

**CITY OF ILWACO  
ORDINANCE NO. 864**

**AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE FOR THE MAINTENANCE AND OPERATION OF A CABLE SYSTEM IN THE CITY OF ILWACO, WASHINGTON.**

**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 CITY COUNCIL OF THE CITY OF ILWACO, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

This Franchise Agreement ("Franchise") is between the CITY of ILWACO, WASHINGTON, hereinafter referred to as the "Grantor" and FALCON COMMUNITY VENTURES I, L.P., locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the "Grantee."

**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. "Board/Council" shall mean the governing body of the Grantor.
- C. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.

- D. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- E. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- F. "Gross Revenues" shall mean any and all revenue as determined in accordance with Generally Accepted Accounting Principles ("GAAP") received by Grantee from the operation of the Cable System to provide Cable Services within the Service Area, by any affiliate which is a cable operator and only to the extent such amounts are earned from the operation of the Cable System within the Service Area to provide Cable Services. Gross Revenues shall include, without limitation, amounts for the Basic Cable Service, any other programming service tiers, pay services, subscriber installations and transactions, Leased Access programming fees, advertising revenues excluding commission and/or applicable agency fees, and equipment rentals, and monies received by Grantee attributable to its payment of franchise fees that is has passed through to it Subscribers. Grantee shall report to the Grantor Gross Revenues as determined in accordance with GAAP. Gross Revenues, however, shall not be double counted. Gross Revenues of both Grantee and an affiliate that represent a transfer of funds between Grantee and the affiliated entity, and that would otherwise constitute Gross Revenues of both Grantee and the affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of Grantee which are payable from Grantee's revenue to an affiliate and which may otherwise constitute revenue of the affiliate, shall not constitute additional Gross Revenues for purposes of this Franchise. Gross Revenues shall not include sales or other similar taxes imposed by law on subscribers which Grantee is not obligated to collect, nor shall they include unrecovered bad debt or credits, refunds and deposits paid to subscribers. Gross revenues shall not include utility taxes collected from subscribers.
- G. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- H. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.
- I. "State" shall mean the State of WASHINGTON.
- J. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way 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 Service Area, which

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

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

## **SECTION 2** **Grant of Franchise**

**2.1 Grant.** 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 Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 16.11. This Franchise will be automatically extended for an additional term of five (5) years from the expiration date as set forth in Section 16.11, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

**2.3 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any generally applicable local ordinance necessary to the safety, health, and welfare of the public which is lawfully adopted pursuant to the Grantor's general police power. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that has the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise, this Franchise will prevail, except as to those ordinances and regulations which are the result of the Grantor's lawful exercise of its general police power.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

**SECTION 3**  
**Franchise Renewal**

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor 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**  
**Waiver, Indemnification, No Estoppel, No Duty**

**4.1 Indemnification.** Grantee shall, at its sole expense, protect, defend, indemnify and hold harmless the Grantor, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the Grantor from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of Grantee, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law, arising from the construction, installation, maintenance, operation, alteration or modification of the Cable System or arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, provided that the Grantor shall give 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 Grantee and Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by Grantee, Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, 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.

**4.2 Insurance.**

- A. The Grantee shall purchase and maintain at its own expense insurance outlined below. Insurance must be written with an insurance carrier licensed to do business in the State of Washington and carry at least an A.M. Best rating of not less than A-.

The Grantee shall maintain throughout the term of the Franchise agreement plus an additional six (6) months after termination insurance in amounts at least as follows:

Workers' Compensation

Statutory Limits

Commercial General Liability Form CG 00 01	\$1,000,000 per occurrence Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

Grantee's policies shall be primary over any other policies and Grantor's policies shall be excess.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee including completed operations, 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 including the additional insured endorsements on or before the inception of this agreement and upon request, but no more than once per year.

## 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 continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. 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.

**6.2 New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and

easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Grantee.

**6.3 Annexation.** The Grantor shall promptly 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 upon sixty (60) days' 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 Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on Gross Revenues 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 that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, 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 16.4 with a copy to the Director of Government Relations. 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.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly 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 have the right to 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 without obtaining all legally required permits of the Grantor.

8.2 **Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services 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 facilities 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 its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8.3 **Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

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 public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the 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 Streets 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 acts amount to gross negligence by the Grantor.

**8.7 Tree Trimming.** 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.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable 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 the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

**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, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. 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.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**8.11 Emergency Use.** If the Grantee provides an Emergency Alert System ("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 and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at 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 15.1 of this Franchise.

**9.5 Service to Public Buildings.** Grantee shall provide, without charge, one outlet and equipment of Basic Cable Service to City Hall (120 1<sup>st</sup> Ave, Ilwaco, WA 98624); the City Shop (213 Main St SE, Ilwaco, WA 98624); and the Fire Hall (301 Spruce St, Ilwaco, WA 98624). 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.

**9.6 Cable in the Classroom.** Grantee participates in Cable in the Classroom, an industry program, to provide, without charge, one (1) outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary public school instructional buildings and public library buildings within the Service Area and located within one hundred twenty five (125) feet of Grantee's distribution plant.

