

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CABLE
FRANCHISE RENEWAL BETWEEN THE CITY OF CLAYTON AND COMCAST OF
CALIFORNIA IX, INC.**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, the City Council has jurisdiction over cable systems pursuant to Government Code §53066 et seq. and Chapter 5.08 of the Clayton Municipal Code; and

WHEREAS, in order to provide cable service within the City of Clayton, a cable service company must be granted a franchise or franchise renewal by the City Council after a public hearing; and

WHEREAS, Comcast of California IX, Inc. (hereafter "Comcast") currently operates a cable system for the provision of cable service in the City of Clayton pursuant to a non-exclusive license agreement entered in 1989; and

WHEREAS, Comcast has applied to the City for a renewed, nonexclusive franchise to construct, install, maintain and operate a cable communications system in the City for the benefit of the citizens of Clayton; and

WHEREAS, City Council at a noticed public hearing on November 17, 2006 did consider a staff report, including the findings of the needs assessment and related materials for a cable system services franchise; and

WHEREAS, the City has considered the financial, technical and legal qualifications of Comcast, and has determined that Comcast's plans for constructing, operating and maintaining its cable system and delivering the services contemplated by the franchise agreement and will reasonably meet the future cable-related needs and interests of the community; and

WHEREAS, pursuant to Section 611(d) of the Communications Act of 1934 as amended (47 USC 531(d)), the City has an obligation to prescribe rules and procedures under which the cable operator is permitted to use channel capacity which has been designated for public, educational and governmental use for the provision of other services if such channel capacity is not being used for the purposes designated and rules and procedures under which such permitted use shall cease; and

WHEREAS, to the extent this franchise agreement is considered a "project" under the California Environmental Quality Act (CEQA), it is exempt from review under Categorical Exemption Class 1 (CEQA Guidelines Section 15301) as the project involves the licensing of existing facilities in the public rights of way, and under Categorical Exemption 2 (CEQA Guidelines 15302) Replacement and Reconstruction of Existing Facilities and that no further environmental review is required if such work is needed in order to comply with the terms of the franchise agreement set forth hereafter as Exhibit A; and

WHEREAS, Comcast has satisfied all the requirements to set forth in Chapter 5.08 of the Clayton Municipal Code and the Cable Act; and

WHEREAS, Comcast has agreed to the terms, provisions and conditions of the franchise agreement attached hereto and made a part hereof and marked Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Clayton that the City Manager is authorized to execute the Cable Franchise Agreement Between the City of Pleasant Hill and Comcast of California IX, Inc., substantially in the form attached hereto as Exhibit A, subject to any nonsubstantive conforming, technical, clerical or clarifying changes acceptable to the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is directed upon approval of this Resolution by the City Council to submit a written request to Comcast requesting payment within sixty (60) days of the maximum PEG Lump sum capital payment provided in Section VI. B.1. ("Option B") of the franchise agreement, and Comcast is required by this Resolution to submit the payment to the City of Clayton within sixty (60) days of the date of the City's request.

PASSED, APPROVED, AND ADOPTED by the City Council of Clayton, California, at a regular meeting thereof held on October 17, 2006, by the following vote:


AYES: Mayor Shuey, Vice Mayor Walcutt, Councilmember Pierce, Councilmember Laurence, Councilmember Manning

NOES: None

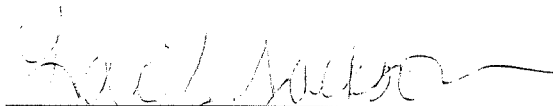
ABSENT: None

ABSTAIN: None


THE CITY COUNCIL OF CLAYTON, CA

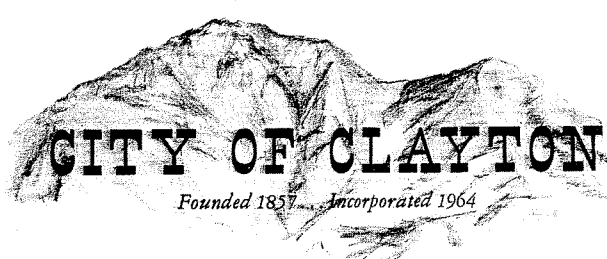

David T. Shuey, Mayor

ATTEST:


Laci Jackson, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular meeting held on October 17, 2006.


Laci Jackson, City Clerk



COMMUNITY
DEVELOPMENT (925) 673-7340
ENGINEERING (925) 672-9700

6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517-1250
TELEPHONE (925) 673-7300 FAX (925) 672-4917

City Council
DAVID T. SHUEY, *MAYOR*
WILLIAM R. WALCUTT, *VICE MAYOR*
PETER A. LAURENCE
GREGORY J. MANNING
JULIE K. PIERCE

Sent via U.S. Mail and facsimile to (925) 349-3538

November 27, 2006

Philip Arndt
Government Affairs Manager
Comcast Corporation
2500 Bates Avenue, Suite A
Concord, CA 94520

Re: Exercise of PEG Access Capital Payment "Option B"

Dear Philip:

The City Council on October 17, 2006 approved Resolution No. 51-2006 (copy attached) which authorized renewal of the franchise agreement between the City of Clayton and Comcast. Section VI (B)(1) PEG Access Capital Payments, of that agreement provides the City with options for accelerating the PEG support payment. The City Council's approving Resolution also stipulated the selection of the Lump Sum Payment "Option B". This letter shall serve as the written notice required under Section VI(B)(1) of the Franchise Agreement regarding the City's option for the PEG Access Capital Payments in a single, lump-sum payment of \$144,456.

As stipulated in the Resolution: "The City Manager is directed upon approval of this Resolution by the City Council to submit a written request to Comcast within 60 days of the selection of the maximum PEG Lump sum capital payment provided in Section VI.B.1 (Option B) of the franchise agreement. Comcast is required by this Resolution to submit the payment to the City of Clayton within 60 days of the date of the City's request."

We are pleased that there has been a final successful outcome of this long negotiation process. Please contact Laura Hoffmeister, Assistant to the City Manager, at (925) 673-7308, should there be any questions.

Sincerely,

Gary A. Napper
City Manager

cc: City Council
Finance Manager
City Attorney



Comcast Cable
12647 Alcosta Boulevard
Suite 200
San Ramon, CA 94583

October 18, 2006

The Honorable David Shuey
Mayor, City of Clayton
6000 Heritage Trail
Clayton, California 94517

Dear Mayor Shuey:

The purpose of this letter agreement is to set forth several commitments between Comcast of California IX, Inc., a California corporation, (hereinafter, "Comcast") and the City of Clayton, California (hereinafter, "the City") that are in addition to the Franchise Agreement to be adopted by Ordinance (hereinafter, "the Franchise"). These items have been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. 546(h), and specifically relate to unique community needs that exist in the City. This letter agreement shall become effective upon approval of the Franchise by the City Council.

- A. **Community/Public Access Program Transition:** To provide the City adequate time to scope, plan, and implement a new Community/Public Access facility, both parties agree to the following provisions for a period not to exceed twenty-four (24) months from the effective date of the Franchise:
1. Upon approval of the Franchise and for the lesser of (i) twenty-four (24) months or (ii) until the date that the City or any entity designated by the City to manage the operation of the public, educational and government ("PEG") access channels commences operation of all of the PEG access channels serving the City (the "Transition Period"), Comcast will continue to provide all of the PEG-related operations and services at the levels of support being provided as of December 31, 2005. Comcast agrees that all costs associated with the Transition Period shall be borne entirely by Comcast, and shall not be included in a pass-through to City subscribers, itemized as a separate line item to City subscribers, nor in any way be offset or credited against any franchise fee payment (previously or hereafter made) or other obligation of Comcast to be paid to City.
 2. Following the conclusion of the Transition Period, Comcast shall be relieved of any and all obligations to operate and maintain a Community Access facility within the City except as specifically provided under the Franchise or otherwise mutually agreed.
- B. **Technical Grant to City:** Within sixty (60) days following the effective date of the Franchise, Grantee shall provide City with an unrestricted technical grant in the amount of Seventy Eight Thousand, Eight Hundred Ninety Two and No/100 Dollars (\$78,892.00). Grantee reserves the right to pass-through the amount of the grant to Subscribers, in addition to the seventy-one cent (\$0.71) PEG pass through provided in the Franchise.
- C. **PEG Channel Re-location:** If Comcast decides at any time to relocate either or both of the

following PEG access channels:

(a) Contra Costa County TV (CCTV) or its successor entity providing county-wide government access television programming,

(b) the shared government access channel currently in effect on this Effective Date of this Franchise,

from their current locations in Comcast's channel line-up, then Comcast shall pay to the entity managing each such channel the sum of Five Thousand and No/100 Dollars (\$5,000.00) cash for each channel relocation, said amount stipulated by the parties as reasonably necessary to defer costs and inconvenience associated with change of letterhead, and designing promotion spots for the new channel location through cross-channel public service announcements, and conducting a bill insert to inform subscribers of the new channel location. If the shared government access channel is not under the management of a single entity at the time of any relocation, the foregoing compensation shall be divided equally among the communities sharing the channel. Comcast shall provide a minimum of at least thirty (30) days' prior notice to the City and subscribers of any relocation of any PEG access channel to a different channel number, unless specifically required otherwise by applicable law. In addition, the parties shall discuss the provision of a reasonable number of promotional spots, to be run as public service announcements.

- D. **Video-On-Demand (VOD) Access:** Comcast acknowledges the importance of access programming in the City. The programming allows the community to promote its diversity and to educate and inform its citizens. As Comcast deploys commercial VOD services on its digital platform in the City, Comcast commits that it will provide the City with the same opportunity, on a nondiscriminatory basis, as other local and national video programmers, to enter into discussions to determine ways in which to add government access programming to VOD. Any approval for the inclusion of programming will be in accordance with Comcast's regular terms and conditions, which will be made available during the discussion process. This Section applies only to the City's primary government access channel. The parties acknowledge that the City has not yet established a government access channel; therefore, this paragraph shall apply only to the extent that the City elects to establish a primary government access channel during the term of this Franchise.

Senior and Low Income Discounts: The parties acknowledge that Comcast no longer offers senior discounts or low income discounts in its Bay Area markets, preferring instead to offer a low cost, entry level Basic Service Tier to all subscribers. However, to the extent that certain Subscribers residing within the Franchise Area currently receive a senior discount or low-income discount pursuant to a previous franchise or other agreement with the City, Comcast will permit those subscribers to remain on that discount plan. In addition, to the extent that such discounts are currently available to subscribers in the City, Comcast may voluntarily agree to make such discounts available to new subscribers who meet the eligibility criteria used to determine the eligibility of current recipients. Should a Subscriber become ineligible for the discount under the plan's regular provisions, or discontinue service for any reason, the Subscriber shall be removed from the plan and shall not be reinstated.

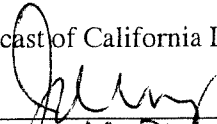
- E. Upon execution of this letter agreement by both parties, and satisfaction of the monetary obligations set forth in Paragraph B above, the parties agree that Comcast has fully satisfied any and all obligations under the franchise granted pursuant to Resolution No. 94-09, past transfer

agreements and ordinances, and Chapter 5.08 of the City of Clayton Municipal Code up until the date hereof, and the City shall seek no further compensation or performance from Comcast under said agreements, resolution and ordinance for the time period prior to renewal. Claims for past franchise fees due and owing, to the extent permitted by the franchise granted pursuant to Resolution No. 94-09, are specifically exempted from this Paragraph.


The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. Comcast stipulates that a violation of these terms by Comcast may be considered by the City as a material violation of the Franchise. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Acknowledged and agreed to this 17 day of OCTOBER, 2006.

Comcast of California IX, Inc.

By: 
Its: P. F. F. F.
Date: October 26, 2006

City of Clayton, California

By: 
Its: CITY MANAGER, GARY NAPIER
Date: Nov 22, 2006

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CABLE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF CLAYTON, CALIFORNIA

AND

COMCAST OF CALIFORNIA IX, INC.

OCT. 17, 2006 - OCT. 17 2021

October 17, 2006

**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE CITY OF CLAYTON, CALIFORNIA
AND COMCAST**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Clayton, California ("City"), and Comcast of California IX, Inc., a California corporation, dba Comcast ("Operator").

WHEREAS, Operator has applied to the City for a renewed, nonexclusive franchise to construct, install, maintain and operate a cable communications system in the City; and

WHEREAS, the construction, installation, maintenance and operation of such a system involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within the City; and

WHEREAS, the City has considered the financial, technical and legal qualifications of Operator, and has determined whether Operator's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has engaged in an independent review and ascertainment of Comcast's qualifications; and

WHEREAS, based on Operator's representations and information and in response to its request for a cable television franchise, the City Council has determined that, subject to the provisions of Chapter 5.08 of the Clayton Municipal Code, as amended, known as the Clayton Cable Television Ordinance (the "Cable Ordinance" or "Ordinance"), and the terms and conditions set forth herein, the grant of a nonexclusive franchise on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the City and Operator have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the City's grant of the Operator's franchise; Operator's promise to provide Cable Service to residents of the City pursuant to and consistent with the Cable Ordinance; the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the signatories do hereby agree as follows:

I. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein or in the Cable Ordinance. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section. The

words “shall and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

A. Access Channel or PEG Channel: Any Channel on the Cable System set aside under this Agreement for public, educational or governmental use.

B. Affiliate: Any subsidiary of the Operator, any parent of the Operator, any Person in which the Operator has a Financial Interest, and any Person who is directly or indirectly under common control with the Operator.

C. Basic Cable Service: The basic tier of service offered by the Operator in accordance with 47 U.S.C. 543(b)(7).

D. Cable Act: The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. 521-611(1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

E. Cable Ordinance: The City of Clayton Cable Ordinance, as it may be amended from time to time.

F. Cable Service: (1) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

G. Cable System or System: The facility proposed to be built, rebuilt, upgraded and/or operated by the Operator, which shall consist of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming, and which is provided to multiple subscribers within the City, but such term does not include: (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves Subscribers without using any public rights-of-way within the City; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201, *et. seq.*, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interaction or on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

H. Channel: A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, subject to any applicable definition established in Federal Communications Commission regulations.

I. Consortium: The Contra Costa Cable Consortium is a group of local government agencies formed to make efficient use of resources in connection with the renewal of various

cable television franchises currently held by companies affiliated with Comcast Cable Communications, Inc. The members of the Consortium are: Contra Costa County, the Cities of Clayton, Concord, Martinez, Pleasant Hill and Walnut Creek, and the Towns of Danville and Moraga.

J. Dwelling Unit: Residential living units as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and including single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.

K. Financial Interest: Includes without limitation:

1. Any form of equity ownership interest, which is either (a) direct or (b) indirect through another form of Person;

2. Any contract in which the Operator or any Affiliate thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;

3. Any option or warrant to purchase the stock or other equity interest in any Person which is related to a Person which generates revenues arising from or attributable to the operation of the Cable System; and

4. Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subsection.

