

TITLE 9
FRANCHISES

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CHAPTER 1
POWER FRANCHISE

SECTION:

9-1-1: Power Franchise Ordinance Adopted by Reference

9-1-1: **POWER FRANCHISE ORDINANCE ADOPTED BY REFERENCE:** The ordinance entitled "An Ordinance granting to Idaho Power Company, its successors and assigns, an Electric Light, Heat and Power Franchise for a term of fifty years and revoking prior Franchise Ordinance", being Ordinance 380, found in Book 9, page 42, City of Salmon, Record Book, is hereby incorporated by reference. (Ord. 70-380, 12-21-70)

CHAPTER 2
GARBAGE SERVICE FRANCHISE

SECTION:

- 9-2-1: Grant Of Franchise
- 9-2-2: Term
- 9-2-3: Specific Conditions
- 9-2-4: Indemnity
- 9-2-5: Comprehensive Liability Insurance
- 9-2-6: Assignment Of Franchise
- 9-2-7: Forfeiture
- 9-2-8: Police Power
- 9-2-9: Extension Of City Limits

9-2-1: **GRANT OF FRANCHISE:**

- A. The City of Salmon, herein referred to as City hereby grants to Lemhi Waste Services, dba/Lemhi Sanitation Service, hereinafter referred to as "Grantee" an exclusive Franchise to collect and haul for hire over the streets and alleys of the City, all garbage collected from public and private customers located within the corporate limits of the City. This exclusive franchise shall not require mandatory garbage service by the citizens of the City.
- B. "Garbage", as used herein, shall be interpreted to mean and include all waste, animal and vegetable matter, rubbish, trash, debris, ashes, tin cans, and other waste materials of any kind which are ordinarily and customarily hauled away and dumped. (Ord. 95-581, 7-19-95; amd. Ord. 08-730, 7-3-2008)

- 9-2-2: **TERM:** The term of the Franchise is extended for an additional term of five (5) years, effective September 2,

2020, and terminating on September 2, 2025. This Franchise shall become effective on such date only if Grantee files a written acceptance of the extension of the Franchise with the City Clerk within thirty (30) days after the date the ordinance codified in this Chapter becomes effective. The term of the Franchise may be further extended by the City following compliance with the provisions of Idaho Code section 50-329. (Ord. 95-581, 7-19-95)

9-2-3: **SPECIFIC CONDITIONS:**

- A. **Garbage Trucks:** All trucks used by Grantee for the collection and hauling of garbage shall be maintained in safe operating condition at all times. Each truck shall be equipped with a closed body that incorporates a hydraulically operated device for compacting collected garbage. Grantee shall also maintain at all times at least two (2) garbage trucks with a minimum capacity of twenty (20) cubic yards. Grantee's garbage trucks shall meet all Idaho Public Utilities Commission standards now in force or as may be adopted hereafter. Grantee shall also provide, without charge or fee, commercial garbage containers for any person or organization requesting such containers. Grantee shall provide service to each customer not less than once per week or upon request; provided, that the customer is current on fees charged by Grantee.
- B. **Service Fees:** The City shall have the authority to approve all changes in rates to the City residences and businesses during this term of this Franchise, provided such fees shall not be arbitrary, unreasonable or discriminatory. Grantee agrees to appear before the City annually for a review of the Grantee's performance, and Grantee further agrees to notify the City of proposed rate changes or modifications in service, and be available to meet with the City prior to the effective date of such change or modification. Rate changes shall not become effective until approved by the City.
- C. **Franchise Fee:** Grantee shall remit to the City a franchise fee in the amount of two and one-half percent (2.5) of the gross monthly billings sent to customers located within the City limits irrespective of whether such billings are in fact collected. Such franchise fee shall be paid to the City Treasurer on or before the first day of each calendar quarter during the term hereof. The Grantee shall during regular business hours allow the City access to Grantee's books and records as necessary to monitor compliance with the terms thereof.

The Grantee shall also allow the City to audit the records of the Grantee to ensure compliance with this Section.

