

DRAFT ONLY

FRANCHISE AGREEMENT

This Franchise Renewal Agreement (hereinafter, the "Agreement" or "Franchise") is made between the City of Davis (hereinafter, "City") and Comcast of California X, Inc. (hereinafter, "Grantee").

The City, after due evaluation and after a public hearing, has determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to renew its franchise with Grantee and, therefore, to enter into this Franchise Renewal Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have their ordinary meaning and the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

1.1. "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under applicable law. The term includes, but is not limited to, Government Access, as that term is defined below.

1.2. "Active Electronics" shall mean those electronic devices of the Cable System using externally-generated energy to perform or provide one or more of the following functions: amplify signals on the Cable System; optical to radio frequency transitions or radio frequency to optical transitions; radio frequency to radio frequency transitions; power the Cable System; monitor and report on the function of the Cable System; and/or perform any other function primary or ancillary to the functions listed here. Such active electronics shall include: headend equipment such as modulators; processors; satellite receivers; headend gas generators; externally-powered telephone system equipment; externally-powered data transmission equipment; amplifiers; fiber optic nodes; power supplies directly supplying power to the Cable System; status monitoring devices; and alarm systems monitoring the Cable System.

1.3. "Affiliate" means a person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or legal entity that directly or indirectly, owned or controlled by, or is under the common ownership or control with, another person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or legal entity.

1.4. "**Cable Act**" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as may be amended from time to time in the future.

1.5. "**Cable Service**" means the one-way transmission to Customers of video programming or other programming services, and Customer interaction, if any, which is required for the selection or use of such video programming or other programming services

1.6. "**Cable System**" means Grantee's facility, consisting of a set of closed transmissions 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 Customers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Customers without using any Public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Customers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.7. "**City**" means the City of Davis.

1.8. "**Customer**" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.9. "**Demarcation Point**" means the patch panel, preterm shelf, termination block or other termination device provided by Grantee at each I-Net site, which represents the interface between the I-Net provided by Grantee and the Qualified I-Net User's local network or end user electronics. In all cases, the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for connection or end user electronics.

1.10. "**Effective Date**" means the date specified in Section 2.3 hereof.

1.11. "**Emergency Operations Command**" or "**EOC**" has the same meaning as that set forth in Section 8558 (c) of the California Emergency Service Act which states that an EOC is: "The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake or other conditions which are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of a political subdivision and require the combined forces of other political subdivisions to combat.

1.12. "**FCC**" means the Federal Communications Commission, or successor governmental entity thereto.

1.13. "**Fiber Optic**" means a transmission medium of optical fiber cable capable of carrying Cable Service by means of electric lightwave impulses.

1.14. "**Franchise**" shall mean this Franchise and any amendments or modifications hereto agreed upon in writing by both the City and the Grantee.

1.15. "**Franchise Area**" means the present legal boundaries of the "City" as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.16. "**Government Access**" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.17. "**Grantee**" shall mean Comcast of California X, Inc. and its successors and assigns.

1.18. "**Gross Revenue**" means all revenue received by the Grantee derived from the operation of the Cable System to provide Cable Services within the Franchise Area. Gross Revenues shall include periodic fees charged to Customers for any Cable Service, such as basic, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; upgrade, downgrade or other change-in-service fees; advertising and home shopping revenues.

Gross Revenues shall not include (1) any taxes on services furnished by the Grantee herein imposed directly upon any Customer by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit; (2) revenue received by the Grantee directly from an affiliate, when the revenue received has already been included as reported Gross Revenues received by the Grantee; (3) refundable deposits, unrecovered bad debt, and late fees; (4) revenue from cable modem service, unless that service is classified as a cable service by federal law and regulation; (5) launch fees, marketing reimbursements, national advertising commissions, and advertising agency commissions; and (6) for purposes of this Franchise, Revenues collected from Customers for Public, Education, or Government Access Capital grants shall be excluded from Gross Annual Cable Revenues and (7) other items based on GAAP when finally determined by a court of competent jurisdiction, except that nothing herein shall be deemed or construed as a waiver of any party's right regarding other issues related to GAAP when not determined by a court of competent jurisdiction.

1.19. "**Institutional Network**" or "**I-Net**" means the facilities or capacity designed principally for connecting public facilities and organizations within the Franchise Area are as is described in greater detail in this Franchise.

1.20. "**OTDR**" means Optical Time Domain Reflectometer.

1.21. "**Person**" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

1.22. “Public Rights of Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System

1.23. “Qualified I-Net User” means any of the following which are passed by the Cable System and located in the Franchise Area: the City and legal entities controlled and administered by the City, State accredited public schools, and certain designated Government buildings within the City as listed in the attached (Exhibit “D”), and other government entities as may be agreed to by the City and Grantee, but not the State or the federal Governments.

1.24. “School” means any publicly funded charter school or public primary and secondary schools accredited by the State of California.

1.25. “Termination Equipment” means the electronic equipment and associated facilities required at the Demarcation Point between the I-Net and the Qualified I-Net User’s local network or end user electronics.

SECTION 2 - Grant of Authority

2.1. The cable television Franchise currently held by Grantee, is hereby renewed, subject to the terms and conditions of this Franchise. The renewal extends the non-exclusive Franchise to construct and operate a Cable System within the streets and public rights of way or public utility easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any streets, public rights of way and public utility easements in the Franchise Area such lines, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the operation of the Cable System.

City desires to encourage the use and availability of new technologies to the residents of City. To the extent that Grantee wishes to provide additional services not included within this Franchise or otherwise authorized by state or federal law, Grantee may do so, upon compliance with any requirements of law and to that end, nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be thirteen (13) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated

2.3 Effective Date. This Franchise shall be effective as of _____, 2005.

2.4. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.5. Reservation of Authority. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Rights of Way.

2.6 Conflict between the Franchise and Cable Ordinance.

(a) This Franchise is entered into pursuant to the City's Cable Television Ordinance, City Municipal Code Chapter 8B. The Ordinance and this Franchise are intended to complement each other and, to the greatest extent possible, to be read together in a consistent manner.

(b) In the event of any direct conflict between the terms and conditions of this Franchise and the provisions of the City's Cable Television Ordinance set forth in the City's Municipal Code, the provisions of this Franchise shall control. It is the intention of the parties that this Franchise is the controlling document and not the City's Cable Television Ordinance.

(c) Should the City's Cable Television Ordinance be amended, revised, superseded or otherwise changed after the effective date hereof in such a way as would materially affect the terms and conditions of this Franchise, the amendment, revision or change shall not apply to this Franchise without Grantee's prior approval; provided, however, that the City retains the right to unilaterally and without the consent or approval of the Grantee amend its customer service regulations which shall be effective and apply to Grantee without Grantee's prior approval or consent, subject to the then current requirements of Federal Law.

2.7. Level Playing Field.

(a) The Franchise granted to Grantee may not be construed to limit in any manner the right of City, through its authorized officers and in accordance with applicable law, to lawfully issue franchises to operate Cable Systems within the City to other individuals or entities; and any additional grants will not operate to revoke, terminate, or materially and adversely affect any rights granted to Grantee by this Franchise.