L. Franchise: The franchise granted pursuant to this Agreement.

M. Franchise Agreement or Agreement: This contract and any amendments, exhibits or appendices hereto.

N. Franchise Area: The territorial confines of the City, and any areas annexed thereto during the term of the Franchise.

O. Gross Revenues: Gross revenues means all revenues derived directly or indirectly by the Operator or any Affiliate of the Operator from the operation of the Cable System to provide Cable Services in the City. Gross revenues shall include, without limitation, the following: (i) fees charged to subscribers for basic service, cable programming service, premium service, pay-per-view programming, video-on-demand programming, a la carte programming, or other cable service; (ii) installation, disconnection, reconnection and change-in-service fees; (iii) franchise or license fees; (iv) late fees; (v) administrative fees, including FCC regulatory fees; (vi) charges for the rental or sales of converters and other equipment to subscribers; (vii) advertising revenues, (excluding commissions paid to or retained by advertising agencies) provided, however, that revenues generated from advertising sales extending beyond the Franchise Area shall be prorated on a per subscriber basis, so that no revenues are double-counted, or attributed to more than one local governmental entity for purposes of calculating

franchise fees; (viii) leased access channel fees; (ix) revenues for program guides; (x) studio and production equipment rental fees; and (xi) revenues from home shopping channels. Gross revenues shall be calculated in accordance with generally accepted accounting principles.

Gross revenues do not include (i) actual bad debt, provided, however, that all or a part of any actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; (ii) the value of free Cable Services provided to employees of the Operator; (iii) the value of advertising time on the Cable System provided as consideration in barter transactions; (iv) PEG access capital support collected by the Franchisee on behalf of the City; (v) any taxes on services furnished by the Operator which are imposed directly on any subscriber by the State of California, the City, or other governmental unit, and which are collected by the Operator on behalf of said governmental unit; or (vi) amounts received from programmers as reimbursement of marketing expenses and launch fees.

P. Installation: The connection of the System from the tap to the point of connectivity to a Subscriber's terminal for the provision of Cable Service.

Q. Institutional Network or I-Net: A communications network which is constructed or operated by the Operator and which is generally available only to subscribers who are not residential subscribers.

R. Interconnect: The provision by the Operator of a physical linking of the Operator's Cable System with another cable system to permit the transmission of public, educational and governmental access programming to and from such other cable system.

S. Operator: Comcast of California IX, Inc., and its lawful and permitted successors, assigns, and transferees.

T. Person: An individual, partnership, association, joint stock company, limited liability company, trust, corporation, or government entity.

U. Public Facility: A fire station, public educational facility, police station, public library, or City department or agency within the Franchise Area.

V. Public Rights-of-Way: The surface of and the space above and below each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, paths, lanes, alleys, sidewalks, boulevards, easements, rights-of-way, and similar public property and areas that the City shall permit to be included within this definition from time to time. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating, and maintaining a Cable System. A Cable Operator shall be deemed to gain only those rights to use the property as are properly in the City, in its sole determination, and as the City may have the undisputed right and power to give.

W. Section: Any Section, subsection or provision of this Agreement.

X. Service Interruption: The loss of picture or sound on one or more Cable Channels.

Y. Service Tier: A category of Cable Service or other services provided by the Operator and for which a separate rate is charged by the Operator.

Z. State: The State of California.

AA. Subscriber: Any Person who or which lawfully elects to become a recipient of Cable Service in a manner consistent with the Operator's applicable terms of service.

BB. Transfer: Any transaction in which (i) the Franchise or the rights and obligations held by the Operator under the Franchise are transferred or assigned to another Person or group of Persons; or (ii) there is a change in the direct or indirect control of the System, the Franchise or the Operator. The term "control," as used in this definition, means working control, in whatever manner exercised. By way of illustration, and not limitation, the addition, deletion or other change of any general partner of the Operator, or a cable operator of the Cable System is such a change of control.

II. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

A. Grant of Authority: Subject to the terms and conditions of this Agreement and the Cable Ordinance, the City hereby grants the Operator the right to own, install, construct, reconstruct, operate, maintain, dismantle, test, upgrade, repair, use and remove a Cable System along, under, over, above, through or across or in any manner connected with the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for the Operator to use the City's Public Rights-of-Way for any purposes other than the provision of Cable Service. Nothing in this Agreement shall be deemed as the granting of authority to operate a telecommunications system or to provide telecommunications services or information services. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit the authority of the Operator to provide services other than Cable Service, to the extent such authority is consistent with applicable state and federal law. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit the Operator's use for specific purposes, and the Operator shall be deemed to gain only those rights to use that are within the City's power to convey. No privilege or power of eminent domain is bestowed by this grant or by this Agreement.

B. Area Served:

1. The Franchise is granted for the Franchise Area defined herein. The Operator shall extend its Cable System to provide service to any residence in the City upon request, in accordance with the terms of the Cable Ordinance and this Agreement.

2. The Operator shall design, construct and maintain the Cable System to pass every Dwelling Unit in the Franchise Area, provided that the Operator will have an exception for any specific quarter-mile segment of street within the Service Area, which has less than eight (8) Dwelling Units fronting thereupon, measured from the closest point of connectivity to the Operator's System.

3. Nothing herein shall require the Operator to expand its Cable System to serve, or to offer service to, any area annexed by the City if such area is then served by another multichannel video programming distributor.

C. Term: The Franchise and this Franchise Agreement shall extend for a term of fifteen (15) years, commencing on the date accepted below by the Operator, unless the Franchise is earlier revoked, or unless the Franchise is renewed or extended by mutual agreement.

D. Grant Not Exclusive: The Franchise granted under this Agreement shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or any component thereof, as it deems appropriate, subject to applicable law. The City also specifically reserves the right to operate a municipal Cable System, or any portion thereof, pursuant to applicable law, including, without limitation, 47 U.S.C. § 541(f).

E. Franchise Agreement Subject to Other Laws: This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, state, and local law. In the event of any conflict between the express terms of this Agreement and the Ordinance, including any amendments to the Ordinance, the terms of this Agreement shall prevail, except with respect to matters falling within the scope of the City's police powers. The Operator reserves the right to challenge the lawfulness of any exercise of the City's police powers, including, without limitation, any amendment to the Ordinance.

F. Franchise Agreement Subject to Exercise of Police Powers: All rights and privileges granted herein are subject to the constitutional police powers of the City and its rights under applicable law to exercise its governmental powers to their full extent, provided that such actions do not unlawfully impair the Operator's contract rights.

G. Approval and Effective Date: The grant of the Franchise provided for in this Agreement shall be effective on the date stated on the signature page (the "Effective Date"), *provided that*, prior to or upon the date of the City's approval of and authorization of execution of this Agreement, the Operator shall have fully executed this Agreement and submitted to the City all submissions required hereby. If the Operator fails to satisfy these conditions within sixty (60) days of the City's approval of and authorization of execution of this Agreement, this Franchise grant shall be deemed revoked. Nothing in this Agreement shall in any way affect or alter the Operator's existing franchise obligations prior to such time as the franchise is renewed and this Agreement becomes effective.

H. Effect of Acceptance: By accepting the Franchise and executing this Franchise Agreement, the Operator:

1. accepts and agrees to comply with each provision of the Cable Ordinance and this Agreement;

2. acknowledges and accepts the City's legal right to grant the Franchise and to enter this Franchise Agreement; and

3. agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it shall not raise any claim to the contrary, or allege in any claim or proceeding by the Operator against the City that any provision, condition or term of the Cable Ordinance or this Agreement at the time of the acceptance of the Franchise was unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the City had no power or authority to make or enforce any such provision, condition or term.

I. No Waiver:

1. The failure of the Operator or the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance in the future, nor to excuse a party from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2. Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation of the right of eminent domain.

J. Limitation on Liability: In any court proceeding involving any claim against the City or other governmental entity, or any official, member, employee, or agent of the City, arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of the Franchise, any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief; provided that the foregoing shall not preclude an offset against future Franchise Fee or other payments to the City if Operator has overpaid such amounts previously. The Operator shall not apply for any waivers, exceptions, or declaratory rulings from the FCC or any other federal or state regulatory agency directly affecting the System or the Franchise without written notice to the City.

III. TRANSFERS

A. City Council Approval Required: No Transfer shall occur unless prior application is made by the Operator to the City and the City Council's prior written consent is obtained, pursuant to this Agreement and the Cable Ordinance. Any such Transfer without the prior written consent of the City Council shall be considered to impair the City's assurance of due

performance, and shall be invalid. The granting of approval for a Transfer in one instance shall not render unnecessary approval any subsequent Transfer.

1. Application.

The Operator shall promptly notify the City Manager of any proposed Transfer. If any Transfer should take place without prior notice to the City Manager, the Operator shall promptly notify the City that such a Transfer has occurred. At least one hundred-twenty (120) calendar days prior to the contemplated effective date of a Transfer, the Operator shall submit to the City Manager an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the new controlling entity or transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information shall be included in the application, provided that, the Operator is not required to duplicate information that it submits to the City Manager to comply with its obligations under federal or State law:

- i. all information and forms required under federal law;
- ii. all information required by the Ordinance;
- iii. any contracts or other agreements that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and
- iv. any shareholder reports or filings with the Securities and Exchange Commission that discuss the transaction.

2. Supplemental Information. The City shall notify Operator of any insufficiency in the information provided in the application within thirty (30) days after receipt thereof. The failure of the City to so notify Operator of such insufficiency shall result in the application being deemed complete. For the purposes of determining whether it shall consent to a Transfer, the City or its agents may inquire into the qualifications of the prospective controlling entity or transferee and such other matters as the City may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under the Ordinance and applicable law. Notwithstanding whether the application has been deemed complete, the City may request additional information related to the proposed transaction to the extent permitted by applicable law.

B. Determination by City: In making a determination as to whether to grant, deny, or grant subject to conditions, an application for a Transfer, the City may consider, without limitation, the legal, financial, technical and other qualifications of the proposed controlling entity or transferee to operate the Cable System; whether the Operator is in compliance with this Agreement and the Ordinance, and, if not, the proposed controlling entity transferee's commitment to cure such noncompliance; and whether operation by the proposed controlling entity or transferee or approval of the Transfer would adversely affect the public health, safety, or welfare of Subscribers or the public.

C. Transferee's Agreement: No application for a Transfer of the Franchise shall be granted unless the proposed controlling entity or transferee agrees in writing that it will abide by and accept all terms of this Agreement and the Cable Ordinance and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Operator under this Agreement and the Ordinance, for all purposes, including renewal.

D. Approval Does Not Constitute Waiver: Approval by the City Council of a Transfer does not constitute a waiver or release of any of the rights of the City under this Agreement or the Cable Ordinance, whether arising before or after the date of the Transfer.

E. Exception for Intra-Company Transfers: Notwithstanding the foregoing, a Transfer to an Affiliate of the Franchisee shall be excepted from the requirements of this section where (i) the Affiliate is wholly-owned and managed by the same ultimate parent as the transferor ; and (ii) the transferee Affiliate:

1. notifies the City within thirty (30) days of the Transfer and, at that time, provides the agreements and warranties required by this section, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;

2. warrants that it has read, accepts and agrees to be bound by each and every term of this Agreement and related amendments, regulations, ordinances and resolutions then in effect;

3. agrees to assume all responsibility for all liabilities, acts and omissions, known and unknown, of its predecessor Franchisee(s), for all purposes, including renewal;

4. agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisee(s);

5. warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;

6. warrants that the Transfer will not in any way adversely affect the City or Subscribers;

7. notifies the City that the Transfer is complete within five (5) business days of the date the Transfer is completed; and

8. agrees that the Transfer in no way affects any evaluation of its legal, financial or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

IV. CONSTRUCTION AND MAINTENANCE

A. Construction Standards:

1. Any construction, rebuild, upgrade, operation, maintenance, and repair of the System shall be in accordance in all material respects with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and other applicable federal, state, or local laws and regulations, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, accepted cable industry practices shall control (except insofar as such practices, if followed, would result in a Cable System that could not meet express requirements of federal, state or local law, or in instances in which such practices are expressly preempted by other standards). Consistent with the foregoing, the City may ensure that work continues to be performed in an orderly and workmanlike manner, reflecting any changes that may occur over the Franchise term.

2. To the extent permitted by applicable law, the City reserves the right to adopt and impose such generally applicable construction standards as it may deem necessary or appropriate, after notice to Operator and opportunity for Operator to participate in such proceedings.

3. All installation of electronic equipment shall be of a permanent nature, using durable components.

4. Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

5. The Operator shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising Operator's Cable System in good condition, order and repair. Consistent with subsection IV(a)(1) above, all safety practices required by law shall be used during construction, maintenance, and repair of Operator's Cable System. The Operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents.

6. In the event of a failure by the Operator to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by City law or ordinance, within the time specified by and to the reasonable satisfaction of the City, the City, following notice and an opportunity to cure, may cause such work to be done, and the City shall submit an itemized list of such costs to Operator as well as any materials reasonably requested by Operator to verify such costs. Following the Operator's receipt of such itemized list and supporting materials, the Operator shall reimburse the City the costs thereof within thirty days, or the City may recover such costs through the or performance bond provided by Operator.

7. In the event of an emergency, or where the Operator's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Operator shall remove or relocate any or all parts of Operator's Cable System at the request of the City. If the Operator fails to comply with the City's request, the City may remove or relocate any or all parts of the Operator's Cable System upon reasonable notice to Operator. If Operator's compliance with the City's request pursuant to this subsection results in the breach of any of Operator's obligations under this Agreement, and Operator has so notified the City before complying with the City's request, Operator shall not be liable for its failure to satisfy such obligations.

8. Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the upgrade, rebuild, repair, replacement, relocation, operation, maintenance, or construction of a System shall be repaired, replaced and restored, in a good workmanlike, timely manner, to substantially the same condition as immediately prior to the disturbance (including appropriate landscape restoration). All repairs, replacements and restoration shall be undertaken within no more than thirty (30) days after the damage is incurred, and shall be completed as soon as reasonably possible thereafter. The City may require that repairs, replacements and restoration take place in a shorter period of time in situations in which City determines that a dangerous condition exists. The Operator shall warrant such repairs, replacements and restoration for at least three (3) years against defective materials or workmanship.

9. Any contractor or subcontractor used for work or construction, rebuild, upgrade, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State of California and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Operator would have if the work were performed by the Operator. The Operator will take reasonable measures to require that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Operator shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

10. Neither party guarantees the accuracy of any maps showing the horizontal or vertical location of existing substructures.

B. Undergrounding:

1. In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Operator likewise shall construct, operate and maintain its transmission and distribution facilities therein underground. In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are aerial, the Operator shall

likewise construct, operate and maintain its transmission and distribution facilities therein on an aerial basis.

2. In those areas of the City where the Operator's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, the Operator shall similarly and simultaneously construct, operate and maintain its transmission and distribution facilities underground, at the Operator's pro rata cost; however, the Operator shall be treated similarly to electric and telephone utilities with respect to the reimbursement of costs related to the creation of underground utility districts.

3. A Cable System must comply with the City's generally applicable requirements for joint trenching and undergrounding in order to minimize disruptions to the rights-of-way.

4. The City specifically reserves all of its rights to approve all above-ground and/or underground locations for all equipment subject to applicable law. The Operator shall, at installation and throughout the term of the Franchise, comply with all applicable environmental reviews.

C. Compliance with Construction Codes and Permitting Requirements:

1. The Operator shall obtain all necessary permits and pay all generally applicable related fees, including but not limited to permit processing and inspection fees, from the City before commencing any construction, repair, upgrade, rebuild or extension of the System, including the opening or disturbance of any Public Rights-of-Way, on private or public property within the City. The Operator shall adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation, or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.