- D. Compliance With Regulations: Grantee shall comply with all ordinances and regulations, as now adopted or as may be hereafter adopted by the City, pertaining to the collection, hauling and disposal of garbage within the corporate limits of the City or regulating the use of the streets therefor. (Ord. 95-581, 7-19-95)

9-2-4: **INDEMNITY:** Grantee shall indemnify and defend the City, its boards, commissions, officers, agents and employees, and any and all other public agencies, and their members, officers, agents and employees, against any and all liabilities for injury to or death of any person or any damage to any property caused by Grantee, its officers, agents or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the Franchise. (Ord. 95-581, 7-19-95)

9-2-5: **COMPREHENSIVE LIABILITY INSURANCE:**

- A. At all times during the term of the Franchise, Grantee will, at its own expense, maintain in force general comprehensive liability insurance with an insurance company approved by the City, the policy or policies to be in form satisfactory to the City. The coverage represented by such policy or policies shall be for the protection of the City, members of its boards and commissions, and its officers, agents and employees against liability for loss or damages for bodily injury, death, and property damage occasioned by the activities of Grantee under the Franchise. Minimum liability limits under the policy or policies are to be five hundred thousand dollars (\$500,000.00) for personal injury or death of any one person and five hundred thousand dollars (\$500,000.00) for personal injury or death of two (2) or more persons in any one occurrence, and five hundred thousand dollars (\$500,000.00) for damage to property resulting from any one occurrence. Additional public agencies and their personnel shall be added as insureds, subject to the same terms and conditions, at the request of the City.
- B. Such policy shall include a provision that requires a written notice of any cancellation or reduction in coverage of the policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If any such insurance is provided by a policy that also covers Grantee or any entity or person other than those named

above, then such policy shall contain the standard cross-liability endorsement. Within thirty (30) days after Grantee's acceptance of this Franchise, Grantee shall provide the City a certificate of insurance evidencing such insurance coverage. (Ord. 95-581, 7-19-95)

9-2-6: **ASSIGNMENT OF FRANCHISE:** Grantee shall not assign the Franchise or otherwise transfer it in any manner whatsoever, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or any part of its facilities that are installed or operated hereunder, except on prior written approval by the City. (Ord. 95-581, 7-19-95)

9-2-7: **FORFEITURE:** The Franchise may be forfeited, at the option of the City, upon failure or refusal by Grantee to observe the terms and conditions set forth herein. Forfeiture may be exercised by written notice to Grantee of failure to observe the terms and conditions hereof, followed by Grantee's refusal to eliminate or correct such failure or violation within thirty (30) days. In the event of any failure or violation, the City may sue in its own name in the manner provided by law for the forfeiture of the Franchise without the necessity of resorting to procedures in quo warranto, and the exercise of such remedy of forfeiture shall not preclude exercise of any other right or remedy given to the City by law, whether exercised concurrently or subsequently. (Ord. 95-581, 7-19-95)

9-2-8: **POLICE POWER:** The passage of the ordinance codified in this Chapter is necessary for the protection of the public welfare and property of the City. Grantee shall not be required to post any security of performance under the terms of this Franchise. (Ord. 95-581, 7-19-95)

9-2-9: **EXTENSION OF CITY LIMITS:** Upon the annexation of any territory by the City, all rights, privileges and the Franchise hereby granted shall extend to the territory so annexed, and all facilities owned, maintained or operated by said Grantee, located within the territory so annexed upon any of the streets, alleys, avenues, or other public places situated in such annexed territory, shall thereafter be subject to all the terms hereof. (Ord. 95-581, 7-19-95)

CHAPTER 3

CATV FRANCHISE

SECTION:

- 9-3-1: Definition of Terms
- 9-3-2: Grant of Franchise
- 9-3-3: Standards of Service
- 9-3-4: Technical Standards
- 9-3-5: Regulation by Franchising Authority
- 9-3-6: Renewal of Franchise
- 9-3-7: Conditions of Sale
- 9-3-8: Transfer of Franchise
- 9-3-9: Compliance and Monitoring
- 9-3-10: Insurance and Indemnification
- 9-3-11: Enforcement and Termination of Franchise
- 9-3-12: Actions of Parties
- 9-3-13: Equal Protection
- 9-3-14: Service of Notices
- 9-3-15: Descriptive Headings
- 9-3-16: Severability
- 9-3-17: Effective Date

9-3-1: **DEFINITION OF TERMS:** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

BASIC CABLE: The lowest priced tier of service that includes the retransmission of local broadcast television signals.

