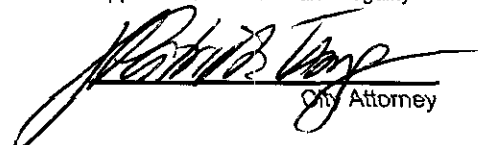


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OAKLAND


City Attorney

2005 SEP 15 11 42 AM '05 OAKLAND CITY COUNCIL

ORDINANCE No. 12730 C.M.S.

AN ORDINANCE OF THE CITY OF OAKLAND GRANTING A THIRTEEN YEAR CABLE FRANCHISE TO COMCAST OF CALIFORNIA/COLORADO, LLC TO CONSTRUCT AND OPERATE A CABLE SYSTEM TO PROVIDE CABLE SERVICE WITHIN THE CITY OF OAKLAND; ESTABLISHING THE TERMS AND CONDITIONS OF THE FRANCHISE GRANT; AND ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE.

WHEREAS, the fifteen year cable franchise issued by the City of Oakland in 1983 has expired and has been continued by agreement of the parties until negotiation and acceptance of a new franchise; and

WHEREAS, Comcast of California/Colorado, LLC ("Franchisee") which at the time of this Ordinance is under the ultimate ownership and control of Comcast Corporation, has been operating the cable franchise in Oakland since 2002, when the franchise was transferred to Comcast from AT&T Cable pursuant to the process established under federal law for the change of control of a cable franchise; and

WHEREAS, the Franchisee has requested a renewed franchise to construct, operate, maintain, upgrade and repair a Cable System in, over, along and under City roads and appropriate Rights-of-Way in the City of Oakland; and

WHEREAS, the City has conducted hearings to identify the future cable-related needs and interests of the community, to consider the financial, technical, and legal qualifications of Franchisee and to determine whether Franchisee's plans for constructing and operating its Cable System are adequate; and

WHEREAS, the City has relied on Franchisee's written representations and has considered all information Franchisee has presented to it; and

WHEREAS, the City wishes to promote the availability of high-quality and diverse services to the City residents, businesses, the City, and other public institutions; and to promote the availability of diverse information resources to the community, including through the development of advanced systems that can support public, educational, and governmental

programming and high-speed access to the Internet; and

WHEREAS, the Franchisee is willing to accept the City's conditions on the franchise grant and has agreed to construct a new cable system that provides opportunities to the public to obtain access to communications facilities for the purpose of disseminating and receiving information, to take advantage of opportunities presented by cable and open video systems to provide for more open government, to enhance educational opportunities throughout the community and provide opportunities for building a stronger community and to allow flexibility to respond to changes in technology, subscriber interests, and competitive factors that will affect the health, welfare, and well-being of the community; and

WHEREAS, the Oakland City Council, having considered the interests proposed and advanced, has found that the grant of the Franchise requested, subject to conditions, is in the public interest; and

WHEREAS, the Council finds this ordinance is subject to exemptions from the California Environmental Quality Act (CEQA), including without limitation, CEQA Guidelines sections 15301; 15302; and 15305:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKLAND:

Pursuant to Oakland Municipal Code, Chapter 5.16, ("Cable Ordinance") as amended from time to time, and based on all information available to the Council, including but not limited to the findings contained in this Ordinance and testimony provided at the Council hearing on this matter, the City Council hereby grants a cable television franchise to Franchisee as follows:

**"GRANT BY THE CITY OF OAKLAND OF A
CABLE FRANCHISE TO COMCAST OF
CALIFORNIA/COLORADO, LLC**

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Section 1. Definitions.