2. The City shall, at all times, have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law in such a manner so as to minimize disruption of service to Subscribers.

D. Conditions on Use of the Public Rights-of-Way:

1. Any and all Public Rights-of-Way or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, reconstruction, rebuild or upgrade of the System shall be promptly and fully restored by the Operator, at its expense, to a condition as good as that prevailing prior to the Operator's work in accordance with the City's normal restoration procedures and standards regarding Public Rights-of-Way and other public property. In so doing, the Operator shall comply with all directions of the City Engineer, including without limitation direction to utilize directional boring in lieu of trenching. Moreover, the Operator shall use its best efforts to reduce, through

coordination with the City Engineer, its trench cuts of the Public Rights-of-Way by coordinating such intrusions with other users, franchisees, licensees and occupants of the Public Rights-of-Way so as to minimize the trench cuts and resulting pavement degradations in the Public Rights-of-Way. It is a violation of this Franchise for the Operator to leave cable unburied on the ground for more than the shortest, temporary period required to bury it. If the Operator shall fail to promptly perform the restoration required herein after written notice and an opportunity to cure, the City shall have the right to put the Public Rights-of-Way, public, or private property back into a condition as good as that prevailing prior to the Operator's work and the City shall obtain reimbursement for such restoration from the Operator. The City may recover the cost of restoration from the performance bond, if it shall remain unpaid fifteen (30) days after presentation for payment. Subject to Section II(E), nothing contained in this Agreement shall excuse or relieve the Operator from compliance with any street cut ordinance of general applicability which the City should hereafter enact.

2. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sanitary sewers and/or storm drains; grading, paving, maintaining, repairing, relocating and/or altering any Public Rights-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3. All System transmission and distribution structures, lines and equipment erected by the Operator within the City shall be located so as not to unreasonably obstruct or unnecessarily interfere with the usual and customary use of the Public Rights-of-Way, and to cause minimum interference with the rights of property owners who abut any of the Public Rights-of-Way, and not to unreasonably interfere with existing public utility installations. Upon request, the Operator shall furnish to and file with City Engineer maps, plats and other information related to the location of the cable distribution plant, showing the location of all lines, amplifiers, power supplies and other equipment, but excluding confidential design specifications. In addition, the City shall have the right to review maps showing confidential information, but shall not have the right to obtain copies of such maps.

4. If at any time during the period of this Franchise the City shall alter, or change the grade or location of any Public Rights-of-Way, the Operator shall at its own expense, upon notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of the City. The foregoing requirement shall apply both in cases in which all utilities occupying the Public Rights-of-Way are required to remove and relocate facilities, and in cases in which the particular location of the operator's facilities is such that only those facilities must be removed and relocated.

5. The Operator shall not place poles, conduits, or other fixtures of the System above or below ground where the same will unreasonably interfere with any gas, electric, telephone, water or other utility fixtures. All the Operator's poles, conduits, or other fixtures placed in any Public Rights-of-Way shall be so placed as to comply with all requirements of the City.

6. The Operator shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Operator shall be given not less than ten (10) business days advance notice to arrange for such temporary changes.

7. The Operator shall cooperate with and participate fully in Underground Service Alert (USA) and other reputable underground facility locating services to insure that damage and/or interference with other underground facilities occupants is minimized.

8. If the Operator enters private property for the purposes of construction where there is no dedicated public easement, the Operator shall first secure the private property owner's written consent. Operator shall restore all private property located within public utility easements and rights-of-way to its pre-construction condition, *e.g.*, replacement of landscaping, fencing, sidewalks and other features.

9. Notwithstanding any other term, condition or provision hereof, no trench cut or portion thereof by the Operator in any Public Rights-of-Way shall remain open and unfilled for more than three (3) business days from the date of its initial opening without the City's consent. For purposes of this section, "open" shall mean and include any degree of refilling and/or restoration of the trench short of the final restoration of the pavement to its original grade. Moreover, the Operator shall, at the close of each day, suitably cover, by plate or other means acceptable to the City, (i) any unfilled trench or portion thereof, and (ii) any open trench which traverses a driveway or other means of ingress and egress for any property owner in such a fashion as to allow reasonable use of the driveway or other means of ingress and egress by the property owner during periods of non-construction.

10. Except in cases of emergency or responses to unplanned system failures where it is impractical to do so, prior to entering onto private property to construct, operate or repair its Cable System (unless the repair or construction can be performed from the Public Rights-of-Way without disrupting private property), the Operator shall give the property owner, (or in the case of residential property, the person residing on or using the property) adequate notice, not less than twenty-four (24) hours, that it intends to work on the property, a description of the work it intends to perform, and a name and telephone number the Person can call to contact the Operator. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users, and that complies with applicable law.

11. The City shall have the option to lay its own conduit or place other public improvements in the Operator's open trenches during the initial construction and during any future rebuilds or repairs, so long as it does not materially increase costs to the Operator, or adversely affect the Cable System.

E. Major Construction: The Operator shall comply with the procedures of this section in the event of any major construction. For purposes of this section, "major

construction” means a system upgrade, system rebuild, or any work in the Public Rights-of-Way that can be reasonably expected to affect System plant served by one or more fiber optic nodes.

1. Construction Plan. Major construction must follow an approved construction plan, and comply with any other conditions the City may require for work in the Public Rights-of-Way pursuant to its generally applicable practices and procedures. The construction plan shall include a timetable for construction that provides for orderly commencement and completion of all work; and a description of the steps the Operator will take to ensure that all local requirements are satisfied, and any construction is completed with minimum disruption to the right-of-way or service. The Operator and the City shall meet to discuss the plan. The City may review the construction plan and submit comments to the Operator within thirty (30) days of the date it was received from the Operator. If the City objects to the plan, the Operator must submit a revised plan and a written response to the comments within twenty (20) days of the date it receives the City’s comments. The City reserves any rights it might have under this Agreement or applicable law if it determines that the revised plan is not adequate. The Operator shall not undertake any construction or encroachment within the public right of way prior to approval of the construction plan and issuance of all required permits.

2. Design and Construction Manual. Operator shall submit to City a System construction manual, and a plan for notifying area residents of the work process for any major construction. City shall have a right to review and approve or disapprove the plan and manuals within 90 days of receipt.

3. Periodic Progress Reporting. Following the commencement of major construction, the Operator shall meet with the City every three (3) months, or at other reasonable intervals, until the construction is completed, and provide an update on the progress of the construction according to the Operator’s general plan, unless the City waives such meeting. Upon request, the Operator shall provide detailed written reports to the City on the Operator’s progress in construction, within ten (10) business days of the request.

4. Public Notification. Prior to the beginning of any major construction, and periodically during each phase, the Operator shall inform the public and its Subscribers about the progress of the construction areas where construction crews will be working and any expected temporary interruptions to existing services which may occur.

F. System Tests and Inspections:

1. The Operator shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and the technical standards of the FCC set forth in Part 76, Subpart K (Technical Standards) of the FCC’s rules, 47 C.F.R. § 76.601 et seq., or any successor standards, including without limitation performance tests, technical standards, signal leakage performance criteria and cable television system monitoring.

2. The Operator shall conduct tests as follows:

- a. proof of performance tests, as compiled by headend, on the System as required by FCC rules; and
- b. special cable plant tests when Subscriber complaints reasonably indicate tests are warranted.

3. A written report of any special test results shall be submitted or otherwise made available locally to the City within seven (7) days of the test. In addition, the Operator shall retain written reports of the results of any tests required by the FCC for a period of three years, and such reports shall be submitted to the City within seven (7) days of a request.

4. If any test indicates that any part or component of the System fails to meet applicable requirements, the Operator, without requirement of additional notice or request from City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved.

G. Inspections During Construction:

The City may conduct inspections of construction areas and subscriber installations, including but not limited to, inspections to assess the Operator's compliance with construction and installation requirements. Inspection does not relieve the Operator of its obligation to build in compliance with all provisions of the franchise. The Operator shall be notified of any violations found during the course of inspections. Applicant must bring violations into compliance within the following time periods after it receives notice of the violation:

1. for safety violations, as promptly as possible and within forty-eight hours;
and
2. for other violations, as directed or within thirty days if no time is specified.

Where it is impossible to correct a violation within the specified time periods, even with the exercise of all due diligence, the Operator shall promptly so notify the City and may request an extension of time to perform; which extension request must specify the deadline for completion and the steps that will be taken to protect the public in the interim. The City will not unreasonably refuse to consent to the request; but it may condition any extension, and may exercise any other remedies it has under the franchise and applicable law for the violation. After the specified time period or any extension, the Operator must submit a report to the City describing the steps that it has taken to bring itself into compliance.

H. Publicizing Proposed Construction Work: The Operator shall notify the general public prior to commencing any proposed construction that will significantly disturb or disrupt public property or Public Rights-of-Way, or have the potential to present a danger or affect the safety of the public generally. Where possible, the Operator shall publicize proposed construction work at least one week prior to commencement of that work by notifying those residents and others in the immediate vicinity of where work is to be done and most likely to be affected by the work in at least two of the following ways: by telephone, in person, by mail, by distribution of

door hangers or flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. Notice to affected Persons must include the name and local telephone number of an Operator representative who is qualified to answer questions concerning proposed construction. The Operator shall supply a copy of any written notice to the City at the City's request.

I. Right of Inspection: The City shall have the right to inspect all construction, reconstruction or installation work performed by the Operator under the provisions of this Agreement and applicable law, to ensure the Operator's compliance and to protect the health, safety and welfare of the City's citizens. All work performed by the Operator shall be fully subject to the general ordinances of the City and, in case of conflict between such general ordinances and this Agreement, the general ordinances shall prevail.

J. System Maintenance:

1. The Operator shall, when practicable, schedule and conduct maintenance on Operator's Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of Operator's Cable System. The Operator shall provide reasonable prior notice to Subscribers and the City before interrupting service for planned maintenance or construction, except where such interruption is expected to be one hour or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

2. Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations.

K. Standard Connections: Standard line extension policy shall be one hundred fifty (150) aerial feet, one hundred twenty-five feet (125) underground. If the aerial or underground connection for service to a Subscriber's location (sometimes known as a "drop") requires no more than a one hundred fifty (150) foot aerial extension or one hundred twenty five (125) foot underground extension measured from the nearest Street (unless the Operator has obtained a waiver from the City pursuant to Section II (B) (2) above)), the Operator shall provide the connection to its service at no charge for the initial one hundred fifty (150) feet or one hundred twenty five (125) feet, as applicable, other than the Operator's standard installation fee. This provision applies only to extensions from cable plant to a Dwelling Unit.

V. SYSTEM FACILITIES, EQUIPMENT AND SERVICES

A. System Requirements. The Operator's Cable System generally shall meet or exceed the following requirements:

1. Compliance with FCC Rules.

a. The System shall conform to or exceed all applicable FCC technical performance standards for cable systems, as amended from time to time, including, without limitation, those set forth in 47 C.F.R. § 76.601.

b. The System shall have personnel, facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Operator's Cable System remains in compliance with the standards specified in this Agreement.

c. The System shall have such facilities and equipment as necessary to maintain, operate, and evaluate Operator's Cable System to comply with FCC technical standards, as such standards may be amended from time to time.

2. Continuous 24-Hour Operation. The System shall be capable of continuous twenty-four-hour daily operation in accordance with FCC signal standards except as caused by a *force majeure* condition, including extremely inclement weather, or immediately following extraordinary storms which adversely affect utility services or which damage major system components.

3. No Interference. The System shall be operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a Subscriber.

4. No Deterioration to Access Signals. The System shall be so constructed and operated so that each PEG Channel shall be delivered over the System with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service.

5. Industry-Accepted Equipment. The System shall use facilities and equipment generally used in high-quality, reliable, modern systems of similar design. Facilities and equipment shall be used at the headend to allow the Operator to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the System shall include components so that a signal received at the headend in color may be received by a Subscriber in color, a stereo signal in stereo. Facilities and equipment should be installed and operated so that subscribers can receive closed captioning and secondary audio.

6. Program Security. The System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a subscriber using, for example, a private identification number or other individual selection procedure.

7. Handicapped Service. The Operator shall comply with all requirements of applicable law related to the distribution of programming to persons with disabilities. Operator shall comply with FCC rules on transmission of closed captioning for the hearing-impaired.

8. Safety. The System's facilities and equipment shall be designed, built and operated in such a manner as to protect the safety of Operator's Cable System workers and the public.

9. Sufficient Staff and Equipment. The System shall have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Operator to substantially comply with applicable law,

including applicable customer service requirements and technical standards, including requirements for responding to system outages. This includes the facilities, equipment and staff required to (i) properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and (ii) be able to respond to customer complaints and resolve system problems in a manner consistent with this Agreement and applicable law.

B. System Characteristics.

1. Throughout the term of this Agreement, the System shall have a minimum activated bandwidth of at least 750 MHz, and shall be capable of delivering at least 78 Channels of video programming.

2. The bandwidth specifications in Section V.B.1 refer to the engineering bandwidth of the System and do not limit what types of signals (*e.g.*, analog or digital) the Operator carries on any part of that bandwidth.

3. The Operator agrees that the System shall be capable of two-way activation.

4. The entire System shall be technically capable of transmitting NTSC analog, compressed digital, and HDTV transmissions. The Operator shall comply with all FCC regulations regarding carriage of digital and HDTV transmissions.

5. Subject to Section II(B) above, the Operator's construction plan shall insure that the System is extended to all parts of the City without regard to income level.

C. Periodic Review. If the City determines that reasonable evidence exists of inadequate System performance, City may require Operator to perform tests and analyses directed toward such suspected inadequacies at Operator's expense. Operator shall fully cooperate with City in performing such testing and any report prepared by Operator shall include at least:

- a. a description of the alleged problem in the System performance which precipitated the special tests;
- b. the System component tested;
- c. the equipment used and procedures employed in testing;
- d. the method, if any, by which the System performance problem was resolved; and
- e. any other information pertinent to said tests and analyses which may be reasonably required by City, or determined when the test is performed.

If after receiving Operator's report, City determines that reasonable evidence still exists of inadequate System performance, City may, at its cost, engage an independent engineer to perform tests and analyses directed toward such suspected inadequacies, in cooperation with Operator.

D. Equipment Compatibility.

1. The Operator shall comply with all FCC regulations, including, without limitation, 47 C.F.R. § 76.630, as amended, regarding scrambling or other encryption of signals, Subscriber premises equipment, equipment compatibility, and facilities and equipment that permit Subscribers to fully utilize the capabilities of consumer electronic equipment while receiving cable service. The Operator shall comply with the subscriber equipment compatibility information requirements of 47 C.F.R. § 76.1622, and shall provide accurate information in response to subscriber requests for information regarding equipment compatibility.

2. The Operator shall perform normal installations at its published rate. A "normal installation" shall be defined as installation of the outside drop, installation of inside wiring from the demarcation point to one principal outlet, connection of the subscriber's television set to the principal outlet, and connection to the subscriber's television set of a digital converter (if applicable) and one other item of consumer equipment, such as a DVD or VCR player (if applicable).

