the Cable System consistent with the FCC regulations.

SECTION 8

Conditions on Street Occupancy

8.1 General Conditions. Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

8.2 Underground Construction. The Equipment of the Grantee that can be reasonably installed underground, shall be installed, at Grantee's sole expense, underground in those Service Areas where existing telephone and electric services (other than high-voltage electric lines) are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its Equipment aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place underground its Equipment that can reasonably be installed underground.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required generally applicable permits and pay all legally required Generally Applicable permit fees, before commencing any work requiring a permit, including the opening or disturbance of any Street within the Franchise Area. Grantee shall adhere to the terms of all the permits and Grantor codes, ordinances, rules and regulations currently or hereafter applicable to construction, operation and /or maintenance of the Cable System within the Service Area, provided that such codes are of General Applicability and adopted pursuant to Grantor's Police Powers.. The Grantor shall administratively assist the Grantee in securing any permits required.

8.4 System Construction. All transmission lines, Equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly-accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Right of Way by the Grantee shall be placed in such a manner as to comply with applicable law and shall not interfere with usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, promptly (or as soon as practicable in the event weather or other events beyond Grantee's control prevent such prompt restoration) and at its own expense, restore any damage or disturbance caused to the Right of Way or public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Right of Way immediately prior to such damage or disturbance.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's Facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such fire or disaster was caused by gross negligence of the Grantor.

8.7 Tree Trimming. In an emergency that threatens the safety or integrity of Grantee's Equipment, Grantee or its designee shall have the authority to trim trees on public property at its own expense, as may be necessary to protect its wires and facilities. In all other circumstances, Grantee shall provide Grantor with ten (10) days' written notice prior to such trimming.

8.8 Removal or Relocation for the Grantor. The Grantee shall, upon receipt of advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by Grantor's Generally-Applicable rules or ordinances and at Grantee's sole cost. Should Grantee fail to remove or relocate as required by this Section, Grantor may cause such work to be done by a qualified contractor after providing thirty (30) days written notice to Grantee, and the costs thereof, including the reasonable costs incurred due to the delay, shall be paid by Grantee, subject to any applicable reimbursement required in Section 8.10.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee. Grantee shall be afforded reasonable advanced written notice from the person holding a lawful permit. Nothing in this section prevents Grantee from requesting reimbursement or compensation from a third party for the cost of such relocation. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. In the event that Grantor reimburses any telephone or electric utility for undergrounding, relocation or removal of Facilities required by Grantor, Grantor shall also reimburse Grantee for similar undergrounding, relocation or removal required by Grantor under this Section 8, contingent upon the following conditions: 1) such reimbursement is mandated by State or federal law; or 2) such reimbursement is not limited or prohibited by a fund, loan, or grant used to fund the reimbursement.

8.11 Emergency Use. Grantee agrees at all times to comply with federal and state Emergency Alert System ("EAS") rules as required in 47 C.F.R. Part 11 or as amended. If the Grantee provides an EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 9

Service & Rates

9.1 Phone Service. The Grantee shall provide either a staffed office within the Service Area or shall maintain a staffed, toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local

telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.2 of this Franchise.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes or fees of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. If Cable Services and non-Cable Services are bundled together and offered to Subscribers for one price, then in accordance with GAAP, Grantee shall account for the revenue from such packages using the retail rate methodology which allocates the bundle discount by the proportion of the total retail rate each billing component represents. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purposes of evading or reducing its Franchise fee obligations. In the event the Cable Act is amended to modify the current cap on franchise fees to an amount greater than five percent (5%) of Gross Revenues, Grantee agrees and shall pay the new maximum amount consistent with federal law. Such increased fee shall take effect upon sixty (60) days written notice of the adoption of a City Council resolution to increase the franchise fee to the new maximum amount.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 16.10. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenue amounts and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a Franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any Franchise Fee payable hereunder shall be five (5) years from the date on which the payment was due. In the

event that a Franchise Fee payment owed under this Franchise Agreement is not made on or before the dates specified herein, interest shall accrue on the unpaid fee at a rate of the Prime Rate plus two percent (2%) commencing with the fifteenth day after the fee shall be due.