**SECTION 10**  
**Franchise Fee**

**10.1 Amount of Fee.** During the term of the Franchise, Grantee shall pay to the Grantor an amount equal to five percent (5%) of Grantee's annual Gross Revenues as a Franchise Fee.

**10.2 Payment of Fee.** Franchise Fees shall be transmitted quarterly by electronic funds transfer to such Grantor bank account as designated by the director of finance and budget, to be received not later than the forty-fifth (45<sup>th</sup>) day of each quarter for the preceding calendar quarter. Within thirty (30) days after the payment, Grantee shall file with the Grantor a written statement which identifies the sources and amounts of Gross Revenues during the quarter for

which payment is made (Franchise Fee Payment Report is attached hereto as Exhibit B). No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which Grantor may have for further or additional sums payable under the provisions of this Section. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one percent (1%) over the prime interest rate.

## **SECTION 11** **Transfer of Franchise**

**11.1 Franchise 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 consent of the Grantor, such consent not to be unreasonably withheld or delayed. 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, consent by the Grantor shall be deemed given.

## **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 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 subsection 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 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. 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.

### **SECTION 13**

#### **Public Education and Government (PEG) Access**

A. Upon written request of the Grantor, the Grantor and Grantee will meet to discuss the possibility of providing one (1) channel on the Cable System for use by the Grantor for non-commercial, video programming for public, education and government ("PEG") access programming. The PEG channel may be placed on any tier of service available to subscribers. If all of the following conditions are satisfied, Grantee will provide one (1) downstream access Channel upon no less than 120 days' written notice from the Grantor following such meeting and receipt of the following:

(1) Grantor has passed a resolution, after a public hearing, stating that there is demonstrated community need for PEG access programming

(2) Grantor has passed a resolution in which it agrees to fund all the operational expenses for such programming

(3) Grantor provides a letter to Grantee identifying those entities or persons who will be responsible for providing access programming and agreeing to indemnify Grantee for any negligence or willful misconduct of such entities or persons for such access programming.

(4) A statistically-significant representative sample survey of Subscribers in the Service Area indicates that more than twenty-five percent (25%) of Subscribers are somewhat interested or very interested in viewing PEG access programming; provided, however, that any such survey shall be at Grantee's option and cost, and shall be conducted and concluded within ninety (90) days of the meeting with the Grantor described above. If Grantee opts not to conduct such a survey, then this subsection (4) shall not be a condition to providing PEG Funding.

B. If the PEG channel provided pursuant to this section is occupied by non-local, substantially duplicated or character-generated programming fifty (50%) percent of the time during "regular viewing hours" measured over any ten (10) consecutive week period, the Grantee shall have a right to a return of the PEG channel upon one hundred twenty (120) days' notice to Grantor of its intent to reclaim the PEG channel. For purposes of this subsection, "regular viewing hours" shall be the hours between 1 p.m. and 11 p.m., Monday through Friday, and

between noon and midnight on weekends. A program may be repeated up to two (2) times after its first run during regular viewing hours before it is deemed "duplicated."

#### **SECTION 14** **Enforcement**

**14.1 Enforcement.** Grantor, subject to applicable federal and state law and this Franchise Ordinance may assert the following remedies in the event Grantor determines, pursuant to subsection 14.2 below, Grantee is in default of any provision of this Franchise Ordinance:

- A. Commence an action at law for monetary damages or seek other equitable relief;
- or
- B. In the case of a substantial default of a material provision of this Franchise Ordinance, declare the Franchise to be revoked consistent with the procedures in Section 16; or
- C. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

In determining which remedy or remedies for Grantee's violation are appropriate, the Grantor shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

**14.2 Notice of Violations and Public Hearing.** In the event that the Grantor believes that Grantee has not complied with the terms of this Franchise Ordinance, the Grantor shall first informally discuss the manner with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify Grantee in writing of the exact nature of the alleged noncompliance. Grantee shall have thirty (30) days from the receipt of notice described above to:

- A. Respond to the Grantor contesting the assertion of noncompliance, or
- B. Cure such default or,
- C. If, by the nature of the default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date they will be completed.

In the event that Grantee fails to respond to the notice described herein or cure the default pursuant to the procedures set forth above, the Grantor shall schedule a public hearing to investigate the default. The Grantor shall give Grantee twenty (20) calendar days' written notice of the time and place of the hearing and provide Grantee with an opportunity to be heard. Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for *de novo* reconsideration before any competent tribunal having jurisdiction over such matters.

**14.3 Enforcement.** Subject to applicable federal and state law, and the Franchise Ordinance, after the hearing set forth in subsection 14.2 the Grantor may impose any of the remedies set out in Section 14.1 herein.

**14.4 Failure to Enforce.** Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise Ordinance by reason of any failure of the Grantor to enforce prompt compliance, and the Grantor's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

**14.5 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**14.6 Revocation.** In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

A. Grantee substantially violates a material provision of the Franchise and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 14.2, Notice of Violation and Public Hearing.