E. Change in Channel Assignment. Should the Operator desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Agreement and in applicable law. The Operator shall provide thirty (30) days' advance written notice to Subscribers and the City of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by the City or by operation of federal or state law, or due to events beyond the reasonable control of the Operator.

F. Payment Centers.

1. Operator shall maintain no fewer than three convenient local customer service and bill payment locations in Contra Costa County for receiving Subscriber payments, handling billing questions, returning and exchanging equipment, and providing customer service information. The locations must be staffed by a Person adequately trained to receive and respond to Subscriber inquiries and bill payments. The locations shall be open during Normal Business Hours that in no event shall be less than thirty-five (35) hours per week. In addition, the Operator shall maintain a drop box adjacent to Operator's local office for receiving Subscriber payments after hours. For purposes of this section, "Normal Business Hours" means those hours in which most similar businesses in Contra Costa County are open to serve customers, and must include some evening hours at least one night per week and/or some weekend hours.

2. The local office requirement of by subsection (1) above shall be waived for so long as the two following conditions are fully satisfied by Operator:

(a) Two or more convenient, geographically distributed cost-free payment locations are established and operated by Operator during Normal Business Hours as described above within the jurisdiction of the City, and

(b) A cost-free equipment exchange and return procedure is established and operated by the Operator or its contractor consisting of the free pick up and delivery of equipment at the Subscriber's residence during Normal Business Hours, or the cost-free exchange or return of equipment at retail establishments located within the jurisdiction of the City or such other equipment exchange and return procedure that is agreed upon by the City and the Operator.

G. Leased Access Channels: The Operator shall provide leased access channels as required by federal law.

I. Customer Service Monitoring. The Operator shall keep such records as required to enable the City to determine whether the Operator is complying with all telephone answering standards required by applicable customer service regulations. Where consistent with industry and company practices, the Operator may maintain such information on an aggregate basis. Copies of available records shall be delivered to the City at no charge within thirty days of request.

J. Emergency Notification. The Operator shall comply with the requirements of 47 C.F.R. Part 11, as amended. In addition, the Cable System shall be designed and constructed to permit Contra Costa County to simultaneously override audio and video signals and broadcast emergency messages on all channels on the System in order to transmit emergency notifications. The Cable System shall be designed so that emergency notification can be received by subscribers in areas designated by individual headends. The County shall have the capability to initiate emergency messages for local or national level alerts, from the Emergency Services Division, or such other places as the Administrator of Emergency Services may designate, without the assistance of the Operator, using a telephone and secure password or by such other technical means as the County may approve. The System must be designed and maintained so that the designated officials can activate a pre-recorded voice message, a redirection scroll, and/or a video message; and/or directly override the audio and transmit a video signal override via the institutional network or other upstream capacity provided for PEG use. The emergency notification system must be reasonably upgraded over time consistent with federal standards, provided, however, that the County may negotiate with Operator for additional notification services. It shall be integrated to the extent possible with the emergency alert systems the Operator is required to provide under federal or state law. The Operator shall assist and cooperate with the County in quarterly testing of the County's emergency notification system. Planned changes or additions to the emergency notification system or its associated technology will be reviewed with the County Emergency Services Division Community Warning System Program prior to their implementation by the Operator.

K. Home Wiring: Operator shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring and home run wiring.

L. Parental Control Lock: The Operator shall make available to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by the Operator, for which the Operator may charge rates consistent with applicable law.

M. Customer Service: During the term of this Franchise, the Operator shall comply with the customer service requirements set forth herein and in the Cable Ordinance as in effect on the Effective Date of this Agreement; however, nothing in this Section shall be construed to limit the City's lawful exercise of its police powers under Sections II(E) and II(F) herein.

VI. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL, AND GOVERNMENTAL USE, AND INSTITUTIONAL NETWORK

A. Access Channels:

1. On the effective date of this Agreement, the Operator shall continue to provide the number of downstream Access Channels currently provided in the City. Upon the earlier of (1) completion of the System Upgrade contemplated under Section V(B)(1), if any; (2) the effective date of the Franchise if the System has already been upgraded; or (3) 24 months after the effective date of this Agreement, the Operator shall make available up to one additional video Access Channels for public, educational and governmental use. The total number of Access Channels to be provided under this section shall be four.

2. In addition to the channels provided pursuant to Section VI.A.1, the City may request and Operator shall provide an additional analog Access Channel when the cumulative time on all the existing Access Channels combined meets the following standard: at least eighty percent (80%) of the cumulative time of sixty (60) hours per week over a consecutive sixteen (16) week period has been programmed with original, non-duplicative programming. In other words, out of a total of 960 hours (60 x 16) of programming appearing on all the Access Channels combined over the 16-week period, 768 (.80 x 960) must be original, nonduplicative programming. If the Operator has converted the System to an all-digital format, and the City has not yet requested an additional Access Channel pursuant to the foregoing provision, the Operator shall make available an additional digital Access Channel within a reasonable time after receiving a written request, without reference to the foregoing standard.

3. Unless otherwise agreed by the City, each Access Channel shall be transmitted on the System in standard unscrambled NTSC analog format so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels, until such time that all channels are made available on a digital format. In the event that all channels on the system are made available in digital format, the Operator shall ensure that Subscribers can receive and display the PEG signals using the same converters and signal equipment used for other broadcast channels at no cost to the City, regardless of the format or type of equipment used by the City to produce or transmit the programming. Access Channels transmitted in digital format shall be subject to the same

compression ratio or digital format in use on the System for local broadcast channels. The Operator shall ensure that the Access Channels are carried on the System throughout the term of the Franchise, whether in analog format, digital format, or both.

4. In the event that the Operator offers commercial interactive services on its Cable System, at such time as Subscribers subscribe to such interactive services, the Operator shall enter into discussions regarding making such capabilities available to the City for use on the PEG Channels. Any costs associated with the deployment of and use of such interactive capabilities, including but not limited to equipment and cable system capacity, shall be borne by the City, on commercially reasonable terms. Any Subscriber equipment necessary to use interactive features on the PEG Channels shall be made available to Subscribers on the same terms as for commercial uses. For purposes of this section, "interactive services" means two-way communication over the Cable System in which the Subscriber interacts with the program being viewed, but does not include merely ordering and receiving pay-per-view, video-on-demand, or other Cable Services.

5. The costs associated with providing, compressing and delivering a digital PEG signal to Subscribers will be borne by the City if the City opts to use digital PEG channels before all other basic service programming is delivered to Subscribers exclusively in a digital format by the Operator.

6. Unless otherwise agreed to by the City, all Access Channels shall be provided as part of Basic Cable Service. The Access Channels shall be carried in channel positions that are not separated by scrambled channels from the other channels carried as part of Basic Cable Service. The parties acknowledge that one of the Access Channels in the City is currently carried on channel number 26, and that the County government access channel is currently carried on Channel 27. The Operator shall not change the Channel assignments for the Access Channels without ninety (90) days prior written notice to the City, except in cases beyond the Operator's control. The Operator shall make reasonable efforts to limit changes to the Access Channel channel assignments.

7. The City may, but need not, designate one or more entities ("Designated Access Providers"), including itself, to control and manage the use of any or all Access facilities, equipment, channels and/or resources under this Franchise for a period of time or at the pleasure of the City. Each Designated Access Provider shall have sole and exclusive responsibility for operating and managing any PEG access facilities and/or resources allocated to it by the City. The Operator shall cooperate with Designated Access Providers in the use of the Cable System for provision of PEG Access. The City, or a Designated Access Provider, may adopt reasonable rules regarding the use of an Access Channel pursuant to 47 U.S.C. § 531(d). The City shall have the authority to resolve any disputes regarding the allocation of the Access Channels.

8. Under no circumstance, shall the Operator be required to make available more than a maximum total of five (5) Access Channels to the City. As a condition of this Agreement, the City acknowledges and agrees that up to four (4) of the PEG Channels shall be jointly programmed by one or more Designated Access Providers to be named by the City in cooperation with the Contra Costa Cable Consortium or its successor. Throughout the term of

this Agreement, the programming carried on these jointly programmed channels shall be the same throughout each of the jurisdictions named in this Agreement as a member of the Consortium. The parties agree that one (1) Access Channel provided under this Agreement shall be capable of distributing programming exclusively within the City, with the understanding that the Cable System's nodes may not precisely follow the geographic boundaries of the City. This obligation shall not be modified should the City decide to withdraw from the Consortium at any time during the term of the Agreement.

9. The Operator shall not designate channels for PEG use that suffer from interference or distortion. The Operator agrees that the transmission technology for PEG channels shall be equal to or better than the transmission technology used for local broadcast signals carried on the basic service tier. Any digital capacity provided for PEG use shall be of a type and quality comparable to that provided for commercial channels.

10. Educational Access Channel(s) shall be for the noncommercial use of the educational community serving Contra Costa County. The City may adopt reasonable rules regarding the use of such Channel(s).

11. Governmental Access Channel(s) shall be for the noncommercial use of the City. The City or its designee may adopt reasonable rules regarding the use of such Channel(s).

12. Public Access Channels shall be for the noncommercial use of the City, or designee, and shall be used for airing programming produced by the public. The City or its designee may prescribe rules and regulations governing the use of such Channel(s).

13. If channels or programming choices on the Cable System are displayed through a menu system, the Access Channels shall be identified on the menu system. City shall be responsible for timely initiating requests for Operator to carry any information on its programming menu, and for all associated costs.

14. The Operator will have six (6) months to activate additional channel capacity required under this Agreement after a request is made. The Operator may use any PEG channel capacity that is not being used for the purposes designated.

15. Access Channels shall not be used for any commercial purpose. The City and any Designated Access Provider may enter into underwriting or sponsorship arrangements with for-profit entities, provided that such arrangements shall conform with sponsorship guidelines used by the Public Broadcasting Service (PBS). Compensation derived from such underwriting or sponsorship arrangements shall not diminish or offset any payments due from Operator under this Franchise.

16. The Operator shall not exercise any editorial control over the content of programming on the Access Channels.

17. The City, in coordination with other Consortium members, shall have the sole discretion to determine which and how many, if any, of the PEG access channels shall be used for public access, educational access and government access.

18. The Operator reserves its rights to pass through all associated costs in operating the Public Access Channel to Subscribers through its rates or itemized on Subscriber bills to the extent authorized by federal law.

B. PEG Access Capital Payments.

1. In addition to and apart from the Franchise Fee paid by the Operator for the use and occupancy of the Public Rights-of-Way, the Operator shall pay to the City seventy-one (71) cents for each Subscriber receiving a billing statement in the City per month for the term of the Franchise, to be used for capital costs which are required for PEG Access facilities (the "PEG Access Capital Payments"). This requirement shall become effective ninety (90) days from the effective date of the Agreement. These payments shall be made directly to the City on a quarterly basis. The City can elect to receive an advance payment of a portion of the PEG Access Capital Payments in a single, lump sum payment, upon written notice to the Operator from the City, which must be received within sixty (60) days of the effective date (the "Lump Sum Payment"). The Lump Sum Payment shall be either (A) an amount up to \$115,565 ("Option A"); or (B) an amount up to \$144,456 ("Option B"). Should City elect Option A, approximately twenty (20) cents of the seventy-one (71) cents for each Subscriber per month collected over the term of the Franchise shall be retained by the Grantee and will be used to offset any such payment by the Operator. Should the City elect Option B, the Operator shall be authorized to include a percentage return reflecting cost of capital not to exceed seven percent (7%) on the difference between the actual amount of the Lump-Sum Payment and the maximum amount permitted under Option A, which difference will not exceed twenty (20) percent of the maximum amount permitted under Option B. Accordingly, under Option B, approximately twenty seven (27) cents of the seventy-one (71) cents for each Subscriber per month collected over the term of the Franchise shall be retained by the Grantee and will be used to offset any such payment by the Operator.

2. City may decide to forego part or all of the PEG access capital support to be provided under Section VI(B)(1) at any time upon sixty (60) days written notice to the Operator. If the City elects to receive the Lump-Sum Payment and later elects to forego the PEG Access capital support before the Operator has recovered the full amount of the Lump-Sum Payment, the City shall reimburse the Operator for the balance of the Lump-Sum Payment. If the City chooses at any time to forego part of all of the PEG access capital support, the City may later choose to begin receiving such support at any time, upon sixty (60) days written notice to the Operator; provided, however, that the City shall not have the right to receive the Lump-Sum Payment, unless timely notice was given pursuant to Section 6(B)(1), above.

3. The City's share of the PEG Access Capital Payments shall be under the direction and control of the City, and shall be used to fund capital costs associated with acquiring PEG access equipment (including, but not limited to, purchasing studio and portable production equipment, editing equipment and program playback equipment), or for capital costs associated

with renovating or constructing of PEG-related facilities (including, but not limited to, acquiring and/or improving studios, and I-Net construction). The City shall exercise its sole discretion as to the allocation of such resources among and within the public, educational and governmental functions.

4. To the extent that the City determines, in its sole discretion, that the construction of an I-Net is an appropriate use of PEG capital funding and decides to use all or a portion of its PEG Access Capital Payment for I-Net purposes, it may use such funds (i) to contract with either Operator or designee of Operator for the capital construction of new and existing infrastructure; and/or (ii) for acquisition of equipment or capital costs required to use existing infrastructure and equipment for I-Net purposes. If the City wants Operator to construct all or a portion of the I-Net, Operator will do so at Operator's cost, which cost will be paid for by the City pursuant to Section VI(E)(3)(A) hereof. Should the City enter into an agreement with the Operator or Operator's designee for managed services, payments may be used to offset one-time capital construction and equipment costs.

5. Operator has the right, in accordance with applicable law, to obtain City records to confirm use of payments required hereunder and under applicable law.

C. Upstream Capacity for PEG Use.

1. The Operator shall continue to provide and maintain, at its own expense, any existing links between PEG Access origination sites in the City and the headend in place upon the effective date of this Agreement, as identified in Exhibit A.

2. The City may request construction of additional bi-directional links for origination of PEG programming. Such request must be in writing. The Operator shall provide a cost estimate for actual costs to construct and activate the new link(s) within ninety (90) days of receipt of the request. Once the City and Operator have agreed upon the design, cost and method of payment, the Operator shall commence construction during the first quarter of the next calendar year so long as the agreement to construct is finalized by June 30th of the current calendar year. If the agreement to construct is finalized after June 30th, the Operator shall not be required to commence construction for a minimum of eighteen months in order to insure funds are budgeted for construction. The City shall be responsible for the cost of any links constructed under this paragraph (2), and may elect for the Operator to be reimbursed for such cost using the PEG Access Capital Payments.

D. PEG Interconnection

1. The Operator shall Interconnect the Cable System with any cable system in a geographically adjacent community, not owned or operated by Operator or an affiliate of Operator, upon the directive of the City, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels. The City shall not direct interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Operator shall not be required to Interconnect with the other cable system unless the operator of that system is willing

to do so and pay for its own costs of constructing and maintaining the interconnect up to the demarcation point, which shall be at a meet point located at or near the border of the neighboring jurisdictions, except as may otherwise be agreed by the parties.

2. Operator shall Interconnect the Cable System with any cable system in a geographically adjacent community that is owned or operated by Operator or an affiliate of Operator, for the purpose of permitting the transmission of PEG Access programming signals between the systems, and the carriage of such signals on the PEG Access Channels. The interconnection shall be done at Operator's sole expense.