10.5 Audit. Grantor may review and/or audit Grantee's records to ensure the correct calculation of Gross Revenues and payment of Franchise Fees. Grantee shall provide such records to Grantor or its designee, upon request by and at no charge to Grantor, subject to Grantor and/or designee signing Grantee's non-disclosure agreement. If there is a dispute as to whether a particular item of revenue is within the scope of the term "Gross Revenues" and Grantee withholds revenue records on the ground that the revenues are not subject to the Franchise fee, Grantee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld. In the event that any Franchise fee is underpaid, Grantee shall pay interest as required in Section 10.2. Subject to applicable law, if the audit discloses an underpayment by an amount in excess of seven thousand dollars (7,000), Grantee will reimburse Grantor for all reasonable audit costs. Said audit shall be conducted no more often than annually, and the audit period shall not be any greater than the previous five (5) years. The audit shall not last longer than six (6) months. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the Grantor, which notice shall include a copy of the audit findings.

SECTION 11

Transfer of Franchise

11.1 Assignment Consent; Transfer. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the Grantor, such consent not to be unreasonably withheld or delayed. Grantor may condition its consent upon terms and conditions that relate to the legal, financial, or technical qualifications of the proposed transferee or assignee. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request and Grantee has provided all information requested by Grantor, then Grantor's consent shall be deemed given. All assignees or transferees must agree to assume all obligations and responsibilities within this Franchise Agreement.

SECTION 12

Records, Reports and Maps

12.1 Reports Required. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and

reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine at a mutually-agreeable location during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the Section of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for (1) books and records showing the calculation of Gross Revenues and payment of Franchise Fees, which shall be kept for five (5) years; and (2) service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. Subject to Oregon's public records law, the Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantee agrees to pay costs incurred by Grantor due to the foregoing denial of books and records, including reasonable attorney fees, in responding to public record requests for Grantee's books and records and/or defending a denial of such public records requests.

SECTION 13

Public, Education and Government (PEG) Channel

13.1 Use of Public, Education and Government (PEG) Channel. Grantee shall provide one (1) channel on the Cable System, for the use by Grantor or its designees for locally-produced, non-commercial video programming for Public, Education and Government ("PEG") access programming. Subject to applicable law, all Subscribers within the Service Area shall have access to the PEG channel.

13.2 Management and Control of PEG Channel. Grantor reserves the right to permit a third party to operate and manage the PEG channel on the Grantor's behalf. Subject to the foregoing, Grantor retains sole and exclusive responsibility for operating and managing the PEG channel.

13.3 Programming Requirements. The Grantor shall provide programming on the PEG Channel to occupy at least sixty percent (60%) of the hours between 9 a.m. and 5 p.m. for any (8) consecutive week period.

13.4 Annual Report to Grantee. Upon Grantee's request and no more than once annually, Grantor agrees to provide Grantee with a written report detailing PEG Channel usage. The annual report shall contain, at a minimum, the average percent of PEG programming on any consecutive 8 week period consistent with the terms provided herein. Grantor shall provide at Grantee's request, but no more than annually, the annual, non-capital costs directly attributable to providing the PEG channel.

SECTION 14 **Free Drops and Cable Service**

14.1 Service to Public Buildings. Subject to applicable law, Grantee shall continue to provide, without charge, one (1) Standard Installation, activated outlet and equipment, for Basic and Expanded Cable Service to all elementary and secondary public school instructional buildings and public library buildings within the Franchise Area and located within one hundred twenty-five (125) feet of Grantee's distribution plant. Additionally, Grantee shall provide, without charge, one Standard Installation, activated outlet and equipment for Basic Cable Service to 4 (four) publicly-owned or publicly-operated buildings within the Franchise Area, up to a maximum of (4) total locations. The locations identified below shall be within one hundred and twenty-five (125) feet of Grantee's feeder cable. The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any inappropriate use of or loss or damage to the Grantee's Cable System.

4 Public Buildings:

- A. City of Florence, 250 Highway 101, Florence, OR
- B. SVFR Station #2 Siuslaw, 251 Laurel St., Florence, OR
- C. Police Dept. Florence, 900 Greenwood St., Florence, OR
- D. Siuslaw Valley Fire Station #1, 2625 Highway 101, Florence, OR

School/Library Buildings:

- A. Siuslaw High School, 2975 Oak St., Florence, OR
- B. Siuslaw Elementary School, 2221 Oak Street Florence, OR. 97439

C. Siuslaw Middle School, 2525 Oak Street, Florence, OR. 97439

D. Siuslaw Public Library, 1460 9th St., Florence, OR

SECTION 15 **Enforcement and Revocation**

15.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the “Violation Notice”).