Except as otherwise provided herein, the definitions and word usage set forth in the Cable Ordinance in effect on the date on which this Ordinance is adopted shall govern this Franchise. References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official, whether by delegation, succession or otherwise. References to “Applicable Laws” include Federal, State and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws include laws now in effect, as the same may be amended from time to time, and new laws, but only to the extent that such amendments or new laws constitute lawful amendments to this Franchise. In no event shall the City be deemed to have the authority to unilaterally amend the terms of this Franchise by its adoption of any ordinance or regulation after the effective date of this Franchise. Nothing herein shall preclude Franchisee from challenging the applicability or enforceability of any such amendment or new law. In addition, the following definitions shall apply:

- 1.1. Access, PEG Access, or PEG Use. The availability of the Cable System, including any institutional network to the extent permitted by Applicable Law, for Public, Education or Government (“PEG”) use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers for the following purposes:
 - 1.1.1. Public Access or Public Use means Access where organizations, groups, or individual members of the general public are the designated programmers or users having editorial control over their programming;
 - 1.1.2. Education Access or Education Use means Access where Schools are the designated programmers or users having editorial control over their programming and other permitted communications;
 - 1.1.3. Government Access or Government Use means Access where government institutions or their designees are the designated programmers or users having editorial control over their programming and other permitted communications;
- 1.2. Cable System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - 1.2.1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

- 1.2.2. A facility that serves Subscribers without using, or connecting to a facility that uses, any public right-of-way within the City;
- 1.2.3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
- 1.2.4. Any facilities of any electric utility used solely for operating its electric utility systems.
- 1.3. Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a standard NTSC broadcast video programming service whether in an analog or digital format. This definition does not restrict the use of any Channel to the transmission of analog television signals.
- 1.4. Designated Access Provider. Any non-commercial entity or entities designated by the City or the Oakland Unified School District to manage some or all of the PEG Channels, facilities and equipment.
- 1.5. Franchise Area. All parts of the City now existing or hereafter annexed.
- 1.6. Franchise. This Ordinance and any amendments, exhibits, or appendices hereto that are accepted and agreed to by the Franchisee.
- 1.7. Line Extension. The extension of plant required to bring the Cable System to the point nearest the potential Subscriber's property line on the public Right-of-Way and from which Franchisee can economically provide Cable Service to the potential Subscriber.
- 1.8. Standard Drop. A connection extending no more than 125 feet from the potential Subscriber's demarcation point to the nearest point on the Cable System from which Franchisee can provide Cable Service to that Subscriber.
- 1.9. PEG Channel. Any channel capacity on Franchisee's Cable System set aside by a Franchisee for PEG Use, including by way of example and not limitation, a digital PEG Channel or an analog PEG Channel.
- 1.10. School. Any publicly funded charter schools, or primary or secondary school (K-12) located within the Franchise Area.

Section 2. Grant of Franchise; Limits and Reservations.

2.1. Grant, Term and Effective Date.

2.1.1. A Cable System Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Ordinance and the Cable Ordinance. Subject to the conditions set forth in this Franchise, this Franchise grants the right to construct, operate, maintain, upgrade and repair a Cable System in, over, along and under City's Public Rights-of-Way within a Franchise Area in the City of Oakland for the purpose of providing Cable Service, commencing on the effective date of the Franchise for a period of thirteen (13) years, unless terminated prior to that date in accordance with the Franchise or Applicable Law.

2.1.2. The grant shall become effective 30 days after second reading and final passage of this Ordinance except as provided in Section 2.1.3.

2.1.3. The grant shall not become effective unless and until Franchisee has (a) filed an unconditional acceptance of the grant made by this Ordinance substantially in the form in Schedule 2.1.3; and (b) made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of the Franchise. If Franchisee fails to satisfy these obligations within 30 days of the effective date of this Ordinance, the City may revoke the Franchise grant.

2.2. Relation to Other Provisions of Law.

2.2.1. The Franchise issued by the City is subject to, and Franchisee must exercise all rights granted to it in accordance with Applicable Law. This Franchise does not confer rights upon the Franchisee other than as expressly provided herein, or as expressly provided under other Applicable Law. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in the Franchise. Subject to the foregoing, Franchisee shall provide the Cable Services required hereunder throughout the Franchise Term and any holdover term, and shall make any Cable Services it provides over its Cable System available as provided in Section 5.1 below.

2.2.2. This Franchise and all rights granted under the Franchise are subject to the City's police powers to adopt and enforce general ordinances necessary to the health, safety and welfare of the public. However, once the Franchise grant is effective, this Franchise is a contract and except as to those changes which are the result of the City's legitimate exercise of its police powers, and such other powers as the City may enforce under applicable law, neither

party may take any unilateral action which materially changes the explicit mutual promises in this contract.