(b) The City shall comply with Government Code Section _53066.3_____. It is the City's intent to grant franchises to another individual or entity to provide Cable Services on material terms and conditions that are no more favorable or less burdensome than the terms and

conditions applicable to Grantee and do not place Grantee at a competitive disadvantage under this Franchise.

(c) In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchising Area, in whole or in part, the City shall promptly serve or require to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, upgrade, rebuild or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located in accordance with applicable law and regulations and also located so as to minimize the interference with the use of the Public Rights of Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Rights of Way. Section 3 as mutually agreed upon herein is intended to apply to this Franchise and replaces Section 8B.02.120 of the City's Municipal Code in its entirety.

3.2. Conditions on Street Occupancy.

(a) Street Improvements, changes and widenings. If any Public Rights of Way within the Franchise Area are lawfully changed, improved, modified or widened at any time during the term of this Franchise, then the Grantee shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new modifications or improvements. If non-city public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, Grantee may make application for such funds. If required by the funding agency, the City shall upon written request of the Grantee make application for such funds on behalf of the Grantee. Nothing in this section shall relieve Grantee of the obligation to alter or relocate its facilities as lawfully required by the City. Further, nothing in this section in any way obligates the City or any other public agency to award or provide relocation funds to Grantee.

(b) Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

(c) Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as provided in the encroachment permit.

City shall notify Grantee of City's intent to repave or overlay City streets and provide Grantee a reasonable opportunity to trench, as may be necessary, in such streets prior to the repaving or overlaying. If Grantee has been afforded the opportunity to trench in such streets, Grantee shall not trench in any street or right of way within thirty-six (36) months of the City repaving or overlaying the street or right of way. Should Grantee determine that there is no alternative to trenching within thirty-six (36) months of a repaving or overlay, Grantee shall notify the City and, if the City and Grantee cannot determine an appropriate alternative, Grantee shall completely restore the street or right of way to a condition reasonably comparable to the condition existing immediately prior to the disturbance as provided in the encroachment permit; such restoration may be a complete overlay or such restoration as necessary to restore the affected portion of the street or right of way to the condition it was in prior to the trenching and to a condition that has the same life expectancy as the repaving or overlay.

3.3. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites and the Cable System in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System including maintenance shall be in compliance with the National Electric Code, applicable California Public Utility Code requirements and applicable FCC or other federal and state regulations in place as of the Effective Date or the date of the work or installation, whichever is later. Grounding at Customer locations shall be in compliance with applicable State requirements. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area. The Grantee shall maintain the Cable System in compliance with applicable federal and state safety regulations. Grantee at all times shall have the right to receive notice and to cure any alleged non-compliance with this Section 3.3 as provided under Section 13.2 of this Franchise.

3.4. Trimming of Trees and Shrubbery in City's Right-of-Way. Grantee, in order to maintain its facilities, including its overhead wires and cables or its underground conduits, may trim trees or other natural growth in City's right-of-way. Tree trimming and pruning shall be done in accordance with the guidelines established by the International Society of Arboriculture (ISA), which are the industry standard, or, if the City adopts its own standards applicable to all Person(s), the City's then current adopted standards shall apply. Tree pruning shall be performed by a qualified employee or contractor, and all work shall be performed under the supervision of an arborist certified by ISA or the City. Except in cases of emergencies, at least twenty-four (24) hours prior to beginning any work that will affect any tree on public property or any street tree, Grantee shall notify the City and obtain permission from the City, and Grantee shall not begin work until its plans and procedures have been approved by the City, which approval shall not be unreasonably withheld. Grantee and City may agree to other procedures different from those set forth herein or may agree to a blanket permit to expedite tree trimming. Nothing in this section will prohibit employees or agents of Grantee to conduct

emergency or maintenance access required tree trimming without the approval of the City. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any verified damage caused by such trimming.

3.5. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality or its cable communications systems facilities. In any part of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Franchise shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.6 Joint Trenching. For new developments, the City shall provide the Grantee with written notice of the issuance of development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The City agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

When new construction or property development occurs, and all utilities are to be placed underground, Grantee shall participate in any joint trench coordinating committee or joint trench program established by the City within the Franchise Area. Grantee may participate in joint trench opportunities where a new development's dwelling units, when occupied, will not meet the line extension policy as set forth in Section 4.3 but shall participate where the new development's dwelling units, when occupied, would meet the line extension standards. Grantee as of the effective date of this Franchise has a program for service availability in new developments. Grantee will work directly with developers to enable provision of service to a new home upon occupancy. Grantee may be involved in all design aspects of the new construction or development that relate to the infrastructure required for Cable Service, including the provision of specifications and engineering assistance prior to construction. The costs of easements, trenching, and construction of the conduits required to bring Cable Service to the new construction or development may be borne by the developer or the property owner, as may be agreed upon by the developer, property owner and Grantee. Grantee will bear all costs of installing cable, amplifiers, and other equipment required to construct and operate the Cable System.

3.7 Active Electronics. Active electronics in the Grantee's Cable System may be in appropriate housings upon the surface of the ground. The size and location(s) of the housings shall be subject to lawful City encroachment permit requirements, which shall take into account the overall design of the Cable System, including technical requirements and costs. Any approval required to be obtained from the City shall not be unreasonably withheld. If

technically and economically feasible and subject to the approval of the public agency owning the property, the Grantee shall locate Active Electronics in median strips, within alleys, on public or private school sites and similar properties to avoid unnecessary intrusion of large housings in residential front and side yards within the public rights of way.

SECTION 4 - Service Obligations

4.1. General Service Obligation. Grantee is authorized by this Franchise to serve the Franchise Area. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area requesting service, subject to the Grantee's line extension policy.

4.2 Businesses to be Served. Grantee may provide service to a business(es) located within the Franchise Area under such terms and conditions as are mutually agreeable to the business(es) and Grantee.

4.3 Line Extension Policy. General Policy. Within the Franchise Area Grantee shall extend its trunk and distribution system to serve Customers requesting service where the density of dwelling units passed by such extension is equal to or greater than forty (40) dwelling units per cable mile in areas passed by overhead cable or sixty (60) households per cable mile in areas passed by underground cable. In areas with less than forty (40) dwelling units per cable mile aerial or sixty (60) dwelling units per cable mile underground, service shall be offered in conformance with Grantee's line extension policies. Grantee shall not be required to extend its trunk and distribution system where the area is already served by another Cable System provider.

(a) **Policy on Non-Standard Installations.** Grantee's maximum standard length for a service drop is one hundred twenty-five (125) aerial feet, and any distance beyond that length Grantee may charge its non-standard installation fee. For underground drops, which require Grantee to cut pavement curbs, sidewalk, or similar "hardscape" surfaces, and for that incremental portion of all drops greater than one hundred twenty-five (125) feet, Grantee may charge its non-standard installation fee. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards.