B. After a final, non-appealable decision by a federal or state court that Grantee has engaged in any actual or attempted fraud or deceit upon the Grantor, Persons or subscribers.

C. Grantee fails to obtain and maintain any material permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the System.

Prior to revocation of the Franchise, Grantor shall provide written notice to Grantee of its intent to revoke the franchise and the basis for the proposed revocation. Grantee shall have 60 days from receipt of such notice to either object in writing and to state its reasons for such objections or to cure the alleged noncompliance. If Grantor has not received a satisfactory response from Grantee, it may seek to revoke the Franchise at a public hearing. In the public hearing, Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to Washington law, including the right to cross-examine witnesses and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. If a forfeiture is lawfully declared, all rights of Grantee under this Franchise Ordinance shall be divested without a further act upon the part of the Grantor, subject to a *de novo* appeal to a court of competent jurisdiction. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

## SECTION 15

**15.1 Right to Require Removal of Property.** Upon revocation of the Franchise, as provided for by this Franchise, the Grantor shall have the right to require Grantee to remove, at Grantee's own expense, all or any part of the Cable System from all Streets and public ways within the Service Area, where the abandoned facilities interfere with reasonable uses of the rights-of-way. If Grantee fails to do so, Grantor may perform the work and collect the cost thereof from Grantee. The actual cost thereof shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Pacific County Auditor. This section shall not apply in cases where Grantee opts to sell or transfer the Cable System pursuant to Section 11.1.

**15.2 Removal Required by Grantor.** Any order by the Grantor's Council to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the date of revocation of the Franchise. Grantee shall file written notice with the Clerk of the Grantor's Council not later than thirty (30) calendar days following receipt of the Council's order of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Grantor. Removal shall be completed not later than twelve (12) months following the date of termination of the Franchise.

**15.3 Removal by Grantee and/or Abandonment.** Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed. Grantee may voluntarily remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the Grantor Council based upon a determination, based on a reasonable assessment of the circumstances, that removal is required in order to eliminate or prevent a hazardous condition.

**15.4 Reservation of Rights.** Notwithstanding the foregoing, Grantee does not waive any of its rights under federal or state law or regulation.

## SECTION 16

### Miscellaneous Provisions

**16.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the 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, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**16.2 Actions 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.

**16.3 Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

**16.4 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:

Grantor: City of Ilwaco  
Attn: Clerk  
PO Box 548  
Ilwaco, WA 98624

Email: [clerk@ilwaco-wa.gov](mailto:clerk@ilwaco-wa.gov)

Grantee: Director, Government Affairs  
Charter Communications  
222 NE Park Plaza Drive, #231  
Vancouver, WA 98684

Email: [Marian.jackson@charter.com](mailto:Marian.jackson@charter.com)

Copy to: Charter Communications  
Attn: Vice President of Government Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131-3674

**16.5 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

**16.6 Written Notice.** Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 16.5 above.

**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 No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Franchise Ordinance.

**16.10 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit 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. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

**16.11 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 ("Effective Date"). The initial term of this Franchise shall expire on ten (10) years from the Effective Date defined herein, unless extended in accordance with Section 2.2 of the Franchise or by the mutual of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.



**PASSED BY THE CITY COUNCIL OF THE CITY OF ILWACO, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 10TH DAY OF OCTOBER, 2016.**



Mike Cassinelli, Mayor

ATTEST:



Holly Beller, Treasurer

VOTE	Jensen	Karnofski	Marshall	Chambreau	Forner	Cassinelli
Ayes	X		X	X	X	
Nays						
Abstentions						
Absent		X				

PUBLISHED: October 19, 2016

EFFECTIVE: October 24, 2016

Accepted this <sup>25</sup>10th day of October, 2016, subject to applicable federal, State and local law.

Falcon Community Ventures I, LP

By: Falcon Cable Communications, LLC, its General Partner

By: Charter Communications, Inc., its Manager

Signature: 

Name/Title: MARK E. BROWN V.P. GOVERNMENT AFFAIRS

Date: 10/25/16



November 1, 2016

VIA FEDEX

Holly Beller  
City Treasurer  
City of Ilwaco  
PO Box 548  
120 First Ave N  
Ilwaco, WA 98624

RE: Charter Cable Franchise

Dear Holly:

Attached please find a fully executed franchise agreement between Charter Communications and the City of Ilwaco. Please note that we have the effective date of the agreement as October 25, 2016. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Gerber', written in a cursive style.

Steven J. Gerber  
Senior Manager, Government Relations

Enclosure


222 NE Park Plaza Drive, Suite #231  
Vancouver, WA 98684



120 First Avenue North  
PO Box 548 • Ilwaco, WA 98624  
Phone: 360.642.3145  
Fax: 360.642.3155

I, Stephanie Stresing, City Clerk for the City of Ilwaco, Washington, do hereby certify that the attached is a full, true and correct copy Ordinance #2016-864, approved by the Ilwaco City Council at its Regular Meeting on the 25th day of October, 2016.

WITNESS my hand and official seal this 7th day of December, 2016.



Stephanie Stresing, City Clerk

(SEAL)