3. Operator shall not object to or impede any connection established by the City or a Designated Access Provider, whether on the property of the City, a Designated Access Provider, or the competing provider, by means of which a competing provider obtains access to the PEG Access Channels, nor shall the Operator object to or impede the transmission of such signals by any competing provider. The Operator shall have no obligation to contribute financially to the cost of establishing any such connection.

4. Notwithstanding the foregoing, interconnection may be waived by the City if not technically feasible. Operator may terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.

5. Nothing in this paragraph alters Operator's Channel obligations for Access programming delivered to Subscribers on the System. Unless the City Operator directs otherwise, or an affected jurisdiction objects, any interconnection shall allow Access Channels to operate without disruption or delay across and within the Franchise Area boundaries.

6. It is Operator's responsibility to ensure that the signals it transmits by means of any interconnection suffer no material degradation, when compared to the quality of the signals as received from the Designated Access Providers. It is not the Operator's responsibility to ensure that the signals provided to the Interconnect by another interconnecting system meet industry standards.

7. Any equipment and construction costs borne by Operator in connection with the obligation to provide for PEG Access Channel interconnection shall be considered "external cost" as such term is used in 47 C.F.R. § 76.922 on the date of this Franchise, and as such, the cost is permitted under federal law and regulation to be passed through to Subscribers, to the extent and in a manner provided for in federal regulations governing the same. The costs of interconnection shall be in addition to any PEG capital contribution made by Operator pursuant to Section VI(B)(1) hereof, and shall not be deducted from the amount of such contribution.

E. Institutional Network

1. I-Net. Upon written request from the City, the Operator shall construct, in accordance with the provisions set forth herein, and the terms and conditions of mutually acceptable I-Net Service Agreements or I-Net Construction Agreements where indicated herein,

an Institutional Network("I-Net") for non-commercial private network communications. In order to exercise its rights under this Section, the City must submit a written request for the provision of the I-Net within five (5) years of the effective date of this Agreement. The City's written request shall include a complete list of proposed I-Net sites, and I-Net design criteria. Cost for the I-Net shall be the responsibility of the City. The City may submit more than one request during the five-year period.

2. I-Net Models. The City may request a proposal for either of the following I-Net models:

(a) A managed I-Net, owned and operated, maintained and administered by Operator ("Operator Managed Network"); or

(b) A fiber-optic cable I-Net infrastructure constructed, maintained and owned by Operator over which the City may operate and manage an I-Net ("City Managed Network").

3. I-Net Proposal. Within one hundred twenty (120) days of receipt of the City's written request for an I-Net proposal, the Operator shall provide a detailed design, cost estimate, and construction schedule for the I-Net. The City's request for an I-Net proposal shall clearly state which I-Net model the City is requesting a design and estimate for. The City shall have one hundred twenty (120) days from receipt of the Operator's I-Net design and cost estimate to respond to the proposal. If the City accepts Operator's proposal, Operator will complete all construction and make service available within one year of the Operator's receipt of the notice of acceptance, so long as acceptance occurs by June 30 of the year. Should acceptance occur after June 30, construction shall be completed within twenty-four months. In any case, the parties may agree on a shorter period for completion, depending on the scope of the project. If the City suggests modifications to the proposal, the Operator shall incorporate the changes into the final I-Net design and submit them for the City's approval. Final architecture, site designation, fiber count, cost estimate, funding arrangements including payment schedule (including applicable interest) and construction schedule shall be subject to the approval of the Operator and the City. The Operator shall not be required to commence construction of the I-Net until a written commitment has been made by the City and funding arrangements consistent with the terms of the Franchise have been established by the City to pay for the construction required herein. If the parties agree on such terms, Operator will complete all construction and make service available within one year of written notice (except as provided herein) from the City accepting the terms of the modified proposal.

(a) City Managed Network Model. If the City chooses the City Managed Network model, the City will receive an invoice for construction costs upon completion of construction and acceptance testing. Operator acknowledges that a limited amount of fiber optic plant was incorporated into its system backbone as part of the upgrade of the system in certain communities, and the Operator shall make such fiber optic plant available at incremental cost for I-Net purposes. Construction costs shall be no greater than the actual cost to the Operator of any construction required to provide the I-Net. "Actual cost" means the actual marginal cost to the Operator of materials and labor necessary to install and construct fiber optic

lines and/or equipment solely related to the I-Net. Construction costs shall include the cost of equipment only to the extent that additional equipment is required to support the services to be delivered over the I-Net. The amount of the invoice shall not exceed the cost estimate provided by the Operator pursuant to the preceding paragraph, and the invoice shall reflect a payment schedule agreed to by the Operator and the City, provided that the City shall not be responsible for making any payments to the Operator if the I-Net does not perform in accordance with industry standards. Additionally, ongoing maintenance and repair of the I-Net infrastructure, whether scheduled or prompted by an emergency, shall be performed by the Operator as consideration for an annual maintenance fee. The terms of maintenance and repair, the amount of the annual maintenance fee, and applicable service standards, warranties and other relevant terms shall be set forth in an I-Net Maintenance Agreement substantially similar to the model agreement attached as Exhibit B, or as otherwise negotiated by the parties. The City may use PEG Capital Support grants to pay for capital costs associated with the I-Net, and may use funding provided by Qualified I-Net Users, or other sources of revenue to pay for any other costs associated with the I-Net. "Qualified I-Net User" means any department of the City, any library or school district serving the City, any college or university located within the boundaries of the City, and any other public agency, including any nonprofit entity designated to provide public access.

(1) Construction, Acceptance and Termination. I-Net infrastructure will be constructed, acceptance-tested, and terminated by the Operator in accordance with standard industry practices, and the City agrees to grant the Operator all necessary rights of entry, easements and licenses to accomplish the construction to the I-Net sites, subject to the City normal procedures. Each fiber I-Net site connection will be terminated at an internal point of demarcation in an industry standard fiber termination panel acceptable to the City, unless the City provides another means of termination. At each fiber termination location the City will provide wall mount backboards of suitable size and accessibility. I-Net infrastructure shall meet manufacturers' specifications for fiber transmission cable, attenuation, splice loss and connector loss. OTDR and fiber power meters will be used to test the fiber cable transmission characteristics for acceptance using industry standard test methodologies. Construction of the I-Net shall be deemed completed upon satisfaction of the following:

(i) The Operator shall notify the City, or its designee, in writing at least thirty (30) days in advance of completion of construction of each I-Net connection. The notice shall include the date the Operator is prepared to conduct an Optical Time Domain Reflectometer (OTDR) and power loss tests at 1550 nm and 1310 nm end-to-end test. All tests must be successfully completed. The fiber optic tests shall be deemed successfully completed if the optical performance standards in Exhibit A are met or exceeded.

(ii) The City, or its designee, shall also have the option of conducting a physical inspection of the construction and connections to each I-Net site. This inspection shall be conducted no later than thirty (30) days following receipt of the test data required by paragraph (i).

(iii) After completing installation to each I-Net site, the Operator shall provide test documentation and a map and other documentation showing the

design and as-built location of the I-Net plant serving that site to the City or its designee. The City shall have ten (10) business days from receipt of all the documentation referenced above to note any problem areas that require repair or reconstruction and subsequent retesting. In such cases, the City shall notify the Operator of the problem areas, and the Operator shall take corrective action, retest the affected plant and provide new documentation that demonstrates performance that meets or is better than pertinent standards. If the Operator's corrective action does not resolve the problem within a reasonable time period, then the City may decide not to accept the affected portion of the I-Net. In the event the City does not respond during the initial 10 business day period referenced above, then the I-Net connection shall be deemed accepted.

(2) Administration, Maintenance and Management. The City shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment located on the City side of the I-Net fiber termination panel at each I-Net site, and the internal site network itself.

(3) City I-Net Users to Provide Electronics as Provided Herein. Operator shall be responsible for supplying and installing the I-Net infrastructure to the specified fiber terminal panel locations only, providing a pathway for I-Net communications between sites. Any active equipment or components on the City's side of the termination panel, including but not limited to computers, network cards, optronics, electronics and equipment racks, required for I-Net use shall be provided and maintained at the City's sole expense.

(4) Future Fiber. The City may identify certain I-Net sites that will not be constructed at the time the initial I-Net is constructed or activated. So long as such sites are included in the approved final design, the Operator agrees to include splice points and splice point housings on those portions of the system where additional fiber will need to be deployed or additional connections will need to be made. Upon notification from the City, the Operator will provide updated designs and cost estimates within ninety (90) days of a request by the City for I-Net extension to these additional sites, and will make the I-Net available within one hundred twenty (120) days from the City's approval of the updated design, cost estimate and funding arrangements, including a payment schedule. The City may also identify new sites following completion of the initial I-Net. Estimated costs and a network design for serving those sites will be provided by the Operator within ninety (90) days of written notification by the City. Unless an extraordinary extension of the I-Net is required to serve the site, the Operator will make the I-Net available within six (6) months from the City's approval of the cost estimate and design. Whenever the Operator extends its system infrastructure for its purposes, it may be required by the City to incorporate a separate fiber cable with a strand count not to exceed 12 strands for future I-Net purposes throughout all or portions of the length of the system extension. The City shall notify the Operator in writing during the permitting process if it wishes to exercise this option. The actual incremental cost of additional materials and labor and any additional construction, as approved by the City based on an estimate provided by the Operator, shall be paid to the Operator in accordance with the terms and conditions set forth in Section VI(E)(3)(a).

(b) Operator Managed Network Model. If the City chooses a Operator Managed Network model, the City will pay a recurring monthly per site service fee and a non-

recurring capital construction fee in accordance with a fully executed I-Net Service Agreement negotiated in good faith by the City and Operator, provided that the City shall not be responsible for making any payments to the Operator for any period in which the I-Net does not perform in accordance with industry standards. The recurring monthly per-site service fee shall be negotiated and specified in each I-Net Service Agreement. Capital costs allocable to the Operator Managed I-Net may be reimbursed through the use of the PEG Access Capital Support funds. At a minimum, the I-Net Service Agreement shall include provisions pertaining to: design and implementation schedule review and approval; capital costs; monthly or annual service cost; transport type and transfer rate provided; equipment provided; spare, backup and disaster recovery system capabilities; dedicated versus shared capacity; required performance standards, including at a minimum, network availability, throughput, packet errors and other pertinent quality of service parameters; acceptance testing procedures, components and standards for approval; security provisions; repair and maintenance provisions; service support requirements; testing requirements and reporting requirements. Ongoing maintenance and repair of the I-Net and fiber infrastructure, whether scheduled or prompted by an emergency, shall be performed by the Operator at no additional charge to the City.

(1) Construction and Termination. I-Net infrastructure will be constructed and terminated by Operator in accordance with standard industry practices, and the City agrees to grant Operator all necessary rights of entry, easements and licenses to accomplish the construction to the I-Net sites. Each fiber connection will be terminated in a standard fiber termination panel. At each fiber termination location, the City will provide wall mount backboards and a power source for the basic termination.

(2) Operator to Provide Equipment, Optronics and Electronics. The Operator shall provide all I-Net system and site equipment, optronics and electronics in accordance with a fully executed I-Net service agreement. The Operator shall maintain, repair, reconstruct, remove, relocate and, as necessary, replace portions of the I-Net during the term of this Franchise or any extension thereof.

(3) Administration, Maintenance and Management. The Operator shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment, optronics and electronics up to a point of demarcation on the City side of the system equipment. All optronics and electronics located at each I-Net site shall be maintained in accordance with a fully executed I-Net service agreement. All maintenance shall be performed in accordance with industry standards, and all I-Net equipment shall comply in all respects with applicable governmental codes, laws, ordinances or regulations and the National Electric Code and the National Electric Safety Code. Preventive and routine maintenance of the I-Net under the Operator Managed Network Model shall be performed in the same time-frame and in the same fashion as routine and preventive maintenance are performed for the Operator's Subscriber network. Problems discovered during the course of preventive and routine maintenance shall be immediately reported to the City if correction of such problems will result in disruption of services. After informing the City of such a problem, the Operator shall, within a reasonable period of time, prepare and transmit a report to the City describing the corrective action, if any, that was or will be taken.

(c) Efficient Construction. In all possible instances, the Operator shall ensure that the I-Net is provisioned in the most cost-efficient, and technically viable manner and City shall ensure that any permits for constructing the I-Net are issued in a timely manner.

(d) Interconnection. The Operator shall make the I-Net facilities available for purposes of Interconnection at a meet point at the boundary of the City's Franchise Area to cable systems serving franchise areas that are geographically contiguous to the City, provided the City has secured the written permission for such Interconnection from the regulatory authority for the geographically contiguous franchise area. Subject to written agreement between the City and the regulatory authority of the geographically contiguous franchise area, the City or its designee, shall have the right to control and schedule the operation of all I-Net Interconnections. City shall be responsible for all costs associated with interconnection under either the Operator Managed I-Net model or the City Managed I-Net model.

(e) Other Charges. Other than as provided elsewhere in this Section IV(E)(3), there shall be no other charges or costs whatsoever related to the construction, maintenance, or use of the I-Net.

4. Ownership and Right of Use. The City and other Qualified I-Net Users shall have the indefeasible and exclusive right to use the I-Net for noncommercial private network communications so long as the City has met its financial obligations to the Operator, which right cannot be revoked by the Operator or its successors, if any, during the term of the Franchise or any renewals thereof. However, the Operator shall at all times own in fee the fiber optic cable infrastructure and associated facilities and equipment up to termination points where physically connected to City owned optronics or electronics, if any. The obligations for provision and maintenance of the I-Net will convey to all successors and assigns. If, at any time, I-Net infrastructure is found to be abandoned, the City's indefeasible rights of use and access to the I-Net shall continue.

5. Private Network Status. The I-Net is a private communication network governed by this Franchise and I-Net service agreements, where required, are to be mutually negotiated between City and Operator. The City will use the I-Net solely for noncommercial applications in accordance therewith and may grant access only to Qualified I-Net Users. To wit, the City and Qualified I-Net Users shall not lease, sublease or resell I-Net capacity or services to a third party for any purpose whatsoever without the Operator's written consent. The City will not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality in the normal operation of Operator's cable system and Operator reserves the right to temporarily suspend until rectified, the City's rights granted hereunder in the event such interference should occur. Such unilateral suspension under these circumstances shall not place Operator in violation of the Franchise.

6. I-Net and Force Majeure. Neither the City nor the Operator shall be in default or liable to the other for any failure of performance under this Section (VI)(E) due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein) including but not limited to: acts of God, fire, flood or other catastrophes, severely adverse

weather conditions, national emergencies, riots, insurrections, wars or strikes, lockouts, work stoppages or other labor difficulties, provided however, the party that is unable to perform its obligations shall promptly notify the other party of such delay and the time period shall be extended for the actual amount of time said party is so delayed.

