ORDINANCE NO. 1342

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION TO PROVIDE TELECOMMUNICATION SERVICES WITHIN THE CITY OF CANBY, ESTABLISHING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", currently provides telecommunications services, more specifically, telephone services within the City of Canby (City); and

WHEREAS, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040 and No. 1053 expired on June 7, 2010; and

WHEREAS, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise with Grantee to provide telecommunication services to the citizens of Canby; and

WHEREAS, the City has evaluated the technical, legal and financial capability of the Grantee to continue to provide such service to its citizens, and believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way-; and

WHEREAS, the City and Grantee have negotiated an updated nonexclusive Franchise Agreement to provide telecommunication service to customers within the City of Canby, Oregon; and

WHEREAS, the City Council finds based on its assessment of community needs that the proposed nonexclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated nonexclusive franchise agreement as requested, consistent with the terms and conditions of Exhibit "A"; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a nonexclusive franchise on the terms and conditions in the attached Exhibit "A", for a five (5) year term from the effective date of June 7, 2010, to provide

telecommunication services, specifically, telephone services, to its customers in the City of Canby.

Section 2. In order to avoid a break in the continuity of the telephone services currently provided by Canby Telephone Association, and to better promote the safety, health and welfare of the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall retroactively take effect on June 7, 2010 as directed by the Canby City Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, May 4, 2011 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, May 18, 2011, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on May 18, 2011, by the following vote:

YEAS 6 NAYS 0

Randy Carson

Randy Carson, Mayor

ATTEST:

Kimberly Scheafer

Kimberly Scheafer, CMC
City Recorder

FRANCHISE AGREEMENT BETWEEN

THE CITY OF CANBY, OREGON

AND

CANBY TELEPONE ASSOCIATION,

AN OREGON COOPERATIVE CORPORATION

This Nonexclusive Franchise Agreement (Agreement) is by and between the City of Canby, Oregon (City) and Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", for the provision of telecommunication services to customers within the City of Canby, Oregon.

RECITALS

WHEREAS, Grantee, currently provides telecommunications services, including specifically, telephone services, within the City; and

WHEREAS, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040 and No. 1053 expired on June 7, 2010; and

WHEREAS, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise agreement with Grantee to provide telecommunication services to the citizens of Canby; and

WHEREAS, the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way; and

WHEREAS, the City and Grantee desire to leave no doubts as to their respective roles and by entering into this Agreement, in consideration of the premises above stated and the terms, conditions and agreements contained herein, **the Parties do hereby agree as follows:**

Section 1: Grant of Franchise. The City hereby grants to Grantee, a nonexclusive franchise to use the public rights-of-way within the City to provide telecommunications services to customers within the City. Grantee agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations,

including Canby Municipal Code (CMC) Chapter 12.36, as amended from time to time.

Section 2: Term. The term of this franchise shall be five (5) years, commencing with the effective date set forth in Section 8. Notwithstanding the foregoing, the Grantee may terminate this franchise after providing six months' written notice to the City upon Grantee's conversion to providing telecommunication services using voice over internet protocol, provided that the Grantee has other lawful authority to maintain the facilities permitted by this franchise in the City's rights-of-way and termination is consistent with the Canby Municipal Code.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights-of-way throughout the City as the City limits may exist now or in the future.

Section 4: Franchise Fee.

A. As consideration for the use of the City's rights-of-way, Grantee shall remit to the City seven percent (7%) of its "gross revenues" earned from the provision of telecommunications services (as defined in CMC 12.36.030) within the City. "Gross revenues" shall mean "any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitation imposed by federal or state law".

B. Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45th day of each quarter shall be assessed interest at the rate of one and one half percent per month until paid. Payment for the third and fourth quarters of 2010 shall be made no later than thirty (30) days after the passage of this Ordinance.

C. The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined in Section 4A above for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of the franchise. Any difference of payment due either the City or Grantee following audit shall be payable within thirty (30) days after written notice to the affected party.

Section 5: Franchise Acceptance, Proof of Insurance. Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Administrator (1) a written statement accepting the terms and conditions of this franchise grant substantially in the form set forth in Exhibit A, and (2) proof of the insurance required by CMC 12.36.080H. Timely filing of such acceptance and proof of insurance and the payment of franchise fees owed for the third and fourth quarters of 2010 required by Section 4B shall be a condition of this franchise becoming effective.

Section 6: Franchise Nonexclusive. The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights-of-way.

Section 7: Changes in Law. This franchise authorizes only the provision of "telecommunications services" as that term is defined in CMC 12.36.030. The provision of other services by Grantee requires separate authority from the City. In the event of changes in applicable laws during the term of this franchise, such that additional services are deemed to be "telecommunications services" and/or additional revenues are eligible for calculation of franchise fees, this Agreement will operate to authorize Grantee's use of the City's rights-of-way for provision of the additional services, provided a corresponding change in the calculation of the franchise fee payable to the City is made.

Section 8: Effective date. This Agreement will become effective as of June 7, 2010.

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first written above.

CITY OF CANBY, OREGON,

A Municipal Corporation

By: Randy Carson

Name: Randy Carson

Title: Mayor

APPROVED AS TO FORM:

John H. Kelley

John H. Kelley – City Attorney

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EXHIBIT A

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

This is to advise the City of Canby, Oregon that Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1342 passed by the City Council on May 18, 2011 (the "Franchise") granting a Franchise for five (5) years to Canby Telephone Association. The Grantee agrees to abide by each and every term of the Franchise.

CANBY TELEPHONE ASSOCIATION

BY
TITLE President
DATE May 23, 2011