CABLE ACT:	Collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
CABLE SERVICE:	Shall have the meaning specified for "Cable Service" in the Cable Act.
CABLE SYSTEM:	Shall have the meaning specified for "Cable Communications System" in the Cable Act. Unless otherwise specified it shall, in this document, refer to the cable communications system constructed and operated in the City under this Chapter.
CHANNEL:	A single path or section of the spectrum which carries a cable service.
CITY:	The City of Salmon, a Municipal corporation of the State of Idaho.
FCC:	Federal Communications Commission, or successor governmental entity thereto.
FRANCHISE:	The initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the system.
FRANCHISING AUTHORITY:	The City of Salmon, Idaho or the lawful successor, transferee, or assignee thereof.
GRANTEE:	Independent Cable Systems of Idaho LLC or the lawful successor, transferee, or assignee thereof.
GROSS REVENUES:	Any and all receipts and revenues received directly or indirectly from all sources by the Grantee and attributable to the operation of the cable system within the corporate limits of the City including, but not limited to, revenue from sales of advertising upon the cable system; however, that such phrase shall not include any fees or taxes which are imposed directly or indirectly on any

subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit of agency.

Gross revenues is intended to include, but is not limited to, all income received by the Grantee without any offsetting of expenses, costs or depreciation, from:

A. Subscribers receiving goods, equipment, equipment service, or cable service from or through the use of a cable system within the City; revenues for service, installation and repair; and, any and all charges not specifically exempted herein such as delinquency fees, interest, or finance charges;

B. Sales of advertising upon the cable system; and

C. Commissions on sales from home shopping programming.

"Gross revenues" shall not include net uncollectible debts.

INSTALLATION: The connection of the cable system to subscribers' terminals.

PERSON: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

PREMIUM SERVICES: Programming over and above those provided by basic cable for which there is generally an additional charge.

PUBLIC WAY: The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right of way, including, but not limited to, public utility easements, dedicated utility strips, or rights of way dedicated for compatible

uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the system.

SERVICE AREA: The present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

SUBSCRIBER: A person or user of the system who lawfully receives communications and other services therefrom with the Grantee's express permission. (Ord. 94-576, 12-7-94)

9-3-2: GRANT OF FRANCHISE:

A. Grant: The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, across,

or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the system.

- B. **Additional Services:** Because the communications industry and the regulatory environment in which it operates are rapidly changing, and because increasing competitive pressures are playing a role in the future of the industry, the City will not require the Grantee to provide video, voice or data service(s) to the City on more preferential terms than any provider of competitive service(s).
- C. **Term:** The Franchise granted hereunder shall be for an initial term of fifteen (15) years commencing on the effective date of the Franchise as set forth in subsection 9-3-17, unless otherwise lawfully terminated in accordance with the terms of this Franchise.
- D. **Nonexclusivity:** Any franchise granted pursuant to this Chapter shall be nonexclusive and shall not preclude the City from granting other or further franchises or permits or preclude the City from using any public way, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights of way and thoroughfares and other public properties. All franchises granted subsequent to the effective date of the ordinance codified in this Chapter shall be granted consistent with the terms and conditions of this Chapter. (Ord. 94-576, 12-7-94)

9-3-3: STANDARDS OF SERVICE:

- A. **Conditions of Street Occupancy:** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.
- B. **Restoration of Public Ways:** If during the course of the Grantee's construction, operation, or maintenance of the system there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition as

good as or better than the condition of the public way existing immediately prior to such disturbance.

- C. Relocation at Request of Franchising Authority: Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee.
- D. Relocation at Request of Third Party: The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: 1) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and 2) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.
- E. Trimming of Trees and Shrubbery: The Grantee shall have the authority, upon receiving approval from the City Public Works Superintendent, to trim trees or other natural growth overhanging any of its system in the service area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this

Section. The Franchisee shall be responsible for debris removal from such activities. Failure to remove debris after a reasonable time shall result in the debris being removed by the City and the costs involved charged to the Franchisee.

- F. Safety Requirements: Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other Federal, State, and local regulations and the National Electric Safety Code. The system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.
- G. Aerial and Underground Construction: In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided, that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.
- H. Required Extensions of Service: The system, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof.

Whenever the Grantee shall receive a request for service from at least fifteen (15) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (1/4 cable mile) of its trunk or distribution cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers; provided, that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the system, or as provided for under subsection 9-3-31 of this Chapter. In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner.