7. Service Agreement.

(a) Pursuant to this Article VI(E), an I-Net Service Agreement may be developed in good faith between the City and the Operator with respect to a Operator Managed Network, and an I-Net Construction Agreement may be developed to specify the terms of on-going maintenance with respect to a City Managed Network. Any such agreement will incorporate all the pertinent requirements of this Article VI(E), and may specify additional and more detailed operation and maintenance responsibilities, standards of reliability and response time for repair, technical network management and status monitoring requirements. If an I-Net Service Agreement or I-Net Construction Agreement is established between the City and the Operator, should any additional maintenance requirements be negotiated, such requirements will be in addition to those contained herein and would be incorporated into the Operator's total maintenance responsibilities. Should any additional maintenance requirements be negotiated between the City and the Operator as related to any individual Qualified I-Net User site, the rate due the Operator may be adjusted during such negotiations to compensate the Operator for such additional maintenance responsibilities.

(b) The City shall be offered terms and conditions at least as favorable for comparable services as are offered to other entities provided with comparable managed services by the Operator or any Affiliate offering comparable services in the Bay Area under agreements initiated after the date of this Agreement. Upon completion of any contract with the City provided with managed services, any renewal of the contract shall also reflect the terms and conditions for comparable services as offered by the Operator or any such Affiliate to any other managed service customer.

(c) Any I-Net Service Agreement or I-Net Construction Agreement shall provide that the Operator shall maintain and respond to complaints about the I-Net so that there is no significant degradation of the signals carried, and so the system operates at a level of reliability specified in such agreement. The Operator shall respond to I-Net outages at least as quickly as it responds to the most critical outages on its Cable System. The I-Net must be designed, constructed, and maintained so that it meets the needs of the City, as identified in any proposal issued and accepted pursuant to Article VI(E)(3).

8. I-Net Use. The I-Net may be used by the City and any Qualified I-Net User for any lawful non-commercial purposes. The City agrees to require all Qualified I-Net Users to stipulate and agree to this limitation. This limitation shall apply to all Qualified I-Net Users. The City may assign its rights under this Section VI(E)(8) to any Qualified I-Net User.

9. Warranties/Acceptance. The acceptance of the I-Net or any component thereof, or payment for service and equipment, shall not waive any defect in the work or constitute acceptance of work or equipment not in compliance with the applicable design and

specification requirements. The Operator shall provide in its contracts for warranties of the work and equipment satisfactory to the City and will provide for the enforcement of such warranties and for the correction of work or equipment not provided in accordance with applicable design and specification requirements or which is otherwise defective. The City may terminate use of, and payment for, I-Net services or any portion thereof based on demonstrated, verifiable non-performance or non-compliance by the Operator with the terms of this Franchise or the Service Agreement after giving the Operator reasonable notice and opportunity to correct the problem causing non-performance or non-compliance.

10. Survival of I-Net Obligations. All I-Net obligations established pursuant to an I-Net Construction Agreement shall survive throughout the term of this Franchise and remain obligations regardless of any sale or transfer of ownership or control of the System and during any extension or renewal of this Franchise. All I-Net obligations established pursuant to an I-Net Service Agreement shall survive throughout the term of such agreement, including any renewal or extension of such agreement.

VII. FRANCHISE FEE

A. Payment to the City: In consideration of the grant of the Franchise provided for herein and the Operator's use and occupation of the Public Rights-of-Way, the Operator shall, at all times during the term of this Agreement, pay to the City a Franchise Fee of five percent (5%) of the Operator's annual Gross Revenues. The Franchise Fee shall be payable within thirty (30) days of the expiration of each of the Operator's fiscal quarters. Each payment shall be accompanied by a report in such form as the City may reasonably request showing the computation of the Franchise Fee for the preceding quarter.

B. Computation: In the event that the Operator or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with non-Cable services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, Gross Revenues shall be determined based on a reasonable allocation of the revenue received for the bundled, tied or combined services based upon a methodology that is consistently applied in Comcast communities in Northern California, and that fairly reflects the manner in which the Operator or any Affiliate records such revenues on its books and records. Except in the case of promotional activities, at minimum, the revenue received from the bundled, tied, or combined services and allocated to Gross Revenues for purposes of determining the Franchise Fee shall reflect a pro rata share of the published charge for Cable Services, when purchased separately. The mere fact that the Operator bundles, ties or combines Cable Services with non-Cable Services shall not be deemed a promotional activity.

C. Supporting Information: The City, on an annual basis, shall be furnished a statement within ninety (90) days of the close of the calendar year, certified by an officer of the Operator reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year. The City shall have the right to conduct an audit of the Operator's books and records reasonably related to the calculation of Gross Revenues and Franchise Fees for the audit period not more frequently than once every three (3) years, upon sixty (60) days' prior written notice to the Operator, and shall provide the City or its designee copies of such books and records, subject to the terms of a mutually satisfactory

confidentiality agreement, substantially identical to that attached as Exhibit C. If such audit indicates a Franchise Fee underpayment of at least five percent (5%), and such finding is not contested, the Operator shall assume all reasonable costs of such an audit. If there is any underpayment, the Operator shall remit to the City all applicable Franchise Fees.

D. No Accord or Satisfaction: Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Agreement or any Franchise Agreement or for the performance of any other obligation of the Operator.

E. Late Payment: In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in this Agreement, or in the event that an audit discloses an underpayment, the Operator shall pay a late fee computed from the original due date through the date of payment, at an annual rate equal to the lesser of the maximum rate permitted by applicable law or 18% per annum.

F. No Limitation on Taxing Authority:

1. Nothing in this Agreement shall be construed to limit any authority of the City to impose any tax, fee, or assessment of general applicability.

2. The Franchise Fee payments required by this section shall be in addition to any and all taxes of a general nature or other fees or charges which the Operator shall be required to pay to the City or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Operator. The Operator shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said City taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Operator, except as may be expressly permitted by applicable law. Nor shall the Operator apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as a deduction or other credit from or against any of its Franchise Fee obligations, each of which shall be deemed to be separate and distinct obligations of the Operator, except as may be expressly permitted by applicable law. The Operator shall not designate or characterize the Franchise Fee as a tax.

VIII. RATE REGULATION

The City reserves all of its rights to regulate the Operator's rates to the maximum extent permitted by applicable law.

IX. INSURANCE, SURETY, AND INDEMNIFICATION

A. Insurance Required: The Operator shall obtain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire term of the Franchise, at its own cost and expense and keep in force and effect the following insurance covering the Operator, and by additional insured provision, the City. Coverage must be placed with an insurance company/companies authorized to do business in the State of California and evidenced

by a certificate of insurance and/or copies of the insurance policies. Operator's insurance shall be primary and not contributory with any insurance that may be maintained by the City.

B. Minimum Scope of Insurance: Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability Coverage ("occurrence" form CG 0001). The policy must include coverage for Contractual Liability, Premises and Operations, Independent Contractors, Broad Form Property Damage, Personal Injury, and Products and Completed Operations. The policy must also include coverage for the explosion, collapse and underground hazard.

2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto."

3. Workers' Compensation Coverage meeting all requirements of California Law and Employers' Liability Coverage.

C. Minimum Limits of Insurance: Operator shall maintain policy limits of no less than:

1. General Liability: A minimum liability insurance policy of \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: A minimum liability policy of \$2,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code and Employers Liability limits of \$1,000,000 per accident.

4. The City may review these amounts no more than once every three years and may require reasonable adjustments to them consistent with the public interest, any increases not to exceed the percentage change in the Consumer Price Index for the San Francisco-Oakland-San Jose Metropolitan Area for the period since the prior review, or the Effective Date, as applicable.

D. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be identified. At the option of the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Operator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions:

The policies shall contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

a. The City, its officers, officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Operator; products and completed operations of the Operator; premises owned, occupied or used by the Operator; or automobiles owned, leased, hired or borrowed by the Operator. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers acting within the performance of the official duties of the position and not resulting from malfeasance in office, willful neglect of duty or bad faith.

b. The Operator's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Operator's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

d. The Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Operator for the City.

3. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

F. Verification of Coverage: The Operator shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

G. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

H. Failure Constitutes Material Violation: Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

I. Indemnification.

1. The Operator shall indemnify, defend and hold the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs that any of the Indemnified Parties acting within the performance of the official duties of the position and not resulting from malfeasance in office, willful neglect of duty or bad faith, may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a Franchise to the Operator, the operation of the Operator's System and/or the acts and/or omissions of the Operator or its agents or employees, whether or not pursuant to the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person by the Operator, but shall exclude any claim or action arising out of the sole negligence or willful misconduct of the Indemnified Parties or related to any City programming or other Access programming for which the Operator is not legally responsible. An Indemnified Party shall promptly submit a written request to the Operator of any claim or legal proceeding which gives rise to the Operator's indemnification obligations under this Section. An Indemnified Party shall be offered the opportunity to participate in the defense, compromise, settlement or other resolution or disposition of any claim or proceeding. The Indemnified Party shall fully cooperate with the Operator regarding any such matter.

2. The indemnification obligations of the Operator set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for the Operator under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by the Operator.

3. The City does not and shall not, waive any rights against the Operator which it may have by reason of the indemnification provided for in this Agreement, because of the acceptance by the City, or the deposit with the City by the Operator, of any of the insurance policies described in this Agreement and regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

4. The Operator's and the City's indemnification obligations under this Agreement shall survive the expiration, cancellation or termination of this Agreement.

J. No Limit of Liability: Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of the Operator for damages under the Franchise.

X. PERFORMANCE GUARANTEES AND REMEDIES

A. Construction Performance Bond:

The Operator shall obtain and maintain performance bonds as required by the City's generally applicable permitting procedures and construction requirements to ensure the Operator's satisfactory performance of construction and other work in the Public Rights-of-Way, including, but not limited to, any construction required by this Agreement.

B. Security Fund:

1. The Operator shall file and maintain with the City an additional performance bond in the amount of One Hundred Thousand Dollars (\$100,000) to ensure the Operator's faithful performance of its obligations. The form and content of the performance bond shall be approved by the City.

2. The Operator and its surety shall be jointly and severally liable under the terms of the performance bond.

3. There shall be recoverable by the City from the performance bond any and all fines, penalties, and liquidated damages due to the City and any and all damages, losses, costs, and expenses suffered or incurred by the City resulting from the failure of the Operator to faithfully comply with the material provisions of this Agreement, the Cable Ordinance, and applicable law; comply with all orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay fees due to the City; or pay any claims or liens due the City. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees.

4. The performance bond shall provide for thirty (30) days' prior written notice to the City of any intention on the part of the Operator to cancel, fail to renew, or otherwise materially alter its terms.

5. The performance bond shall be released only upon expiration or nonrenewal of the Franchise or upon the replacement of the performance bond within the time specified herein.

C. Failure Constitutes Material Violation: Failure to maintain or restore the performance bond shall constitute a material violation of this Agreement.

D. Rights Cumulative: All remedies under the Cable Ordinance and this Franchise Agreement are cumulative unless otherwise expressly stated; provided that the City may not seek or impose any other remedy under the Franchise Agreement or Cable Ordinance for a breach for which liquidated damages apply, except in the event of repeated and willful violations of the same Franchise provision where the Operator has failed and refused to cure the violation, or for a violation that remains uncured when a cap on liquidated damages for the violation has been reached. The exercise of one remedy shall not foreclose use of another. The City is not entitled

to recover damages for the same injury under two separate sections where doing so would result in a double recovery to the City.

E. **Relation to Insurance and Indemnity Requirements:** Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit the Operator's duty to indemnify the City in any way; nor shall such recovery relieve the Operator of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

F. **Remedies:** In addition to any other remedies available at law or equity, the City may apply any one or a combination of the following remedies in the event the Operator violates, and fails to cure after notice and expiration of the applicable cure period, the Cable Ordinance, this Franchise Agreement, or applicable state or federal law:

1. Apply any remedy provided for in this Agreement.
2. Revoke the Franchise pursuant to the procedures specified in this Agreement.
3. Impose penalties available under state and local laws.
4. In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

G. **Liquidated Damages:**

1. Because it may be difficult to calculate the harm to the City in the event of a breach of the Ordinance or this Franchise Agreement by the Operator, the parties agree to liquidated damages as a reasonable estimate of the actual damages. To the extent that the City elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for the specific violation for which the liquidated damages were imposed. Nothing in this Section is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

2. Prior to assessing any liquidated damages, the City shall mail to the Operator a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Operator shall have a reasonable time from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. Except for those violations which are not curable, or which are repeated or ongoing violations for which an opportunity to cure has already been provided, the time to cure shall be no less than the following:

a. Ten business days for violations involving insurance or bond requirements;

b. Ten business days for violations involving the payment of franchise fees or other monetary obligations;

c. thirty days for all other violations.

3. The City may not assess liquidated damages if the Operator has reasonably responded to the complaint and cured or commenced to cure, as may be appropriate, the violation within the time frame provided in the notice or within such other reasonable time as agreed upon by the parties. In the event the Operator fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and shall inform the Operator in writing of the assessment. The Operator shall have thirty (30) days to pay the damages assessed. Subject to Section X.G(5), if the Operator does not pay the damages assessed within thirty (30) days, the City in its discretion may collect the damages from the Security Fund.

4. Notwithstanding any cure period, liquidated damages shall begin to accrue as of the date of the notice provided pursuant to Section X.G(2).

5. In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies. The City reserves the right to pursue any non-monetary remedy, including but not limited to injunctive relief, in addition to or in lieu of any remedy available under this section.

6. The parties agree that the following liquidated damages amounts are reasonable:

a. For failure to provide data, documents, reports, bonds, insurance, or information as required or requested under this division by City, the Operator shall pay \$50.00 per day for each day or part thereof that such violation continues.

b. For failure to meet system construction commitments in the franchise without prior written authorization from the City, the Operator shall pay \$100.00 per day for each day or part thereof that such violation continues.

c. For failure to test, analyze and report on the performance of the system following a request, the Operator shall pay \$50.00 per day for each day or part thereof that such violation continues.

d. For failure to (i) obtain any required permit; (ii) comply with any applicable permit condition; or (iii) commence, pursue, or complete any work required by law or by the provisions of this agreement or by the cable ordinance to be done in any street or other public place, within the time prescribed, and to the satisfaction of the City, the Operator shall pay \$100.00 per day for each day or part thereof that such violation continues.

e. For failure to comply with public, educational, governmental access channel provisions, or institutional network provisions, the Operator shall pay \$100.00 per day for each day or part thereof that such violation continues.

f. For failure to answer Subscriber calls as required by Section 5.08.309 of the Cable Ordinance [Telephone Communication Services], in any calendar quarter where Operator fails to meet the applicable standard and performs at 80% or above, the Operator shall pay the City \$1,000; in any calendar quarter where the Operator fails to meet the applicable standard and performs at less than 80% but at least 70%, Operator shall pay the City \$3,000; in any calendar quarter where the Operator fails to meet the applicable standard and performs at less than 70%, Operator shall pay the City \$5,000.

g. For any violation of any other customer service standards, \$100 per day per violation for each day or part thereof that such violation continues.

h. For transferring the Franchise without a transfer application, to the extent required by this Agreement, as set forth in Section III(A)(1), for approval: \$500 per day for each violation for each day after Operator's receipt of notice that the violation continues;

i. For failure, except in the case of force majeure, of the emergency notification system to perform in accordance with the requirements of this Agreement in the event of a public emergency or vital information situation: \$2,000 per incident;

j. For all other material violations of the franchise: \$100 per day for each violation for each day the violation continues.