4.4. Programming. The Grantee shall offer to all Customers broad categories of programming. Grantee shall provide City with a list of program services, rates and charges offered and shall update the list at least annually. In addition, Grantee shall provide City with notices of changes to program services, rates and charges at least 30 days in advance, which is the same time that notices will be provided to Customers.

4.5. No Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable

Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.6. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

5.2 Grantee's rates and charges for cable service shall be subject to regulation by the City to the full extent authorized by applicable state and federal law. The City retains the right, at any time during the term of the Franchise to institute regulation of rates and charges, as such regulations may be authorized under the then current federal law unless Grantee is determined to be subject to effective competition under federal law. Grantee understands that, as of the date of execution of this Agreement, the City regulates rates and charges for basic Cable Service and associated equipment as authorized by applicable state and federal law.

SECTION 6 – Public, Educational and Governmental Access

6.1. Channel Use. Non-commercial use of channel space for public, educational and governmental ("PEG") access shall be made available on the most basic tier of service offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth below. City shall have use of channel(s) designated for PEG use, whether the PEG access user is an individual, educational or governmental user. Grantee does not relinquish any ownership rights over a channel(s) designated for PEG use, and the City and PEG access user acquires no legal ownership interest by virtue of the use of a channel so designated no matter how long the same channel has been designated for such use. Grantee shall not exercise editorial control over any public, educational, or governmental use of channel capacity, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity in violation of 47 U.S.C. § 559 and applicable FCC regulations. The City shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use, which shall ensure that PEG Access Channel(s) and PEG Access Equipment will be available on a first-come non-discriminatory basis.

6.2. Channels. Through the term of this Franchise, Grantee shall make available three (3) channels for City's PEG use. Upon 120 days advance written notification, Grantee shall make available one (1) additional channel for PEG use. On the third anniversary of the effective date of this Franchise and upon 120 days advance written notification from City, Grantee shall make available one additional channel for PEG use, for a total of five (5) initial channels.

6.3. Designation of Channel Use. City shall be responsible for designating the use of these channels for public access, education and government programming. The channel(s), in the sole discretion of the City, may be utilized in any PEG combination.

6.4. Digital Channels. At such time as the entire Cable System is technically configured digital, City may request, and Grantee shall make available upon 120 days advance written notice from City, the conversion of the five (5) initial channels to five (5) digital channels and three (3) additional digital channels for a total of eight (8) digital channels, provided that the City or City's designee(s) are providing the following level of programming: during ten (10) consecutive weeks, a pre-existing channel designated for the same purpose as the channel requested (Public Access, Educational Access, or Governmental Access) cablecasts at least forty-two (42) hours per week of original programming. For the purposes of calculating the forty-two (42) hours per week of programming, a program may be repeated only once after its original run during the ten (10) week period. The parties understand and agree that certain uses, such as government meetings, may reach channel capacity and warrant an additional channel while not meeting the standard for original programming set forth above. In such case the parties agree to consider and may mutually agree, on a case-by-case basis, to provide the additional channel(s) without first meeting the standard set forth above. As used herein "original programming" means non-repeat programming and does not include character generation or bulletin boards.

6.5. At such time as the entire Cable System is digital, City shall be responsible for the costs of the end user equipment necessary to provide and transport digital programming for the PEG channels. End user equipment means equipment necessary to receive and transmit access programming. Grantee will provide a fiber transmitter or its equivalent at the City's PEG access two control sites in order to transport the control site's digital signal over the fiber to Grantee's headend. The City may use PEG capital funds for these equipment needs, if any. Grantee shall be responsible for any equipment necessary at its head end or in its Cable System or return lines to provide the transport and distribution of the PEG channels to the Customer. Digital channels assigned or allocated to PEG access use shall have a compression ratio that is no higher than other digitally delivered channels used for typical commercial channels that deliver programming to the Franchise Area in a similar format for delivery to Customers.

6.6. PEG channels will not be used for commercial purposes, such as leasing capacity, or compete with current or future services provided by the Grantee and its affiliates.

6.7. Channel Number Relocation. Except for situations or circumstances beyond Grantee's control, if Grantee fails to provide City with a minimum of 30 days advance

notice of a channel number change for a PEG access channel, Grantee shall reimburse the City an amount not to exceed \$6,000.00 for its cost incurred in connection with the channel change.

6.8. Return Lines.

(a) Grantee shall continue to provide and maintain the return lines located at City Hall, Davis Community Television, and at the Veteran's Memorial. In the event City determines that any of the above return lines need to be relocated, City shall reimburse Grantee for its costs of time and material in removing and relocating such return line(s). In addition, City intends to relocate the Community Media Center to a new library at Walnut Park within the Franchise Area. Upon written request of the City and concurrently with the construction of the library at Walnut Park, Grantee agrees to install a return line at the Community Media Center. The City shall pay to Grantee its costs of time and materials.

In the event that City determines that an additional return line(s) should become necessary, City shall provide ninety (90) days advance written notification of such request, and Grantee shall provide a cost estimate for the construction and installation of the additional return line and City shall then determine whether to proceed with the additional return line(s).

6.9. Grantee's Use of Fallow Time. In the event the City or other PEG access user elects not to fully program its Channel(s), thereby leaving a channel(s) completely unused or dark for a period of time during the day, the Grantee may program this unused time on those channels subject to 60 days written notice to City of Grantee's intent to do so. If within 60 days, the City or other PEG access user does not program the unused time, Grantee may use such time. The City may reclaim the unused time by providing Grantee with no less than 60 days advance written notice.

6.10. Indemnification. The City shall indemnify Grantee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on any PEG channel and from claims arising out of the City's rules for or administration of access.

6.11. PEG Capital Funding. Within ninety (90) days of the Effective Date, Grantee shall collect from residential Customer and pay to the City as PEG capital fees the following amounts:

- (a) For the first 60 months, \$0.85 per residential Customer per month;
- (b) For the next 36 months, \$0.75 per residential Customer per month;
- (c) For the next 12 months, \$0.66 per residential Customer per month;
- (d) For the next 12 months, \$0.65 per residential Customer per month;
- (e) For the next 36 months, \$0.57 per residential Customer per month.

City will support PEG Access operations on a dollar for dollar match to the PEG capitol support fees passed through by Grantee to subscribers, as stated immediately above. In the event that franchise fees are no longer available through state or federal

governmental actions over which the city has no control, the obligation of the City and Grantee shall be waived for any time period in which the City does not receive franchise fees. In the event franchise fees are less than the pass-through PEG capitol support fees, the city's obligation shall be limited to the franchise fees actually received, and Grantee's obligation to collect and pay to the City PEG capital fees shall be reduced correspondingly.

In no event will the City be required to match PEG capitol support fees with any funds other than franchise fees.

In the event that the City has a fiscal crisis which, the City Council's determination, necessitates reduction in the dollar for dollar match for PEG Access operations from franchise fees, the City and the Grantee shall discuss and mutually agree on the reduction in franchise fee support and reduction in PEG Capitol support during the period of fiscal crisis.