15.2 Grantee’s Right to Cure or Respond. Unless Grantor is pursuing a Revocation pursuant to Section 15.5 below, the Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of such default, it cannot be cured within the thirty (30) day period, request from Grantor additional time to remedy the default, initiate reasonable steps to remedy such default, and notify the Grantor of the steps being taken and the projected date that they will be completed, which in no case shall exceed a total of sixty (60) days from Grantor’s notice without prior approval from Grantor.

15.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Council shall schedule a public hearing if it intends to continue its investigation into the default. Unless Grantor is pursuing a Revocation pursuant to Section 15.5 below, Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be publicized and noticed in the same manner as all public meetings are publicized and noticed and in compliance with Oregon public meetings law. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, after which it shall determine if a breach or violation has occurred and/or whether or not the Franchise shall be revoked. The public hearing shall be on the record and, at the Grantee’s request and sole expense, the City shall provide a written transcript to the Grantee within ten (10) business days. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council using a standard of deference consistent with federal and Oregon law. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

15.4 Enforcement. Subject to applicable federal, State and Generally Applicable City law, in the event the Grantor, after the hearing set forth in subsections 15.3 or 15.5, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise itself in accordance with subsection 15.5 below.

15.5 Revocation Hearings: Standards, Notice, and Opportunity to Cure

- A. Prior to revocation of the Franchise, the Grantor shall give written a Revocation Notice to the Grantee, which shall state its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the material and substantial noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee within sixty days, it may then revoke the Franchise. If the Grantee responds within sixty days and such response is not satisfactory to Grantor, Grantor shall schedule a public City Council hearing no earlier than 30 days from the date of Grantee's response. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and its intent to revoke the Franchise. The public hearing shall be conducted in accordance with requirements of Section 15.3 above.
- B. Notwithstanding the above provisions, the Grantee and Grantor reserve all of their rights under federal or state and City law or applicable regulation.
- C. Upon revocation of the Franchise, Grantee may remove the Cable System from the Right of Way of the Grantor; or may abandon the Cable System in place with written permission from Grantor.

SECTION 16 **Miscellaneous Provisions**

16.1 Reservation of Rights and Compliance with Laws. Grantor and Grantee reserve all applicable rights under state or federal law and shall conform to all state and federal laws regarding right of way occupancy, Cable Service, and cable television as they become effective. Grantee shall also conform with all Generally Applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise.

16.2 Force Majeure. Neither Grantor or Grantee shall 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, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantor or Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility

providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached if such delays were reasonably beyond the ability of the Grantor or Grantee to foresee or control, as well as unavailability of materials and/or qualified labor to perform the work necessary.

16.3 Minor Violations. The Parties agree that it is neither Parties' intention to subject the other Party to penalties, fines, forfeitures, revocation, or termination of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative material impact on the other Party or on Subscribers within the Service Area.

16.4 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such Party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

16.5 Competitive Equity. The Grantee acknowledges and agrees that Grantor reserves the right to grant one or more additional franchises to construct a Cable System to provide a Cable Service within the Franchise Area. If any such competitive Cable Services franchise is granted by Grantor which contains more favorable or less burdensome material terms or conditions than this Franchise, Grantor agrees that it shall renegotiate this Franchise to include substantially similar material terms or conditions to Grantee. In determining whether the material terms of this Agreement are more burdensome or less favorable than the material obligations of a competing wireline Cable Service provider's Agreement, the Parties and a court of competent jurisdiction shall consider the comparative material obligations in their totality.

Grantor shall abide by the notice requirements in Oregon public meetings law for any public meeting pertaining to the granting of another Cable franchise. Grantee may request to be included on such notices, per Oregon law.

In the event that a non-franchised multichannel video programming distributor with facilities located in Grantor's Streets provides service to the residents of Grantor, the Grantee may request Franchise amendments. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall: (1) indicate the presence of a non-franchised competitor; (2) identify the basis for Grantee's belief that Grantee is at a competitive disadvantage; and (3) identify the regulatory burdens requested to be amended or repealed.

16.6 Notices. Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

As set forth above, notice served upon the Grantor shall be delivered or sent to:

Attn: City Manager
City of Florence
250 Hwy. 101
Florence, OR 97439
erin.reynolds@ci.florence.or.us

And every notice served upon Grantee shall be delivered or sent to:

Attn: Director, Government Affairs
Charter Communications
222 NE Park Plaza Drive, #231
Vancouver, WA 98684
Marian.jackson@charter.com

With a copy to:

Attn: Vice President, Government Affairs
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

16.7 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

16.8 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the Parties regarding the subject matter hereof.