- I. Subscriber Charges for Extensions of Service: No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his or her cable drop underground, existence of more than one hundred fifty feet (150') of distance from distribution cable to connection of service to subscribers, or a density of less than fifteen (15) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

J. Service to Public Buildings: Subject to subsection 9-3-31, the Grantee shall, upon request, provide without charge, one outlet of basic service to those Franchise authority offices, fire station(s), police station(s). and public school building(s) that are passed by its system. The outlets of basic service shall not be used to distribute or sell services in or throughout such building, nor shall such outlets be located in areas open to the public. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. If additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

K. Emergency Use: In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers, and assigns, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

L. Customer Service Standards:

1. Definitions: For purposes of this Section, the following definitions shall apply:

<p>NORMAL BUSINESS HOURS:</p>	<p>The term "normal business hours" means those hours during which most similar businesses in the community are open to serve subscribers. The Grantee will notify its subscribers and the Franchising Authority of its normal business hours.</p>
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<p>NORMAL OPERATING CONDITIONS:</p>	<p>The term "normal operating conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters,</p>
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civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

SERVICE INTERRUPTION: The term "service interruption" means the loss of picture or sound on one or more channels.

2. System Office Hours and Telephone Availability:

a. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to subscribers twenty four (24) hours a day, seven (7) days a week.

(1) Trained representatives of the Grantee will be available to respond to subscriber telephone inquiries during normal business hours, as defined herein.

(2) After normal business hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee on the next business day.

b. Under normal operating conditions, as defined herein, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety percent (90%) of the time under normal operating conditions, as measured by the Grantee on a quarterly basis.

c. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints indicates a clear failure to comply with such standards.

d. Under normal operating conditions, the subscriber will receive a busy signal less than three percent (3%) of the time.

e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

3. Installations, Outages and Service Calls: Under normal operating conditions, each of the following four (4) standards will be met no less than ninety five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard installations" are those that are located up to one hundred twenty five feet (125') from the existing distribution system.

b. Excluding conditions beyond its control, the Grantee will begin working on service interruptions, as defined herein, promptly and in no event later than twenty four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

c. The Grantee will provide "appointment window" alternatives for installations, service calls, and other installation activities, which will be either a specific time or, at maximum, a four (4) hour time block during normal business hours.

d. The Grantee shall not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

e. If a representative of the Grantee is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the subscriber.

4. Communications Between Grantee and Subscribers:

a. Notifications to Subscribers:

(1) The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(A) Products and services offered;

(B) Prices and options for services and conditions of subscription to programming and other services;

(C) Installation and service maintenance policies;

(D) Instructions on how to use the service;

(E) Channel positions of programming carried on the system; and

(F) Billing and complaint procedures, including the address and telephone number of the local Franchising Authority's cable office.

(2) Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the system and in writing. Notice will be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding subsection L4a(1).

b. Billing:

(1) Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee will respond to a written complaint from a subscriber within thirty (30) days from receipt of the complaint.

c. Refund checks will be issued promptly upon request, but no later than the return of all subscriber equipment provided by the Grantee and, either the subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is later.

d. Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

- M. Parental Control Devices: Upon request by a subscriber, the Grantee will make available for sale or lease at fees consistent with the Cable Act and subsequent FCC rules a device by which the subscriber can prohibit viewing of a particular cable service.
- N. Adaptation to New Technology: Grantee shall provide a brief summary report annually of relevant technological development in

cable services. At a meeting to be held after the seventh anniversary of the acceptance of this Franchise the City and Grantee shall discuss technological developments and their incorporation into the services provided. Nothing contained herein shall require the Grantee to negotiate such additions if they are not economically or technically feasible or if incorporation of such additions will adversely affect the operation, financial condition, or market development of the system.