Until the PEG capital payments set forth above are implemented and collected from Customers, Grantee will continue to pay to the City the PEG capital amount of \$6,250.00 on a monthly basis (\$75,000 annually) set forth in the immediately prior franchise; provided that there is no double collection and payment of PEG capital fees to the City. The purpose of this continued payment is avoid a gap in payment of PEG capital funds to the City prior to the pass through of PEG capital funds agreed to herein. All such payments shall be remitted to the City quarterly at the same time as the Grantee pays the franchise fee to the City.

(a) Within one hundred eighty (180) days of the end of the City's fiscal year, the City shall provide Grantee with an annual report signed by the City Manager under penalty of perjury documenting the use of the previous year's PEG funding and showing the budgeted use of the current year's PEG funding to ensure PEG funding was used for capital expenses only. Grantee shall have the right to audit the City's PEG capital fund not more than once for any three (3) year Franchise period.

(b) In the event the City cannot demonstrate that PEG funding was used for PEG Capital needs, Grantee's PEG capital payments going forward shall be reduced an equivalent amount or future franchise fees payable to the City shall be reduced by an equivalent amount or the City pays to Grantee within thirty (30) days the amount of funding which was not used for PEG capital, all at Grantee's option. In event the City is to pay Grantee, the amount paid to Grantee shall be credited back to current customers.

6.12. Interconnection

(a) Grantee shall facilitate the physical interconnection of PEG Access Channels on the Cable System to the most effective meet point at the boundary of the City's Franchise Area to 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. The cost of such interconnection shall be Grantee's to the meet point at the boundary of the City Franchise Area.

Notwithstanding the generality of the foregoing, any interconnection with cable systems other than Grantee's that may be required under this Section shall also be contingent upon Grantee and the other cable operator reaching an agreement for the required

interconnection on reasonable terms and conditions. If Grantee is unable to reach agreement with such other cable operator, Grantee shall provide evidence satisfactory to the City that Grantee made multiple attempts in a timely manner to reach an Interconnection agreement on mutually acceptable terms.

(b) Interconnections shall have the capability of transmitting and receiving PEG Access programming, and shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected Access Channels.

(c) Subject to written agreement between the City and the regulatory authority of the geographically contiguous franchise area, the City, or its designated access entity, shall have the right to control and schedule the operation of all interconnected Access Channels. However, the requirement to interconnect PEG programming with geographically contiguous Cable Systems of willing franchise authorities shall not result in an increase in the number of Access Channels beyond the number of Access Channels provided for in Sections 6.1 and 6.3 hereof.

(d) The Grantee will work with such other cable operator or regulatory authority so that technically adequate signal quality in compliance with the technical standards of this Franchise is initially and continuously provided for Access interconnections so that end of line reception is in compliance with FCC technical standards. The other cable operator or regulatory authority, as originator of signals and programming, is responsible for providing technically adequate signals and programming to be carried on interconnected Access Channels.

SECTION 7 - Customer Service Standards; Customer Bills;

7.1. Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC. City has also adopted the State customer service standards, which are applicable to Grantee. As set forth in Section 7.4, Grantee shall also comply with the City's Customer Service Protection Standards as set forth in the City's Cable Ordinance and modified or amended by Section 7.4 of this Franchise.

7.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 7.1 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

7.3 City Cable Ordinance Customer Service Standards. Grantee has agreed to and shall comply with the Customer Service Regulations in effect as of the Effective

Date of this Franchise Agreement, as set forth in the City's Cable Ordinance, Davis Municipal Code sections 08B.05.010 through 8B.05.0270, as modified herein.

(a). In lieu of the requirements of Section 8B.05.020 related to Office Availability;

Grantee agrees to engage in a trial period of no less than six (6) months during which time Grantee shall:

1. Maintain at least one office at a convenient location in the City that shall be open for walk-in traffic at least four weekdays and one weekend day per week. The hours for walk-in traffic shall be at least 10 hours per day on two weekdays, eight hours per day on two additional weekdays and least one five hour period on a Saturday or Sunday.

2. Broadly publicize the availability of evening and week-end local office hours.

3. Gather information about the use of the local office during evening and weekend hours.

4. If, after the six (6) month trial period, the walk-in traffic during the weekend and 10 hour days is equal to the traffic during the other hours of operation, Grantee will extend the office hours in subsection (1) above for the term of the Franchise, provided that Grantee may retest the public's use of weekend and evening hours from time to time and may discontinue some or all of these additional hours if the traffic during these hours falls below that of the traffic during the other hours of operation.

5. If the walk-in traffic during this six (6) month trial period does not justify the continuation of the trial hours set forth in subsection 1 above, Grantee may notify the City and implement different hours of operation that reflects customer traffic.

6. At such time as Grantee determines an office within the Franchise Area has become unnecessary, Grantee, will meet and confer with City, and provide information regarding alternative service options and business reasons for closing the office. Thereafter, Grantee will provide thirty (30) days notice to all Customers with information concerning office closure and detailing other service options.

(b). In lieu of the requirements of Section 8B.05.030(b) related to Telephone Answering Time, Grantee agrees that:

1. Customers shall wait no longer than 30 seconds from first ring to connection to Interactive Voice Recognition. The hold time after

customer has made a choice to connect from Interactive Voice Recognition to customer services shall be no longer than 90 seconds.

(c). To comply with Section 8B.05.040(a) related to the scheduling of Appointments, the Grantee may:

1. Offer the customer four hours blocks of time in which technicians will meet customers at their residence.

2. Offer two hours blocks of time upon request of the customer. Two hour blocks of time may require more lead time to schedule.

(d). To comply with Section 8B.05.040(b) related to Rescheduling Appointments, Grantee shall

1. Inform the customer at the earliest possible time that the technician may miss an appointment.

2. Offer the customer the next available two-hour window for the rescheduled appointment.

(e). To comply with Section 8B.05.040(c) related to Missed Appointments, Grantee shall continue its On Time Guarantee Policy, or an equivalent policy. Under this Policy, Grantee offers the customer several choices for missed appointments such as free installation or service credit valued at the cost of expanded basic service or basic service, whichever the Customer subscribes to. Customers will have the ability to elect remedies under California Civil Code section 1722, as it may be amended from time to time, if applicable.

(f). To comply with Section 8B.05.050(c) related to Repairing Outages, the Grantee shall respond to outages within twenty-four (24) hours and repair outages as soon as possible. City acknowledges that not all repairs for outages or service interruptions can be completed within 24 hours.

(g). As it relates to Section 8B.05.050(g) Time for Extension, subsections (i), (ii), and (iii) are deleted. Grantee shall provide service within seven (7) days of request where there is activate plant within 125 feet of the proposed service location. In all other cases, Grantee shall comply with the Line Extension Policy as detailed in Section 4.3 of this Franchise Agreement.