16.9 Administration of Franchise. This Franchise is a contract and neither Party may take any unilateral action that materially changes the express mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

16.10 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise.

16.11 No Third Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this ___ day of _____, 2018.

City of Florence, Oregon

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, 2018, subject to applicable federal, State and local law.

Falcon Cable Systems Company II, L.P.

By: Charter Communications VII, LLC, its General Partner

By: Charter Communications, Inc., its Manager

By: _____

Paul Abbott

Vice President, Local Government Affairs & Franchising

Charter Communications

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 4
Meeting Date: April 2, 2018
Department: Public Works

ITEM TITLE: Single Source Authorization for SCADA Equipment Purchase and Installation for the Wastewater Treatment Plant in the amount of \$143,600.

DISCUSSION/ISSUE:

In 2012, the City of Florence standardized all of our Supervisory Control and Data Acquisition (SCADA) controls, equipment and service with The Automation Group, Inc. Since this time the City has made considerable investment in our radio telemetry system, notably the remote transmitting units (RTU's) for wastewater and water pumping facilities, water reservoir sites, well sites, and both treatment plants.

Our existing Programmable Logic Controller's (PLC's) at the Wastewater Treatment Plant were installed in late 1990's when the plant underwent a major facilities upgrade. A number of these PLC's have been moved to 'obsolete' status by Rockwell Allen Bradley, which means that Rockwell Allen Bradley are no longer able to supply new items for this product line. Finding quality used replacement control cards for these 1990's vintage PLC's are difficult at best. According to other municipalities that have these older and obsolete PLC's which have utilized used parts for their controllers have had mixed results. We, too, have experienced mixed results as some of these used products are not completely usable when they arrive and are placed into service.

Some of the problems that we have seen during the last year are replacing burnt out digital and analog I/O (Input/Output) Points. We have moved those Points to spare locations on the circuit board(s) and reprogrammed the PLC(s), including the SCADA software, however we are quickly running out of spares. As of now, we have not had a failed processor but if that were to happen we would not be able to get a used one in a timely manner, if at all. A partial or complete failure of one of the PLCs would require operating the wastewater plant 24/7 in manual control until one was located.

Specifically, the product line that is obsolete is the PLC-5 Controllers and 1771 I/O cards. Rockwell Allen Bradley (the manufacturer of the PLC-5 product line) has recommended that we migrate to the ControlLogix Control Systems. The ControlLogix family of programmable automation controllers (PAC) allows the City to leverage advancements in technology that provide access to information for more informed decisions, faster performance for more throughput, and more memory. Additionally, the ControlLogix platform improves ease-of-use and enables scalability via a common control engine in a single development environment that helps to eliminate the need for multiple discrete control systems.

Advantages of the new ControlLogix system:

- Availability of new replacement parts locally
- Expandability of our control system for future applications
- Faster programming and troubleshooting saving costs on service calls
- Online support from Rockwell Allen Bradley (Rockwell Allen Bradley no longer offers support of any kind to the old PLC-5 Controllers)
- Better support as all new integrators know the ControlLogix platform, however few know the older PLC-5 Controllers as most of the programmers from that era are retiring and the old network protocols are not being taught for more than 15 years
- Improved capacity and asset utilization, leading to greater overall equipment effectiveness
- Regulatory compliance and reduced exposure to security risks

The existing PLC-5 Controllers have been an industry standard for more than 30-years. However, no technology can last forever. The PLC-5 Controllers have been discontinued as of June 2017.

Again, the ControlLogix Control Systems is a high performance platform that allows the City to converge our discrete, motion, process, and safety processes, including extreme environments, into an integrated plant-wide architecture that enables us to achieve a connected enterprise. Migrating to the ControlLogix family of programmable controllers (PAC) allow the City to leverage advancements in technology that provide access to information for more informed operational decisions, faster performance for more throughput and more memory. The ControlLogix platform improves ease-of-use and enables scalability via a common control engine in a single environment that helps to eliminate the need for multiple discrete control systems.

The project scope is to replace three of the existing PLC-5 Controller's to the ControlLogix platform and migrate one of the PLC-5 Controller's to MicroLogix 1100 PLC with three modules to drive the autodialer. The autodialer is used to call-out staff when there is a process issue, pump failure, signal failure, fire and security alarm, or other alarms (such as high and low level alarms) in the system that needs to be addressed by an operator.