- O. Devices for the Hearing Impaired: Franchisee shall provide sound enhancing devices to requesting subscribers for a hearing impaired subscriber or subscriber's family member in compliance with the Act. This requirement may be met by providing closed caption programming.
- P. Educational and Governmental Access: Upon request and after one hundred twenty (120) days' written notice by the Franchising Authority, Grantee shall make available one channel to be used for educational and governmental cablecast programming which will be administered by the Franchise Authority except as provided for in this Section. In order that the cable customers of the City receive the most benefit from the cable system including diverse programming, the access channel must maintain programming four (4) hours per day at least five (5) days per week. If this level of programming is not maintained, the City shall return to the Grantee eighteen (18) consecutive hours' use of the channel, per day, including hours between nine o'clock (9:00) A.M. and nine o'clock (9:00) P.M., for the sole use by the Grantee. Grantee also reserves the right to program the designated access channel during the hours not used by the Franchising Authority or other governmental entities. Access to the channel shall be shared with all municipalities receiving programming from the common headend site. The Franchising Authority shall agree to indemnify, save, and hold harmless Grantee from and against any liability resulting from use of the aforementioned educational and governmental channel by the Franchising Authority. (Ord. 94-576, 12-7-94)

9-3-4: **TECHNICAL STANDARDS:**

- A. Applicable Law: Subject to Federal, State and local law, a Franchisee shall comply with FCC Rules, part 76, subpart K, sections 76.601 through 76.610 as amended, hereafter, and, at the minimum the following:

9-3-4

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1. Applicable City, County, State and National/Federal Codes and ordinances;
 2. Applicable utility joint attachment practices;
 3. The National Electric Safety Code; ANSI C2;
 4. Local utility code requirements;
 5. Local rights of way procedures.
- B. Preventive Maintenance: A comprehensive program shall be developed, effected, and put into operation to ensure continued cable communications operating standards in conformance with FCC Regulations, part 76, or as may be amended. (Ord. 94-576, 12-7-94)

9-3-5: **REGULATION BY FRANCHISING AUTHORITY:**

A. Franchise Fee:

1. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5) of gross revenues (as defined in Section 9-3-1 of this Chapter) received by the Grantee from the operation of the system on a quarterly basis; provided, however, that the Grantee may credit against any such payments:

a. Any tax, fee, or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such;

b. Any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services); and

c. Any other special tax, assessment, or fee such as a business, occupation, and entertainment tax.

2. Franchisee shall pay the franchise fee to the City quarterly, on or before the thirtieth day of each January, April, July and October. The first three (3) such payments shall be twenty five percent (25%) of the total annual estimated franchise fee due by the Franchisee. The fourth such payment shall be the balance of the franchise fee due.

The year end payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation.

3. All sums which become delinquent, shall accumulate interest at the statutory rate provided in Idaho Code, title 28, chapter 22, section 104(1). The accrual of interest is not intended to waive or in any manner restrict City's ability to elect any procedure or method of collection permissible by law to enforce all the terms and conditions of this Chapter.

4. The period of limitation for recovery of any franchise fee payable hereunder shall be six (6) years from the date on which payment by the Grantee is due.

5. Where the City determines by audit, financial statement or other method, that Franchisee has underpaid franchise fees or other charges owed to City, and where such underpayment is greater than ten percent (10) and is shown to be wilful, in addition to all fees and interest due and any other remedy sought by the City, the Franchisee may be required to pay an additional penalty of fifty percent (50%) of the total amount outstanding.

6. The Franchising Authority and the Grantee have agreed to increase the amount paid as franchise fees by the Grantee to the Franchising Authority to five percent (5%) of gross revenues received and provided for in subsection 9-3-5A1. The Franchise authority agrees that all amounts paid by the Grantee as franchise fees may be added to the price of cable services and collected from the Grantee's customers as "external costs", as such term is used in 47 C.F.R. 76.922 on the date of this agreement. In addition, all amounts paid as franchise fees may be separately stated on the customers' bills as permitted in 47 C.F.R. 76.985. The increase in franchise fees will be payable by Grantee to the City after: a) the approval of the City, if required, to the inclusion of the increase on customers' bills, including any required approval pursuant to 47 C.F.R. 6.933; b) notice to Grantee's customers of the inclusion; and c) the collection of the increase in franchise fees by the Grantee from its customers.

B. Rates and Charges:

1. The City may adopt the requisite ordinances to regulate rates for the provision of basic cable TV service and equipment as defined, provided and permitted by the 1984 Communications Act, as amended by the Cable Television Consumer Protection

and Competition Act of 1992 ("1992 Act") together with implementing regulations promulgated by the FCC.

2. The Grantee shall file with the City on December 31 of each year a full schedule of all subscribers and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communications system.