(h). With respect to Section 8B.05.080 titled City Approval of Notices and Bills, the Grantee shall

1. Provide City with copies of the following before or at the same time notice is provided to Customers:

(i) Major revisions of billing notices that affect the notice regarding how to contact the City;

(ii) Annual notices of customer services and policies;

(iii) Statements of service and channel line up changes.

2. Notify the City when compliance with the advance notice standard was not possible for reasons beyond the control of the Grantee

3. Grantee may provide the notices in draft form, at a minimum, to expedite notice to the City.

Pursuant to 47 CFR Section 76.1603(e), the city manager or any other city representative shall not have editorial control nor will Grantee's communications to their Customers or residents of the city be subject to approval by the City.

(i). To comply with Section 8B.05.090, the Grantee may provide 30 days notice instead of 60 days notice to the city manager or designee.

(j). To comply with Section 8B.05.100, the Grantee intends to provide all written materials to customers that will be legible and understandable to the average adult citizen.

(k). To comply with Section 8B.05.110, the Grantee shall maintain public files open for public inspection pursuant to 47 CFR Section 76.1700 and any other applicable state or federal rules. Public file records do not include all customer notices and promotional offers.

(l). To comply with Section 8B.05.0140(a) and (b) related to the late fees, Grantee shall comply with the late fee or administrative fee requirements of California State law (California Government Code Sections 53088.6 and 53088.7).

(m). With respect to Section 8B.05.0140(c) related to Operator Billing errors, payments shall be considered timely if received on the due date.

(n) Under Section 8B.05.0150, Grantee is required to provide automatic prorated credits for loss of service for a period of twelve (12) hours or longer. In lieu of that requirement, Grantee may provide any one or more of the following:

1. Offer a webpage on which customers can report outages;
2. If electronic service becomes available, Grantee will notify customers;
3. Make prorated credits available upon request of the customer; or

4. Upon request of customer credit the customer for the entire period which customer actually experienced an outage.

(o). To comply with Section 8B.05.0170 related to billing refunds, Grantee shall issue refunds to customers within 10 days after disconnect and return of all equipment to the operator, if cable service has been terminated. Grantee will send a refund via mail within three (3) weeks from date of disconnection or return of equipment.

(p). To comply with Section 8B.05.0190, charges for service may be made after the customer requests disconnection.

(q). Under Section 8B.05.0210(c) related to reinstating service after disconnection due to non payment, Grantee shall comply with state law and shall consider reinstatement after one year to customers blocked from service, as long as the customer agrees to pay a reasonable deposit.

(r). Under Section 8B.05.0220(c) related to restoration of service after disconnection for reasons provided in paragraph (a) thereof, Grantee shall comply with state law and shall consider reinstatement after one year to customers blocked from service, as long as the customer agrees to pay a reasonable deposit.

(s). Under Section 8B.05.0240 related to deposits, Grantee shall pay interest on accounts where deposits are kept if required by state law.

(t). In lieu of the requirements of Section 8B.05.0250(b) related to notice prior to premium channel promotions and in light of the technology available to block such programming, Grantee shall:

1. Periodically provide information to Customers regarding the availability and operation of parental controls. This information may be provided through mailers, public service announcements or on Grantee's website, or by any other method determined by Grantee.

2. Upon City's request, but not more that once every two years, Grantee will provide a report on the information provided to Customers regarding parental controls.

(u). In lieu of the requirement of Section 8B.05.0260 related to Bundled Services, Grantee may offer service choices to Customers including bundled services as provided under applicable federal or state law.

(v). In addition to the provisions of Section 8B.05.0270 related to Relief from Obligations, Grantee shall be exempt from customer service standards where Grantee faces "effective competition" pursuant to 47 CFR Section 76.905 et. seq. to the extent it has been determined by the FCC or other appropriate federal or state agency and that this determination exempts the Grantee from customer service obligations.

SECTION 8 - Oversight and Regulation by City

8.1. Franchise Fees.

(a) The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area.

(b) The franchise fees shall be paid on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. The report shall note and reconcile discrepancies from the last report.

(c) A delinquency charge in the amount of one and one-half percent (1.5%) per month of the unpaid balance may be collected by the City on any franchise fee payment overdue by ten (10) days or more.

8.2. Franchise Fees Subject to Audit.

No acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provision of this Franchise.

(a) All payments shall be subject to audit, which audit shall be limited to no more than one (1) for any three (3) year Franchise period. The Grantee shall pay the City's reasonable and actual out-of-pocket costs of the audit if the audit results show an under payment of more than five percent (5%) of the Grantee's annual payment to the City, up to a maximum amount of Seventy-Five Hundred Dollars (\$7500), or an audit occurring in year ten (10) through and including year thirteen (13) of the Franchise the maximum amount of reimbursable reasonable and actual out-of-pocket expenses shall increase to Ten Thousand Dollars (\$10,000). The Grantee shall pay to the City within thirty (30) days after the time for filing such statements, the sum prescribed or any undisputed unpaid balance thereof for the period of time covered by such statement. In the event the Grantee overpaid the City, the Grantee may deduct such amount from the next Franchise fee payment due to the City until such time as the overpayment has been recovered.

(b) The Grantee shall file with the City within one hundred eighty (180) days after the expiration of the Grantee's fiscal year an audited financial statement prepared by a certified public accountant or an officer of the Grantee, certifying in a form reasonably satisfactory to the City's financial officer the Gross Revenues of the Grantee during the preceding fiscal year.

8.3. Inspection of Cable System. In accordance with applicable law, the City, or its designated agent, shall have the right to periodically inspect, but not more than three

(3) times during the term of the Franchise, except to respond to a safety complaint, on reasonable prior written notice, the construction, reconstruction, or condition of the Cable System in the Franchise Area, as necessary to monitor Grantee's compliance with the provisions of this Franchise. Except in emergencies or where required pursuant to an encroachment permit or other city construction permit, City shall provide Grantee ten (10) days' written notice in advance of any inspections conducted under this provision, and shall provide Grantee the right to accompany City in such inspection. City shall, within ten (10) days of acceptance of any inspection reports provided by its designated agent, provide Grantee with copies of any written inspection reports prepared following such inspection. Grantee shall not be responsible for costs incurred by the City for inspecting Grantee's construction, operation or repair of the cable system.

8.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

8.5. Maintenance of Books, Records, and Files.

(a) Books and Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee (generally reasonable notice shall be thirty (30) days notice), may review such of the Grantee's books and records which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's local business office during normal business hours, and without unreasonably interfering with Grantee's business operations. Such notice shall specifically reference the section or subsection of the Franchise, which is under review, so that the Grantee may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local business office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location. Reasonable travel costs shall be those set forth in the then current City travel reimbursement policy for city employees who travel on city business. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years or until completion of the franchise fee audit for the three year period immediately preceding, whichever is longer.

To the extent that Grantee claims that the information required by the City is proprietary or confidential in nature, City, to the extent permitted by law, agrees to treat any such information disclosed by the Grantee as confidential, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act. For the purpose of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to trade secrets, the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation

of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined to be competitively sensitive.