The hardware only costs are:

○ PLC 1	\$1,517 (this PLC-5 Controller will be replaced with a MicroLogix 1100)
○ PLC 3	\$26,391
○ PLC 6	\$20,625
○ PLC 7	<u>\$19,865</u>
Hardware Total	\$68,398

Migration, installation, programming, testing and startup costs:

○ PLC 1	\$6,398
○ PLC 3	\$22,835
○ PLC 6	\$18,478
○ PLC 7	\$18,615
○ Software upgrade	\$3,713

- o Contingency \$5,160 (additional four days onsite to resolve any unforeseen problems that may arise during the upgrades)

Installation Total \$75,199

The project grand total is \$143,597.

To provide some context, a reconditioned 1771 I/O replacement card can run between \$3,600 - \$12,000 with availability between 24-48 hours (for a reconditioned card) to 4-6 weeks for a better quality card. Each of our existing PLC-5 Controllers 3 analog input cards and 2 output cards. To replace the existing analog 1771 I/O cards would be \$18,000 - \$60,000 per existing PLC. This is just the hardware costs and does not include the costs for the installation and programming. The migration of PLC 6 or PLC 7 to the new ControlLogix platform averages \$38,791.50 each complete (new equipment plus installation and programming) as compared to the analog 1771 I/O cards only at \$18,000 - \$60,000.

As Council may imagine, this project was not identified during the 2017-19 biennium process. However, Public Works did identify and program the replacement of the air handling equipment (blowers) and fine air diffusers at the wastewater treatment plant for \$150,000. The \$150,000 for the air handling equipment replacement is in the approved 2017-19 biennium budget.

For the air handling equipment replacement, the City has recently completed our due diligence and received an evaluation and recommendation from engineering firm to appropriately size and configure the new system. The engineers estimate for the air handling equipment and diffuser replacement is in excess of \$600,000 and we need to re-examine the scope of the replacement, explore energy incentives to buy down the initial capital expenditure, and review phasing options for the project.

With the air handling equipment replacement project off the table, the City has \$150,000 available to adequately fund the PLC replacement without affecting the budget.

The City has been using TAG for providing repair and support service to our SCADA system for a number of years. TAG is proficient in the design and implementation of SCADA telemetry and wireless telemetry systems. Due to the many years of service, TAG is uniquely qualified to provide an integrated solution to our SCADA needs due to their intimate knowledge of our existing systems.

FISCAL IMPACT:

The proposal from TAG to provide equipment, components, software and labor to replace and install the new PLC's at the wastewater treatment plant is \$143,597. By delaying and re-scoping the air handling and diffuser equipment replacement, \$150,000 is now available to fund the PLC replacement project. Funding is available in the FY17-19 Biennium Wastewater capital budget and the project is fully funded.

RELEVANCE TO ADOPTED CITY WORK PLAN:

- City Service Delivery – improving, maintaining and enhancing our infrastructure as feasible.
- Livability & Quality of Life – by providing wastewater treatment that is safe, efficient and sustainable to the community.
- Economic Development – quality wastewater treatment facilities enhances the development and redevelopment potential of the community.
- Communication & Trust – strengthening citizen trust by cooperatively working with residents for the common good.
- Financial & Organizational Sustainability – ensuring that our infrastructure supports current and future needs.

ALTERNATIVES:

1. Do not award single source contract.
2. Direct staff to prepare a formal Request for Proposals for the replacement of the PLC-5 Controllers with new ControlLogix Control Systems.
3. Do not complete the work and run the risk of having to man the wastewater treatment plant 24/7 when the existing PLC-5 Controllers fail.

RECOMMENDATION:

Staff recommends that the City Council approve Resolution No. 6, Series 2018 authorizing the City Manager to enter into a single source agreement with The Automation Group, Inc. for SCADA equipment purchase and installation for PLC-5 Controllers replacement and upgrade.

AIS PREPARED BY: Mike Miller, Public Works Director

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other

Comments: *ERReynolds*

ITEMS ATTACHED: Attachment 1 - Resolution No. 6, Series 2018

**CITY OF FLORENCE
RESOLUTION NO. 6, SERIES 2018**

A RESOLUTION AUTHORIZING THE CITY OF FLORENCE, OREGON TO ENTER INTO A SINGLE SOURCE AGREEMENT WITH THE AUTOMATION GROUP, INC. (TAG) IN THE AMOUNT OF \$143,600 FOR SCADA EQUIPMENT AND INSTALLATION AT THE WASTEWATER TREATMENT PLANT.