3. The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.

4. Nothing in this agreement shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users. (Ord. 94-576, 12-7-94)

9-3-6: **RENEWAL OF FRANCHISE:**

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority 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, as amended, unless the procedures and substantive predictions set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.
- B. In addition to the procedures set forth in said section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations

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regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of section 626 of the Cable Act. (Ord. 94-576, 12-7-94)

9-3-7: **CONDITIONS OF SALE:**

- A. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the system or by its actions lawfully effects a transfer of ownership of the system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in section 627 of the Cable Act.

- B. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its system to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its system which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to Federal or State law; it being further agreed that the Grantee's continued operation of its system during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. (Ord. 94-576, 12-7-94)

9-3-8: **TRANSFER OF FRANCHISE:** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. 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 system in order to secure indebtedness. Within thirty (30) days of receiving the

request for transfer, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given. (Ord. 94-576, 12-7-94)

9-3-9: **COMPLIANCE AND MONITORING:**

- A. Testing for Compliance: The Franchising Authority may perform technical tests of the system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the system in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable State or Federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of the Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the Grantee.
- B. Books and Records: The Grantee agrees that the Franchising Authority upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions

hereof. The Grantee shall not be required to provide subscriber information in violation of section 631 of the Cable Act. (Ord. 94-576, 12-7-94)

9-3-10: **INSURANCE AND INDEMNIFICATION:**

- A. Insurance Requirements: The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, comprehensive general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury, and property damage. The Grantee shall provide a certificate of insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days' prior written notice to the Franchising Authority.
- B. Indemnification: The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its system, including, but not limited to, reasonable attorneys' fees and costs; provided, that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this Section. (Ord. 94-576, 12-7-94)

9-3-11: **ENFORCEMENT AND TERMINATION OF FRANCHISE:**

- A. Notice of Violation: In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
- B. Grantee's Right to Cure or Respond: The Grantee shall have thirty (30) days from receipt of the notice described in subsection 9-3-11 A: a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or b) to cure such default, or c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

- C. Public Hearing: In the event that the Grantee fails to respond to the notice described in subsection 9-3-11A pursuant to the procedures set forth in subsection 9-3-11B, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 9-3-11B above, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.
- D. Enforcement: Subject to applicable Federal and State law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:
1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
 2. Commence an action at law for monetary damages or seek other equitable relief; or
 3. In the case of a substantial default of a material provision of the Franchise, declare the Franchise agreement to be revoked in accordance with the following subsection 9-3-11E.
- E. Revocation of Franchise:
1. The Franchising Authority shall give written notice to the Grantee of 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 noncompliance. The Grantee shall have forty five (45) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

2. At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within forty two (42) days of the issuance of the determination of the Franchising Authority.

3. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

- F. **Impossibility of Performance:** The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control. (Ord. 94-576, 12-7-94)

9-3-12: **ACTIONS OF PARTIES:** In any action by the Franchising Authority 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. (Ord. 94-576, 12-7-94)

9-3-13: **EQUAL PROTECTION:** In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a system to operate within the Franchise area on terms or conditions more favorable or less burdensome to such operator than those applied to the Grantee pursuant to this Franchise. If the Franchising Authority authorizes or permits another system to operate within the Franchise area, it shall do so on condition that such system indemnify and hold harmless the Grantee

for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs including those of the Grantee, the Franchising Authority, and utilities, incident to inspections, make ready, and construction of an additional system in the Franchise area; and the Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorizations granted to another system. (Ord. 94-576, 12-7-94)

9-3-14: **SERVICE OF NOTICES:**

- A. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.
- B. The notices or responses to the Franchising Authority shall be addressed as follows:

City of Salmon
200 Main Street
Salmon, Idaho 83467

The notices or responses to the Grantee shall be addressed as follows:

Independent Cable Systems of Idaho, LLC.
c/o Custer
Attn: Dennis Thornock
1111 South Main Street
P.O. Box 324
Challis, ID 83226

- C. The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other. (Ord. 94-576, 12-7-94)

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9-3-15: **DESCRIPTIVE HEADINGS:** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein. (Ord. 94-576, 12-7-94)

9-3-16: **SEVERABILITY:** If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any State or Federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof. (Ord. 94-576, 12-7-94)

9-3-17: **EFFECTIVE DATE:** The effective date of this Franchise is September 1, 1994, pursuant to the provisions of applicable law. This Franchise shall expire on August 31, 2009, unless extended by the mutual agreement of the parties. (Ord. 94-576, 12-7-94)