(b) File for Public Inspection. Throughout the term of this Franchise, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

(c) Public Records Requests. In the event that the City receives a request under the California Public Records Act or any similar state or federal "sunshine," law for public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall promptly notify Grantee of such request and Grantee may take such action as Grantee deems appropriate regarding such request.

SECTION 9 – Transfer or Change of Control of Cable System or Franchise

9.1. Transfer.

(a) No transfer, sale, assignment, change in control of a Franchise or Cable System, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) (hereinafter referred to as a "transfer") shall occur without the prior written consent of the City. Prior to a transfer the Grantee shall submit a complete application to the City in accordance with the Cable Act and FCC rules. The application shall demonstrate that the proposed transferee has the legal, technical, and financial qualifications to own and operate a cable franchise as provided under federal law. The City Council may hold a public hearing on the proposed transfer after which the City Council shall determine whether to approve, approve subject to conditions or disapprove the proposed transfer. Any transfer that is made without the prior approval of City shall be deemed a material violation of this Franchise. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(b) **Definition of Transfer or Change of Control.** A change of control of Grantee shall be deemed to have occurred whenever ownership, including but not limited to beneficial ownership as defined by Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, as amended, of more than fifty percent (50%) of voting stock then outstanding of an Operator or its indirect corporate parent is acquired by or transferred to a person or group of persons acting in concert, none of whom already own fifty percent (50%) or more of the voting stock. A transfer or change in control also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of Grantee or its direct parent company; however, no consent shall be required for any transfer or change of control where the transferee at the time of the application is controlled by or under the control of the then current owner or then current general partner.

(c) **Assumption of Obligations.** No transfer application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Franchise.

9.2. Consent. Within 30 days of receiving a request for consent, the City shall in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the request for consent within 120 days after receiving such request, or such extension agreed to by the Grantee, consent shall be deemed granted.

9.3. No Consent. No consent shall be required for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness.

SECTION 10 - Insurance and Indemnity; Performance Bonds

10.1. Insurance.

(a) Throughout the term of this Franchise, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City as an additional insured and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise.

(b) Failure to maintain the insurance or failure to furnish, deliver and maintain the certificates required by this section shall constitute a material breach of the Franchise. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under the Franchise.

10.2. Indemnification.

(a) **Scope of Indemnity.** To the extent permitted by law, and except for matters arising out of the negligence (whether passive or active) or willful misconduct or gross negligence of City, or its officers, boards, commissions, agents, employees, Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, and its officers, boards, commissions, agents, employees, against any and all claims, causes of action, proceedings, and judgments for damages, arising out of the construction, maintenance and operation of its Cable System. This indemnity does not apply to: (1) the content of programming carried on any channel set aside for public, educational or governmental use, or channels leased pursuant to 47 U.S.C. Section 532, unless the Grantee was actively engaged determining the editorial content of

the program; or (2) the City's use or its designated entity's use of channels for PEG access purposes.

(b) **Duty to Give Notice and Tender Defense.** The City shall give Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding claimed to be covered by the indemnity of this Section. The City shall cooperate fully in the defense of any such action, suit or proceeding and shall not incur any expenses chargeable to Grantee without the written consent of Grantee, which consent shall not be unreasonably withheld. If the City determines that it is necessary for it to employ separate or independent counsel, the costs of such counsel shall be the responsibility of the City.

10.3. Performance Bonds.

(a) At least thirty (30) days prior to commencing any major construction, reconstruction, repair, extension or expansion of the cable system, Grantee shall provide to City a construction performance bond securing faithful performance by Grantee of the work to be done in the amount of ten percent (10%) of the estimated cost of the work. The bond shall be released upon substantial completion of the construction work to be performed in the public rights-of-way in satisfaction of the Cable System upgrade.

(b) In addition to the construction performance bond set forth in subsection (a), upon acceptance by Grantee of this Franchise, Grantee shall provide a performance bond in the amount of Two Hundred Thousand Dollars (\$200,000.00) to ensure the faithful performance of its responsibilities under this Franchise.

(c) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements required of all contractors working within the public rights-of-way provided, however, that if Grantee is performing work solely on behalf of the City, Grantee may include the cost of any normal permit fees and other permit requirements within the costs to be billed to City and City shall pay the costs of any normal permit fees and other permit requirements as part of the cost of the work to be performed by Grantee.

(d) The City may reduce the amount of the bond consistent with Grantee's performance of its responsibilities under the Franchise. After the expiration of the term of the Franchise, transfer, revocation or termination, Grantee shall be entitled to the return of the bond or portion thereof as soon as possible; provided that the City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's material violation of the Franchise.

SECTION 11 - System Description, Services and Requirements

11.1. Upgrade. The Grantee has upgraded the cable system to provide a total system capacity of at least 750 MHz as of the Effective Date of this Franchise. Nothing in this section shall be deemed to prevent Grantee from providing experimental or promotional services to some, but not all, residential Customers. These experimental or promotional services may only be provided temporarily and in no case longer than 24 months.

11.2 Service to City Governmental Facilities within the Franchise Area. The Grantee agrees to and shall provide at no cost one “Basic” tier Cable Service and one standard installation at one outlet to each public building located in the Franchise Area within 125 feet of the Grantee's Cable System. “Public buildings” are those buildings owned and occupied by the City for government purposes, but shall not include buildings owned by the City but leased to private third parties, buildings used to house jail populations, and buildings of the State and Federal government. A current list of these buildings and any exceptions are included as Exhibit C. Upon City's written request, Grantee shall provide at no cost one “Basic” tier Cable Service and one standard installation at one outlet to any newly constructed or newly occupied City owned and occupied public building located within the Franchise Area within 125 feet of Grantee’s Cable System. The City may provide for internal wiring for additional outlets within the building with the prior consent of Grantee which shall not unreasonably withheld, provided that any equipment necessary to protect Grantee’s Cable System shall be the responsibility of the City. Cable Services provided under this section may not be exhibited in public areas and shall not be used by City or any other party to sell services in, throughout or outside of such buildings. The City or the requesting public agency shall be responsible for nonstandard installations or extensions to buildings that do not fall within Grantee’s line extension policy and any additional services or equipment at Grantee’s customary charges.

11.3 Service to School Buildings. The Grantee agrees to provide at no cost one “Basic” tier Cable Service and one standard installation at one outlet to each public and accredited K-12 private school, not including “home schools” or colleges located in the Franchise Area within 125 feet of Grantee’s Cable System. Cable Services provided under this section may not be exhibited in public areas and shall not be used by schools or any other party to sell services in, throughout or outside of buildings. The school shall be responsible for nonstandard installations or extensions to buildings that do not fall within Grantee’s line extension policy, and for any additional services or equipment at Grantee’s customary charges.

11.4 Indemnification. Schools and governmental agency with such outlets in their buildings shall hold the Grantee harmless from and against any and all liability or claims arising out of the use of such outlets including but not limited to those arising from copyright liability.