RECITALS:

1. Public Works has researched, developed, reviewed and refined the SCADA (Supervisory Control and Data Acquisition) needs of the Wastewater Treatment Plant.
2. The Automation Group, Inc. (TAG) is the only supplier/source that is familiar with the existing system to make the additional improvements.
3. In accordance with ORS 279B.075 the installation of the SCADA system requires the acquisition of compatible goods and services.
4. Funding is available in the FY17-19 Biennium Adopted Budget from the Wastewater Capital Outlay fund.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to proceed and enter into a Goods and Services Agreement between The Automation Group, Inc. and the City of Florence, Oregon in the amount of \$143,600 for SCADA equipment purchase and installation at the Wastewater Treatment Plant.

ADOPTION:

This Resolution is passed and adopted on the 2nd day of April, 2018.

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 5
Meeting Date: April 2, 2018
Department: Admin

ITEM TITLE: Report on the City's economic development program

DISCUSSION/ISSUE:

Jesse Dolin will give a brief presentation to the Council on his position and role as Economic Development Catalyst for the City of Florence.

FISCAL IMPACT:

This is a departmental presentation to the Council on the economic development work done by Jesse Dolin, Economic Development Catalyst for the City of Florence.

RELEVANCE TO ADOPTED CITY WORK PLAN:

This position meets the 2017 Council Goals of actions aimed towards sustaining and expanding the Florence economy through;

- Business Retention and Expansion
 - Marketing and recruitment
 - Economic Infrastructure
 - Support of entrepreneurship and innovation
-

AIS PREPARED BY: Jesse Dolin, Economic Development Catalyst

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other
Comments:

ER Reynolds

ITEM'S ATTACHED: None

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 6
Meeting Date: April 2, 2018
Department: City Manager

ITEM TITLE: CITY MANAGER REPORT

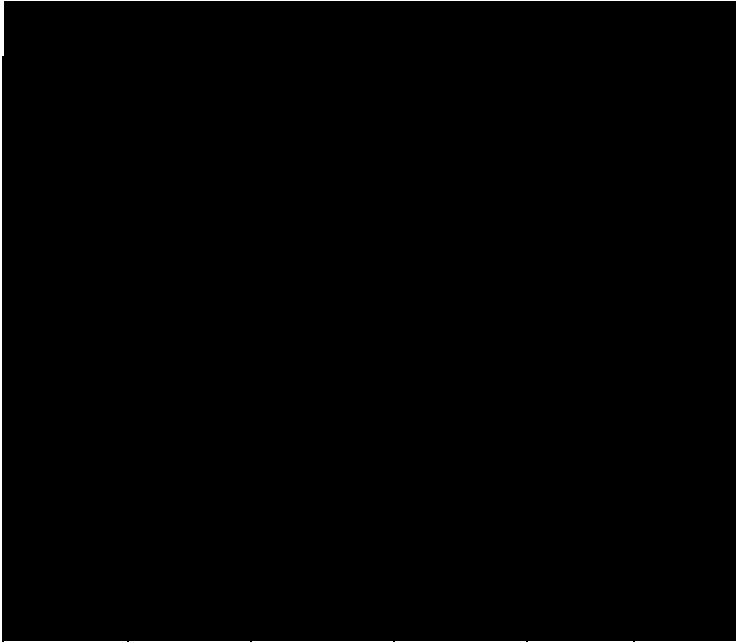
- Angela Brog – Communications Officer – 10 Years of Service

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 7
Meeting Date: April 2, 2018
Department: City Council

ITEM TITLE: CITY COUNCIL REPORTS

Florence City Council Calendar - 2018



April

M	Tu	W	Th	F	Sa/Su
2 Council Meeting	3	4 Council Work Session Canceled	5	6	7 & 8
9	10	11	12	13	14 & 15
16 Council Meeting	17	18 Council Work Session - Tentative	19	20	21 & 22
23	24	25	26	27	28 & 29
30					

May

M	Tu	W	Th	F	Sa/Su
	1	2	3	4	5 & 6
7 Council Meeting	8	9 Council Work Session - Tentative	10	11	12 & 13
14	15	16	17	18	19 & 20
21 Council Meeting	22	23 Council Work Session - Tentative	24	25	26 & 27
28 Memorial Day Holiday	29	30	31		

June

M	Tu	W	Th	F	Sa/Su
				1	2 & 3
4 Council Meeting	5	6 Council Work Session - Tentative	7	8	9 & 10
11	12	13	14	15	16 & 17
18 Council Meeting	19	20 Council Work Session - Tentative	21	22	23 & 24
25	26	27	28	29	30 & 1