H. Performance Bond Procedures: The following procedures shall apply to making a claim against the performance bond for the collection of liquidated damages and monetary defaults:

1. If the Operator fails to make timely payment to the City of any amount due under this Agreement or applicable law, the City may, after ten (10) business days written notice to the Operator, make a claim against the performance bond for the amount due, with interest and any applicable penalties.

2. If the City Manager determines that the Operator is in default of any provision of this Agreement or of the Cable Ordinance which is subject to liquidated damages pursuant to Section X.F above, and determines that the collection of liquidated damages is appropriate, the City may make a claim against the performance bond for the amount of the liquidated damages pursuant to the procedures in Section X.G above.

I. Revocation of Franchise:

1. The City shall have the right to revoke the Franchise for any material violation of this Agreement.

2. Notice of Violation or Default. In the event the City believes that the Operator has not complied with a material term of the Franchise, it shall notify the Operator in writing with specific details regarding the exact nature of the alleged noncompliance or default.

3. Operator's Right to Cure or Respond. The Operator shall have ninety (90) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the ninety (90) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

4. Public Hearings. In the event the Operator fails to respond to the City's notice or in the event that the alleged default is not remedied within ninety (90) days or the date projected by the Operator, the City may give the Operator written notice of its intent to revoke the Franchise, stating its reasons. Prior to revoking the Franchise, the City shall schedule a public hearing, on at least thirty (30) calendar days' notice, at which time the Operator and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Operator to effect any cure. If the City determines to revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Operator.

J. Rights upon Revocation or Termination of Franchise:

1. Upon completion of the term of the Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to the Operator by the City, the Operator's right to occupy the Public Rights-of-Way shall terminate, subject to Applicable Law.

2. If the City revokes the Franchise, or if for any other reason the Operator abandons, terminates, or fails to operate or maintain service to its Subscribers, the City may purchase the cable property at a fair market value.

XI. REPORTING AND REVIEW

A. Records Required and the City's Right to Inspect:

1. The Operator shall at all times maintain and upon request provide to the City: a full and complete set of maps showing the location of all lines, amplifiers, power supplies and other equipment, but excluding confidential design specifications and Subscriber service drops and equipment provided in Subscribers' homes. In addition, the City shall have the right to review records and maps showing confidential information, but shall not have the right to obtain copies of such records and maps. To the extent technically and economically feasible, the Operator shall also make records and maps available to the City in electronic format compatible with the City's computer system.

2. The Operator shall at all times maintain the operator's semi-annual proof of performance test results for the previous twelve months.

3. Upon reasonable notice, and during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, the Operator shall permit examination by any duly authorized representative of the City, of all Cable System property and facilities, together with any appurtenant property and facilities of the Operator situated within or without the City, provided they are necessary to enable the City to carry out its regulatory responsibilities under applicable law and this Agreement. The Operator shall have the right to be present at any such examination and take those steps necessary to ensure the protection of confidential information.

4. The Operator shall maintain all public files as required by applicable law. The City or its designee shall also have the right to review upon reasonable and timely written notice, at any time during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, at the Operator's local office, all books, documents, and records reasonably necessary to ensure compliance with the Franchise. The Operator shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law.

5. To the extent not inconsistent with applicable law, the Operator shall have the right to designate as confidential and proprietary any confidential, proprietary, trade secret and privileged information that may be provided to the City and the City shall thereupon treat such information as privileged from disclosure under the California Public Records Act. The City shall provide the Operator with at least ten (10) business days' advance notice of any request by a third party for disclosure of information designated by the Operator as confidential, proprietary, trade secret or privileged. To the extent that any information regarding the local Cable System is maintained, either separately or cumulatively with information concerning other Cable Systems or operations, by the Operator or an Affiliate, the Operator shall make copies of such records available for inspection and auditing at the local office within seven (7) days after receipt of a written request by the City.

6. Upon reasonable request and limited to matters directly affecting the Cable System or the City's authority over the Cable System, Operator will provide copies of all petitions, applications, communications and reports submitted by the Operator or on behalf of the Operator to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the Cable System. Copies of responses from any such governmental authority to the Operator shall likewise be furnished upon request to the City.

B. Annual Reports:

1. The Operator shall within ninety (90) days of each calendar year end, submit a written end of the year report to the City with respect to the preceding calendar year containing the following information. The Operator shall provide the required information as it

pertains specifically to the City, with the exception of the telephone answering report required by paragraph (e), which may be provided on a regional basis.

a. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to Cable Services commenced or discontinued during the reporting year;

b. The number of service calls (calls requiring a truck roll) received by type during the previous year, and the percentage of service calls compared to the Subscriber base by type of complaint;

c. The number and type of outages known by the Operator for the previous year, identifying separately the following:

(i) each planned outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected;

(ii) each known unplanned outage, the time it occurred, its estimated duration and the estimated area and number of Subscribers affected, and if known, the cause; and

(iii) the total estimated hours of known outages as a percentage of total hours of Cable System operation. An outage is a Service Interruption affecting two (2) or more Subscribers.

d. A summary of those complaints that have been referred to Operator's escalations team, identifying both the number and nature of the complaints received and an explanation of their resolution. The term "escalations team" means a team of experienced customer service representatives that Operator has designated to handle written customer complaints, and complaints where resolution cannot be obtained through the customer's initial telephone contact.

e. A statistical report showing that the Operator has complied with the telephone answering requirements set forth in the Cable Ordinance;

f. A fully audited revenue report from the previous calendar year for the Cable System certified by an officer of the Operator, and a reconciliation between previously projected estimates and actual audited figures;

g. Copies of summaries of the Operator's semi-annual proof of performance test results for the previous twelve months;

h. Copies of strand maps for any new construction completed during the previous twelve months; and

i. An up-to-date map of all cable facilities located in the City; the map shall be in both a digital format, and on paper.

2. In addition, the Operator shall include the following items in the annual report, upon written request of the City, provided such request is made no later than January 31 in the calendar year that the report is due:

a. A description of any reasonably foreseeable construction plans that could have significant effects on or involve significant activity in the Public Rights-of-Way;

b. A copy of any existing report or regulatory filing identifying all Persons who at the time of filing the annual report control or own an interest in the Operator of five percent (5%) or more;

c. A list of officers and members of the Board of Directors of the Operator and any Affiliates directly involved in the operation or the maintenance of the Cable System;

d. To the extent available in any existing report or regulatory filing prepared by the Operator, an organizational chart showing all Persons with more than a five (5) percent ownership interest in the Cable Operator, and the nature of that ownership interest (whether limited partner, general partner, preferred shareholder, or other Person); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified; and

e. An annual report for each entity identified in the preceding paragraph which issues an annual report.

C. Quarterly Reports: The City may request that the Operator provide the City with a quarterly report containing the same information required in the annual report regarding customer service performance and telephone answering standards.

D. Reports Available for Inspection: All reports required under this Agreement, except those required by law to be kept confidential and any confidential, proprietary, trade secret and/or privileged information, shall be available for public inspection in the Operator's offices during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

E. Operator's Expense: All reports and records required under this Agreement shall be furnished at the sole expense of the Operator.

XII. ABANDONMENT AND EXTENDED OPERATIONS

A. Abandonment or Removal of Equipment:

1. The Operator shall not abandon any portion of its Cable System without giving at least three (3) months prior written notice to the City. The Operator shall not abandon any portion of the Cable System without compensating the City for any damages resulting to the City from the abandonment.

2. The City, upon such terms as the City may reasonably impose, may give the Operator permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Agreement, the Operator shall remove all abandoned facilities and equipment upon receipt of written notice from, the City and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, the Operator shall refill, at its own expense, any excavation made by or on behalf of the Operator and shall leave all Streets and other public ways and places in as good condition (per the City's standard procedures for the same) as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal according to the City's usual standards and procedures. The liability, indemnity and insurance provisions of this Agreement and any security fund provided for in this Agreement shall continue in full force and effect during the period of removal and until full compliance by the Operator with the terms and conditions of this Section.

3. Upon abandonment of any Franchise property in place, the Operator, if required by the City, shall submit to the City a bill of sale and/or other instrument, reasonably satisfactory in form and content to the City, transferring to the City the ownership of the Cable System property abandoned.

4. At the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for in this Agreement in any such case without renewal, extension or transfer, the City shall have the right to require the Operator to remove, at its own expense, all above-ground portions of the Cable System from all Streets and public ways within the City within a reasonable period of time, except to the extent the Operator is authorized or utilizing the System pursuant to applicable law.

5. Notwithstanding anything to the contrary set forth in this Agreement, the Operator may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable operator.

B. Extended Operation and Continuity of Service: Upon the expiration, revocation or termination of the Franchise, the Operator shall, upon request of the City, continue to operate the Cable System for a period of time not to exceed six (6) months from the date of such expiration, revocation or termination under the terms and conditions of this Agreement and the

Franchise and to provide the regular Subscriber service and any and all of the services that may be provided at that time.

XIII. MISCELLANEOUS PROVISIONS

A. Conflict with and Amendment of Ordinance: All of the terms, conditions, and provisions of the Franchise shall be deemed to be embodied in the Ordinance and this Agreement, and, in the event of any conflict, the express terms of the Franchise, as amended, shall prevail over conflicting or inconsistent provisions in the Ordinance.

B. Discrimination Prohibited: Operator shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to nondiscrimination.

1. All Operator rates and charges shall be published and nondiscriminatory. Except as provided hereunder, Operator shall establish rates and charges for all Subscribers without regard for race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Operator's Franchise Area. Nothing in this section shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns or discounted rates for provision of Cable Services to multiple unit buildings. Notwithstanding the foregoing, the Operator may offer service to senior citizens at discounted rates.

2. Operator shall not deny Cable Service, or otherwise discriminate against Subscribers, PEG access programmers or any other Persons on the basis of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Operator's Franchise Area.

3. The Operator shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Operator require a Subscriber to waive such rights as a condition of service.

C. Unbundling: In the event the Operator shall, during the term of the Franchise, offer bundled or packaged Cable Services with non-Cable Services, all such bundled or packaged service offerings shall be in compliance with state and federal advertising and trade practice regulations on bundling and packaging.

D. Receivership and Foreclosure:

1. The Franchise granted hereunder shall at the option of the City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the Operator, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and

the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under the Franchise and/or this Agreement or provided a plan for the remedy of such defaults and violations which is satisfactory to City, and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise and this Agreement.

2. In the case of a foreclosure or other judicial sale of the Franchise property or any material part thereof, the City may give notice of termination of any Franchise granted pursuant to this Agreement upon the Operator and the successful bidder at such sale, in which the event the Franchise granted and all rights and privileges of the Operator hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) the City shall have approved the transfer of the Franchise in accordance with the provisions of the Franchise and this Agreement; and (2) such successful bidder shall have covenanted and agreed with the City to assume and be bound by all terms and conditions of the Franchise.

E. Franchise Renewal: Franchise renewal shall be in accordance with applicable law and the Cable Ordinance. The City and the Operator, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

F. Severability: If any provision of this Agreement is held by any Governmental Authority of competent jurisdiction, to be invalid or unenforceable as conflicting with any applicable law now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such applicable law, such provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such applicable law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, said provision shall thereupon return to full force and effect and shall thereafter be binding on the City and the Operator, provided that the City shall give the Operator thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for the Operator to comply with such provision. Operator shall have no liability for any violation or non-compliance of any such invalid, unenforceable, repealed, amended or rescinded law or provision during any period of invalidity, unenforceability, repeal, amendment or rescission of the subject law.

G. Preemption: In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the City's right under subsection XIII.M, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, provided that if reasonably necessary, Operator

shall have a minimum of sixty (60) days in which to comply with the previously preempted provision.

H. Compliance with Federal and State Laws: Both parties shall, at all times during the term of this Franchise Agreement, including any extensions thereof, comply with all applicable federal, state, and local laws and regulations.

I. Force Majeure: In the event the Operator's performance of any of the terms, conditions or obligations required by this Agreement or a Franchise granted hereunder is prevented by an unforeseeable cause or event not within the Operator's reasonable control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof provided the Operator has notified the City in writing within ten (10) business days of its discovery of the occurrence of such an event. The Operator shall not be excused from any violation of the terms, provisions and conditions of this Franchise, except for causes which are beyond the reasonable control of the Operator. In the event of any such force majeure occurrence, Operator shall perform to the maximum extent possible. Except as otherwise provided above, violations caused exclusively by acts or omissions by the City or its officers, agents or employees shall constitute an excuse and justification for failure of the Operator to comply with the terms, provisions and conditions of this Franchise, precluding a determination that the Operator is in breach. However, violations as a result of such exclusive causes shall not be deemed to excuse the Operator from other unrelated violations, shield the Operator from a determination that it is in breach for such other unrelated violations, or bar any relief for damages or otherwise as a result of such other unrelated breach. Examples of circumstances beyond the control of the Operator which will excuse the Operator from violation and being in breach of the terms, provisions and conditions of this Franchise, when such violations are caused thereby, include the following: strikes, acts of public enemies; orders by military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; floods; civil disturbances; explosions; and Acts of God.

J. Notices: All notices, reports or demands required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when delivered by the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or delivered by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to the City: City of Clayton
6000 Heritage Trail
Clayton, CA 94517

If to the Operator: Comcast Cable
2500 Bates Avenue
Concord, CA 94520
Attn: Area Government Affairs Director
Facsimile: (925) 349-3538

With a copy to: Comcast Cable
12647 Alcosta Blvd. #200
San Ramon, CA 94583
Attn: Regional Vice President, Government Affairs
Facsimile: (925) 973-7104

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

K. Time of Essence: In determining whether a party has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. Notwithstanding the foregoing, a breach for failure to meet any deadline established by this Agreement, other than any construction-related deadline or the repeated failure to make timely monetary payments, shall not be grounds for revocation.

L. Captions and References:

1. The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

2. When any provision of the Cable Ordinance is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the Cable Ordinance or City law that may also govern the particular matter in question.

M. Rights Reserved to the City:

1. In addition to any rights specifically reserved to the City by this Agreement, the City reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise, subject to applicable law.

2. The City shall have the right to waive any provision of the Franchise to be performed by Operator, except those required by applicable law, if the City, in its reasonable opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Operator or the Subscribers. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

N. Operator Bears Its Own Costs: Unless otherwise expressly provided in this Agreement, all acts that the Operator is required to perform must be performed at the Operator's own expense.

O. City Bears Its Own Costs: Unless otherwise expressly provided in this Agreement, all acts that the City is required to perform must be performed at the City's own expense.

P. Entire Agreement: The Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the City and the Operator with respect to the subject matter hereof and merges and supersedes all prior communications, agreements, and understandings, whether oral or written.

Q. Adequacy and Sufficiency of Consideration: The parties hereto expressly declare and agree that adequate and sufficient consideration has been provided for each and every promise, covenant, commitment and undertaking contained in this Agreement.

R. Possessory Interest Taxation: The City hereby declares, pursuant to California Revenue & Taxation Code section 107.6, that as a result of this Agreement, a possessory interest subject to property taxation may be created and any such property interest may be subject to property taxation if it is created. The Operator, as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes levied upon such an interest.