11.5 Emergency Alert System. Grantee and City shall comply with all FCC rules and regulations relating to the national Emergency Alert System (EAS) or any successor system thereto and the California Emergency Alert System Plan where applicable. The City also agrees to follow the California Emergency Alert System Plan.

SECTION – 12 Institutional Network (I-Net)

12.1 I-Net. At the request of the City, Grantee agrees to assist the City in providing connectivity to the City’s I-Net (“I-Net”) within the Franchise Area. The City

shall pay Grantee for its incremental and other costs in designing, installing, and maintaining such a system including permit fees paid to the City.

Within one hundred twenty (120) days of the effective date of this Franchise, Grantee will commence connectivity of public buildings as designated in the mutually agreed upon site list attached hereto as Exhibit "A" and made a part hereof. Grantee shall complete I-Net construction within twelve (12) months, unless extraordinary circumstances are encountered. Under such circumstances, Grantee shall have an additional six (6) months to complete construction.

12.2 City I-Net Fiber Connections To City Buildings Within Franchise

Area. Grantee agrees to provide six (6) strands of fiber optic cabling for I-Net connections to each of the public buildings identified in Exhibit "A." The City shall possess an indefeasible right of use of the I-Net for non-commercial purposes during the term of this Franchise and extension this Franchise. Grantee shall at all times own in fee and maintain the aerial and underground fiber optic cable and associated facilities and equipment up to the fiber termination point at each I-Net site.

(a) **Term.** The term of the I-Net shall be coterminous with that of this Franchise. This Franchise constitutes an indefeasible right of continued use of the I-Net described herein for the term of this Franchise, provided such use is consistent with the City's obligations set forth in this Franchise.

(b) **Ownership of Facilities and Removal at Termination of Agreement.** All of the facilities installed or employed throughout the City by Grantee pursuant to this Franchise shall at all times be and remain the personal property of Grantee and shall not be considered fixtures of any property in which they occupy space. Neither the City nor any third party shall have any rights in the facilities except as expressly agreed to in writing by Grantee and the City, including, but not limited to, this Franchise. The City and its employees, agents, contractors and Qualified I-Net Users shall not use, tamper, or interfere with the facilities and shall use reasonable care not to damage the facilities. At the end of the term of the Franchise (if not renewed) Grantee shall remove or leave in place any or all of the facilities, in the same manner as provided for in the Franchise for other Grantee cable facilities. Upon any renewal of the Franchise the parties shall negotiate and address the rights of the parties with respect to the I-Net on terms that are equivalent to this Franchise with respect to the then existing facilities.

(c) **Payments.** The City or Qualified I-Net Users the City shall pay their share of the cost of constructing the I-Net upon completion of construction and verified as complete by the City. Payment shall be submitted to Grantee within thirty (30) days after receipt of invoice.

12.3 Construction, Acceptance and Termination. I-Net infrastructure will be constructed, tested and terminated by Grantee in accordance with standard practices, including but not limited to practices concerning connectorization, and the City agrees to grant Grantee all necessary rights of entry, easements and licenses to

accomplish the construction to the I-Net sites. Each fiber I-Net site connection will be passively terminated at an internal point of demarcation in a standard fiber termination panel, unless the City provides another means of termination, in which case the City will provide all necessary fiber termination equipment. At each fiber termination location the City will provide wall mount backboards and a power source for the basic termination, or such equipment as chosen by the City as a replacement. I-Net infrastructure shall meet manufacturers' specifications for cable, attenuation, splice loss and connector loss as measured by an OTDR using industry standard test methodologies.

12.4 Maintenance of Fiber. Routine maintenance on the fiber optics used for City I-Net purposes will be conducted on the same schedule as routine maintenance on Grantee's Cable System. Any repairs effected upon such fiber shall be performed by Grantee, with prior notice to the City when practicable. In emergency conditions including, but not limited to, a natural emergency resulting from a windstorm, Grantee shall provide emergency repair work on the Grantee 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 Grantee system plant on a strand or in conduit in which case Grantee fiber shall be repaired as a first priority and City utilized fiber shall be repaired as a second priority. In any such event, Grantee shall have no liability to City for such delay in I-Net service restoration. Grantee will work with the City in restoring service to its I-Net as soon as in the event an Emergency Operations Command is implemented by the City. The City understands, however, that restoring Grantee's services to its Customers is essential to providing emergency override pursuant to FCC EAS requirements. As a part of the maintenance to be performed by Grantee, the Grantee shall maintain, repair, reconstruct, remove, relocate and, as necessary, replace portions of the I-Net during the term of this Franchise and extension of this Franchise, and the City will pay Grantee for its time and material for repair, removal, relocation, and replacement.

12.5 City's Administration, Maintenance and Management of the I-Net. The City shall be responsible for the ongoing administration, maintenance and management of its I-Net facilities and equipment located at each site on the City's side of the patch panel, unless it contracts with Grantee 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 or Qualified I-Net User shall comply in all respects with applicable governmental codes, laws, ordinances or regulations.

12.6 Service Trouble Calls and Escalation. The City acknowledges that Grantee 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-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 Grantee's designated representative, and Grantee shall respond to any routine trouble call within four (4) hours of receipt of notification and shall actively begin working continuously until the problem is resolved.

12.7 City I-Net Users to Provide Electronics. Grantee shall be responsible for supplying and installing the specified fiber optic cable, for the City's use, to the specified fiber termination panel locations only, providing a pathway for I-Net communications between I-Net sites. Any "active" equipment or components or equivalent equipment, including but not limited to computers, network cards, optronics, electronics, and equipment racks, required for I-Net use shall be provided by the City's at its sole expense.

12.8 Private Network Status. The City utilized I-Net is a private communication network governed by this Franchise. The City shall use the I-Net solely for non-commercial applications and purposes, and shall not lease, resell or grant access privileges to I-Net capacity or services to a third party for any commercial purpose. The City will not attach any equipment or otherwise modify its I-Net in any way that will interfere with the signal quality and the normal operation of Grantee's Cable System. Grantee reserves the right to immediately suspend until rectified by the City, the City's rights and use of the fiber optic cabling in the event such interference should occur. The City shall be notified within 4 hours of such occurrence or within 4 hours of the next business day the City is available to receive such notification. Any action by Grantee in exercising its right to suspend the City's right to use fiber optic cabling as provided herein shall not place Grantee in violation or breach of this Franchise. The City shall not access any part of Grantee's fiber and associated facilities and equipment outside the actual I-Net site fiber termination panel. The City's and Qualified I-Net User's use of the I-Net contemplated herein shall not be deemed to qualify or consider Grantee as a common carrier, and the City agrees to limit all uses of the I-Net to protect Grantee from being deemed a common carrier, and further agrees to represent the same in the event of inquiry by any state or federal agency or entity.

In the event of an impermissible use of the I-Net or the City fails to perform or observe its obligations under this Section 12, Grantee shall provide the City with notice and opportunity to cure. The City shall have forty-five (45) days from the receipt of Grantee's written notice: (A) to respond to the Grantee, contesting the assertion of impermissible use; or (B) to cure such impermissible use; or (C) if such impermissible use cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such impermissible use and notify the Grantee of the steps being taken and a reasonable projected date that they will be completed.

If the City fails to cure the impermissible use within the time period provided above, the City may request from Grantee an additional period of thirty (30) days to reach a final resolve with Grantee on the impermissible use. If no final resolve is agreed to by the parties, Grantee may suspend the use of the I-Net upon 30 days advance notification to the City. Nothing herein shall be deemed or construed to prevent either party from pursuing their available legal remedies at law or in equity. Grantee shall reinstate the use of the I-Net upon resolution of the disputed use.

12.9 Qualified I-Net Uses/PEG Origination Uses. The I-Net may be used by the City and any Qualified I-Net User for any applications other than the

provision of Cable Service and other services offered by Grantee. 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. Notwithstanding any other provision of this Franchise, schools and libraries are Qualified I-Net Users and may provide access to Internet services to the schools, libraries and governmental entities. By way of example, permitted uses of the I-Net might include the following:

- (a) High-speed transmission of government data to and from City departments and to and from other organizations and the public;
- (b) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from schools and to and from other organizations and the public;
- (c) Providing videoconferencing among municipal and educational locations and to other locations for municipal and educational purposes;
- (d) Linking libraries and providing terminals at library locations that allow members of the public to access library databases and other remote databases;
- (e) Providing for remote origination of video programming for Access television; and
- (f) Facilitating connections for internal telephone systems, security systems and critical public entity communications applications.

12.10 Future Fiber to the I-Net.

(a) The City may identify new sites within the Franchise Area following completion of construction of the initial I-Net. Estimated costs and a network design for constructing those sites will be provided by Grantee upon written request from the City. Unless an extraordinary extension of the initial I-Net is required to serve the site, Grantee will begin construction of additional I-Net sites within one hundred twenty (120) days from the City's approval of the cost estimate and design. If an extraordinary extension is required Grantee will have an additional sixty (60) days to construct the site.

(b) Whenever Grantee extends its Cable System for its purposes, the City, during the permitting process, may request to incorporate a separate fiber cable with a strand count not to exceed six (6) strands for future I-Net purposes throughout all or portions of the length of the system extension. Grantee, in its sole discretion, may agree to such request from the City, provided that it is technically feasible to do so and the City agrees to pay Grantee or all costs associated with such request. The actual cost of additional materials and labor and any additional construction expense, as agreed to by the City based on an estimate provided by Grantee, shall be paid to Grantee after completion of construction and testing. In no event shall payment be due later than thirty

(30) days after receipt of Grantee's invoice. Grantee shall at all times own in fee and maintain the aerial and underground fiber optic cable and associated facilities and equipment up to the fiber termination point at each I-Net site.

12.11 No Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY, GRANTEE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GRANTEE SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR ANY DAMAGES SUFFERED BY THE CITY OR QUALIFIED I-NET USER ARISING OUT OF ITS PERFORMANCE UNDER THIS FRANCHISE. IN NO EVENT SHALL GRANTEE BE LIABLE TO THE CITY OR QUALIFIED I-NET USER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE.

12.12 Termination. In addition to any other rights accorded in this agreement or by law, Grantee may terminate this agreement upon sixty (60) days written notice (or such shorter period as may be required by law) to the City if Grantee is unable to continue the distribution of service because of any law, rule, regulation, judgment of any court, or any similar reason beyond the control of Grantee. Grantee shall notify the City in writing if Grantee becomes aware of the pendency of any proposed rule, proposed law or pending legal or administrative action that, if final, would preclude Grantee from continuing with the agreement and trigger termination under this section. Grantee may only terminate the agreement under this section if such termination is mandated by the change in law described above.

In the event that Grantee believes that there has been an occurrence that would mandate termination under this section, Grantee shall provide notice to the City (irrespective of whether notice has previously been given of the potential for termination) and the parties shall meet in good faith to determine if there is a modification to this agreement that will permit the I-Net to continue in operation. If this section of this agreement is terminated as provided in this section, the provisions of section 12.2(b) shall apply.

SECTION 13 - Enforcement and Termination of Franchise

13.1. Notice of Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

13.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) 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

forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and a reasonable projected date that they will be completed.

13.3. Public Hearings. In the event the Grantee fails to respond to the City's notice or in the event that the alleged default is not remedied within forty-five (45) days, or the alleged default is not remedied by the date projected by the Grantee, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City that is scheduled at a time that is no less than ten (10) business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

13.4. Enforcement. Subject to applicable federal and state law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the City may:

- (a) Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or
- (b) Secure liquidated damages for breach occurring prior to the date of the hearing should Grantee fail to cure the violation as provided in Section 13.2 but not until after notice is provided to the Grantee. Such liquidated damages shall not exceed a total of \$50.00 per day and not to exceed a total of \$50,000.00.
- (c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the following:
 - (1) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
 - (2) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and witnesses and cross-examine witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be

on the record and, at either party's request, a written transcript shall be made. The cost of the stenographer and written transcript shall be borne by the party requesting the transcript or, if both parties desire a transcript the cost shall be split between the parties. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require.

13.5. Technical Default. The City agrees that it is not its intention to subject the Grantee to liquidated damages, forfeitures or revocation of the Franchise for so-called "technical" breach(es) of the Franchise, which shall include, but not be limited, to the following:

(a) In instances or for matters where a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area and such breaches have not been repeated; or

(b) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a breach by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 14 - Miscellaneous Provisions

14.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

14.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City Manager
City of Davis
23 Russell Boulevard
Davis, California 95616

To the Grantee:

Comcast
Attention: Government Affairs
4350 Pell Drive
Sacramento, CA 95838

with a copy to:

Comcast
3443 Deer Park Drive
Stockton, CA 95219
Attn.: Government Affairs Department

14.3. Entire Agreement. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise.

14.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.5. Governing Law. This Franchise shall be deemed to be executed in the State of California, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of California, as applicable to contracts entered into and performed entirely within the State.

14.6. Modification. No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

14.7. No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

14.8. No Waiver of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee and the City may have under federal or state law unless such waiver is expressly stated herein.

14.9 Due Process. Grantee's Right to Due Process Notwithstanding anything to the contrary, Grantee shall have the right to exercise any and all legal and equitable rights and remedies available to Grantee concerning any controversy or action taken by the City against or applicable to Grantee in connection with this Franchise.

14.10 Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto, and this Section shall control over any conflict or inconsistency with Section 8B.02.0310 of the City's Municipal Code. In accordance with Section 7.3(h)1.ii of this franchise, the Grantee will provide copies of changes to the Privacy Notice.

IN WITNESS WHEREOF, this Franchise has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

City of Davis

Bette Racki
City Clerk

By: _____
Ruth Asumdson
Mayor

Approved as to Form:

Harriet Steiner
City Attorney

Attest:

Comcast of California X, Inc.

By: _____
Rick Germano
Regional Vice President, Operations