S. Representations and Warranties of the Operator's Signatories: Each of the Persons executing this Agreement on behalf of the Operator do affirmatively represent and warrant as follows:

1. That this Agreement and the resulting contract constitute a valid and binding obligation, as to each and every term thereof, enforceable against the Operator and the City in accordance with the terms thereof;

2. That the persons who have executed this Agreement on behalf of the Operator and the City are duly authorized to do so by all necessary action; and

3. That the execution and delivery of this Agreement does not violate any provision of the by-laws and/or Articles of Incorporation of the Operator or the charter of the City.

T. Jurisdiction of California Courts and Waiver of Diversity Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws rules or principles. In the event that suit is brought by any party, the parties agree that trial of such action shall be vested exclusively in the state courts of California, County of Contra Costa, or, in the event of a "federal question" in the United States District Court for the Northern District of California. Moreover, the Operator expressly consents to service of process pursuant to California Code of Civil Procedure Section 416.10 at the office of Operator's registered agent for service of process as to any action arising under or purporting to rise under this Agreement and the Operator expressly declares and agrees that, for the purpose of any action arising under this Agreement and for no other purpose, its principal place of business shall be deemed to be within the State of California, and that it shall

not assert otherwise in connection with any claim of “diversity of citizenship” under 28 U.S.C. Section 1441(b).

U. System Operations:

1. The Operator shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. The Operator shall comply at all times with all other applicable law, relating to nondiscrimination.

2. The Operator shall adhere to the applicable equal employment opportunity requirements of applicable law, as now written or as amended from time to time.

3. Operator will comply with federal and state laws and regulations governing subscriber privacy and confidentiality.

V. Competitive Equity:

1. The Operator acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are generally equivalent. If any such additional or competitive franchise is granted by the City, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions.

2. Notwithstanding any provision to the contrary, at any time prior to the commencement of the Operator’s thirty-six (36) month renewal window provided by Section 626 of the Cable Act, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then the term of Operator’s Franchise shall, upon ninety (90) days written notice from Operator, be shortened so that the Franchise shall be deemed to expire on a date thirty-six (36) months from the first day of the month following the date on which the competitor passes twenty-five percent (25%) of the homes in the Franchise Area and begins providing Cable Service. The Operator shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the City required. The City and Operator shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The City and Operator shall have all rights and obligations

provided under said Section 626. In no event, however, shall the term of this Franchise be reduced to less than eight (8) years from the effective date of this Franchise.

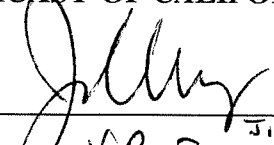
3. Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Operator shall have all rights which may be available to assert, at Operator's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

AGREED TO THIS 17 DAY OF Oct., 2006.

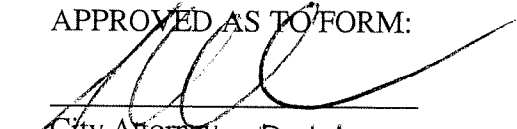
CITY OF CLAYTON

By: 
City Manager, GARY NAPPER

COMCAST OF CALIFORNIA IX, INC.

By: 
VP-Finance
Title: VP-Finance

APPROVED AS TO FORM:


City Attorney, DAN ADAMS

LIST OF EXHIBITS

- Exhibit A Existing PEG Access Origination Sites
- Exhibit B I-Net Maintenance Agreement
- Exhibit C Confidentiality Agreement

EXHIBIT A

EXISTING PEG ACCESS ORINATION SITES

None

EXHIBIT B

**INSTITUTIONAL NETWORK MAINTENANCE AGREEMENT
BETWEEN
COMCAST OF CALIFORNIA IX, INC.
AND
THE CITY OF CLAYTON**

THIS INSTITUTIONAL NETWORK MAINTENANCE AGREEMENT (the "Agreement") is between the City of Clayton, a California municipal corporation, hereinafter the "City," and Comcast of California IX, Inc., hereinafter "Comcast". The parties intend to set forth in this Agreement the terms and conditions for provision of Institutional Network ("I-Net") maintenance by Comcast.

RECITALS

WHEREAS, on _____, the City granted to Comcast a cable television franchise by Ordinance No. _____ (the "Franchise"); and

WHEREAS, Section VI(E) of the Franchise contemplates the manner in which the City may require the provision of an I-Net; and

WHEREAS, pursuant to Section VI(E)(3)(A) of the Franchise the City has requested that Comcast install I-Net facilities to be managed by the City, and that Comcast provide services pursuant to this Agreement to maintain such facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Section 1.** Fiber Construction and Termination. Fiber has been or shall be constructed and terminated by Comcast in accordance with the Franchise to the locations designated in Exhibit A hereto, which may be amended from time to time as sites are connected to the I-Net in accordance with the Franchise.
- Section 2.** Maintenance of Fiber. Routine maintenance on the fiber used for City I-Net purposes and including associated facilities and equipment used exclusively by the City for I-Net communications will be conducted on the same schedule as routine maintenance on Comcast's cable system. Any repairs effected upon the fiber and associated I-Net facilities and equipment shall be performed by Comcast, with prior notice to the City when practicable. In emergency conditions, such as a natural emergency resulting from a windstorm, Comcast will effect emergency repair work on the Comcast utilized fiber and City utilized I-Net fiber, if any, in the course of conducting its own emergency repair work on its cable system, excepting where City utilized I-Net fiber may not be co-located with Comcast system plant on a strand or in conduit in which case Comcast fiber

shall be repaired as a first priority and City utilized fiber shall be repaired as a second priority. In such event, Comcast shall have no liability to City for such delay in I-Net service restoration. Comcast shall levy an all-inclusive, annual maintenance fee (as hereinafter described) for all routine maintenance, non-emergency and emergency repairs upon the I-Net fiber and associated facilities and equipment from the Comcast side of the I-Net fiber termination panel located at each site out to and including the backbone fiber.

Section 3. Service Trouble Calls and Escalation. The City acknowledges that Comcast does not actively monitor the signal transmission upon City utilized I-Net fiber, and would have no notice of a service outage but for City/County-initiated notification. For any outages of City utilized I-Net fiber as determined by the City, the City or its designated I-Net site representative shall notify its information technology ("IT") representative. The City IT representative shall, in turn, contact the Comcast Service Assurance Center ("CSAC") Comcast shall respond to any routine trouble call within four (4) hours of receipt of notification at CSAC and shall actively begin working continuously until the problem is resolved. Notwithstanding the foregoing, the City may request, and the parties shall discuss in good faith, mechanisms and standards for Comcast to provide active monitoring of transmissions on the I-Net fiber.

Section 4. Administration, Maintenance and Management of the I-Net. The City shall be responsible for the ongoing administration, maintenance and management of the non-backbone I-Net facilities and equipment located on the City side of the I-Net fiber termination panel located at each site, and the internal site network itself, unless it contracts with Comcast for a managed network. All such maintenance conducted by the City shall be performed in accordance with industry standards, and any equipment owned and used by the City shall comply in all respects with applicable governmental codes, laws, ordinances or regulations.

Section 5. Cost of I-Net Maintenance; Annual Maintenance Fee. The ongoing maintenance and repair of the City utilized I-Net backbone fiber, whether scheduled or prompted by an emergency, shall be performed by Comcast as part of an annual maintenance fee. Such fee, payable by the City to Comcast at commencement of the City's next fiscal year following execution of this Agreement and each anniversary thereafter, shall initially be Five Hundred and No One Hundredths Dollars (\$500.00) per strand mile per year. Current total I-Net strand mileage shall be indicated on Exhibit "B", attached hereto. Such fee shall apply without regard to number of necessary non-emergency or emergency repair incidents required, and shall cover, without limitation, restoration of outages caused by third-party plant damage or damage wrought by inclement weather, quarterly system drive-outs for preventive maintenance, code compliance inspections, fiber functionality testing and re-documentation, pole change-outs and relocation, strand replacement, strand/facilities re-tensioning, anchoring, all labor, materials and equipment charges and associated engineering costs. City shall make

payment within ninety (90) days of receipt of the invoice. Should City fail to make payment within such period, City shall be assessed an interest charge from the date payment was due at an annual rate of the then current prime rate plus two (2%) percent.

Section 6. Annual Maintenance Fee Increase. Effective on the first anniversary of the initial invoicing of the City for the annual maintenance fee (the "Adjustment Date"), and on each succeeding anniversary during the term of the Franchise, the annual maintenance fee payable by City to Comcast shall be increased by an amount equal to the increase in the Consumer Price Index for Oakland (All Urban Consumers) (the "Index") published most immediately preceding that date which is twelve (12) months prior to the Adjustment Date; provided, however, that in no event shall the annual maintenance fee payable after the Adjustment Date be less than the annual maintenance fee payable before the Adjustment Date. Comcast shall not be obligated to make any adjustments or re-computations, retroactive or otherwise, by reason of any revision which later may be made in the Index figures first published for any period. If the CPI or the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index; otherwise, the parties shall use any comparable general wholesale or retail price index for the United States jointly selected by City and Comcast.

Section 7. Force Majeure. No party shall be in default or liable to the other for any failure or performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood or other catastrophes; adverse weather conditions; national emergencies; insurrections; riots, wars; or strikes, lock-outs, work stoppages or other labor difficulties; provided, however, the party that is unable to perform its obligations shall promptly notify the other party of such delay and the time period shall be extended for the actual amount of time said party is so delayed.

Section 8. Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations and agreements between them. All other provisions of the Franchise shall remain in full force and effect.

AGREED TO BETWEEN THE PARTIES on the last date written below.

COMCAST OF CALIFORNIA IX, INC.

By:
its:
Date:

CITY OF CLAYTON

By:
its:
Date:

ATTEST:

CITY CLERK

EXHIBIT A

SITES:

EXHIBIT "B"

I-Net consists of _____ feet of system plant strand.
_____ feet = _____ miles

EXHIBIT C

**CONFIDENTIALITY AGREEMENT
BY AND BETWEEN
THE CITY OF CLAYTON
AND
[CONSULTANT]
AND
COMCAST OF CALIFORNIA IX, INC.**

THIS AGREEMENT is made as of the date first written below by Comcast of California IX, Inc., (hereinafter "Comcast"), a California corporation, _____ (hereinafter "Consultant"), and the City of Clayton (hereinafter "the Franchising Authority"), a California municipal corporation.

WHEREAS, the Franchising Authority has retained Consultant to perform a franchise fee analysis of Comcast's cable franchise, and

WHEREAS, conduct of the analysis requires Consultant to have access to certain information considered by Comcast to be proprietary and confidential, and

WHEREAS, the Franchise Agreement between the Franchising Authority and Comcast requires Comcast to produce documentation requested for the purposes of conducting the franchise fee analysis, notwithstanding any claims of confidentiality, and

WHEREAS, the Franchising Authority, Comcast and Consultant (hereinafter collectively the "Parties") desire to enter into a working relationship which will permit the review of necessary documentation so that the analysis can be completed, while providing reasonable assurances to Comcast that information legitimately considered confidential will not be publicly disclosed,

NOW, THEREFORE, the Parties agree as follows:

1. The purpose of the disclosure hereunder shall be for the sole purpose of permitting the Franchising Authority and Consultant to perform a franchise fee analysis of Comcast's cable franchise serving the Franchising Authority. The Franchising Authority and Consultant each agree to use the Confidential Information only for such purpose and only in accordance with the terms of the Agreement.
2. The term "Confidential Information" shall mean and refer to all Comcast confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding plans, merger plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products

and services, customer service, merger integration provisions, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools. Confidential Information shall include all Comcast information that should reasonably have been understood by the Parties, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to Comcast, regardless of whether such information is marked "Confidential."

3. Subject to Sections 4 and 5 hereof:

- (i) The Franchising Authority and Consultant each agrees to use the same degree of care and scrutiny as it would use with respect to its own confidential information, but in any case using no less than a reasonable degree of care, to avoid disclosure (including, but not limited to, disclosure to the United States government or any agency or department thereof), publication, dissemination, or use of any or all of the Confidential Information obtained hereunder; and
- (ii) Confidential Information will be kept confidential for a period of five (5) years from the date hereof and shall not, without the prior written consent of Comcast, be disclosed by either the Franchising Authority or Consultant, or any of its or their representatives in any manner whatsoever, in whole or in part.

4. The Franchising Authority and Consultant each agrees that with respect to Confidential Information it will:

- (i) not use the Confidential Information other than in connection with the franchise fee analysis contemplated herein;
- (ii) reveal the Confidential Information only to its representatives who need to know the Confidential Information for the purpose of performing the franchise fee analysis, who are informed of the confidential nature of the Confidential Information, and who shall agree to act in accordance with the terms and conditions of this Agreement; and
- (iii) at Comcast's sole expense and request, at Comcast's request, return promptly to Comcast or destroy (and confirm such destruction in writing to Comcast) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to subcontractors and/or agents), together with all copies thereof, that come into either the Franchising Authority's or Consultant's possession.

The Franchising Authority and Consultant shall be responsible for any breach of this Agreement by its respective representatives under Section 4(ii) above.

5. It is understood, however, that the foregoing provisions in Sections 1, 2, 3, and 4 above shall not apply to any portion of the Confidential Information which:

- (i) was previously known to either the Franchising Authority or Consultant without obligation of confidentiality;
 - (ii) is obtained by either the Franchising Authority or Consultant after the date hereof from a third party which is lawfully in possession of such information and is not in violation of any contractual or legal obligation to Comcast or other third party with respect to such information;
 - (iii) is or becomes part of the public domain through no fault of either the Franchising Authority or Consultant or any of its or their respective employees, subcontractors, or agents;
 - (iv) is required to be disclosed by administrative or judicial action provided that the Franchising Authority and Consultant immediately after notice of such action notifies Comcast of such action to give Comcast the opportunity to seek any other legal remedies to maintain such Confidential Information in confidence; or
 - (v) is approved for disclosure and release by written authorization of Comcast.
6. All the Confidential Information disclosed to, delivered to, or acquired by either the Franchising Authority or Consultant from Comcast hereunder shall be and remain the sole property of Comcast.
7. Disclosure of the Confidential Information disclosed by Comcast to either the Franchising Authority or Consultant shall not constitute any option, grant, or license to either the Franchising Authority or Consultant of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by Comcast. It is understood and agreed that the disclosure by Comcast of the Confidential Information hereunder shall not result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise.
8. Any final report prepared by Consultant and/or the Franchising Authority that references or is based upon Confidential Information provided shall disclose such information only to the extent necessary to convey essential report information (e g., as in a compilation or abstract). Neither the Consultant nor the Franchising Authority shall release any confidential or proprietary information except in accordance with the terms of this Agreement.
9. This Agreement is binding on the Parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.

10. Notices hereunder shall be in writing and shall be deemed to have been delivered as of the day they are received when delivered personally, via certified mail, or via nationally recognized overnight courier:
- (i) if to the Franchising Authority: _____.
 - (ii) if to Consultant: _____.
 - (iii) if to Comcast: _____.
11. Comcast's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive its right thereafter to enforce and compel strict compliance with every term and condition hereof.
12. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.
13. This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the purpose described herein and the subject matter hereof.

IN WITNESS HEREOF, the Parties hereby indicate their assent this _____ day of _____, _____.

CITY OF CLAYTON

By: _____

Title: _____

Date: _____

COMCAST OF CALIFORNIA IX, INC.

By: _____

Title: _____

Date: _____

[CONSULTANTS]

By: _____

Title: _____

Date: _____

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