- 2.2.3. The Franchise shall be interpreted to convey limited rights and interests only as to those Public Rights-of-Way in which the City has an actual interest and only as set out in this Franchise. The grant of the Franchise is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee any interest in any particular location within the Rights-of-Way except as provided by State or Federal law. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on, construct, operate or repair facilities or systems in, or regulate or control the use of the Rights-of-Way. Nor does this provision create a contractual restriction of any rights regarding use of the Cable System in the Public Rights-of-Way which otherwise pass to the Franchisee by operation of law.
- 2.2.4. The Franchise is not in lieu of any other required permit or authorization. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or the Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with Applicable Law governing the construction, operation or repair of the Cable System.
- 2.2.5. Construction, operation, or repair of a Cable Communications System shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. The City shall not unreasonably withhold, delay or condition its review or approval of any permit application, or the issuance of any permit. Upon order of City, any work and/or construction undertaken that is not completed in compliance with City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable time set forth by City. Franchisee shall pay the City's permit fees for construction projects undertaken in the course of major or minor upgrades, installation of fiber optics, minor and major repair, as well as for permit review and processing to the extent they are fees of general applicability for doing construction in the public rights-of-way. In addition, Franchisee shall pay the City's standard inspection fees that are fees of general applicability for doing construction in the public rights-of-way.
- 2.2.6. Nothing in this Section 2.2 prevents Franchisee from raising a claim that a fee, charge, tax or other imposition is a cable franchise fee under federal or state law, or subject to federal or state franchise fee limitations or is otherwise unlawful.

2.3. Interpretation and Conflicts.

2.3.1. In the event of a conflict between the Cable Ordinance as it existed on the effective date of this Franchise, and this Franchise as of its effective date, this Franchise shall control. However, although the exercise of rights hereunder is subject to the Cable Ordinance, the Cable Ordinance is not a contract. Nothing herein prevents the Franchisee from challenging a particular amendment to the Cable Ordinance as an impairment of this Franchise.

2.3.2. This Franchise is only for the provision of Cable Services. It shall not act as a bar or in any respect prevent imposition of additional or different conditions, including additional fees related to the provision of, or the use or occupancy of the Rights-of-Way to provide, non-Cable Services, if any can be lawfully required. The City acknowledges that the Franchisee is providing non-Cable Services over the Cable System. Nothing in this section is intended to expand or contract the City's rights to regulate non-Cable Services. Both the City and the Franchisee reserve all legal rights with respect to the issue of the provision of non-Cable Services.

2.4. Affiliates Must Comply. Any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the Franchise to the extent it operates any portion of the Cable System. The Franchisee shall be fully liable for any act or omission of an Affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Franchise or a violation of the Cable Ordinance, as if the act or omission was the Franchisee's act or omission.

2.5. Relation to Prior Franchise. As of the effective date of this Franchise, the franchise originally granted to and accepted by Lenfest West, Inc. in December, 1983 by Oakland Ordinance 10399, is superseded and of no further force and effect. The City hereby releases the Franchisee and each of its Affiliates from any and all claims the City has, has had or may have, and from any and all liability under the prior franchise, except any claims for failure to pay franchise fees or other sums due thereunder, and any claims for physical damage or repair to any Person or property arising from construction activities related to the Franchisee's rebuild of the cable system.

2.6. Validity. Both parties waive any claim or defense that any provision of this Franchise or the Cable Ordinance as it existed on the date this Franchise was accepted is unenforceable or otherwise invalid or void as of the effective date hereof. Neither party waives the right to challenge the validity of this Franchise or the Cable Ordinance or any provision thereof under any Applicable Law,

including any subsequent interpretation of any existing Applicable Law by the FCC or a court of competent jurisdiction.

2.7. Effect of Franchise Acceptance. By accepting the Franchise, the Franchisee:

- 2.7.1. Acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- 2.7.2. Accepts and agrees to comply with each and every provision of this Franchise;
- 2.7.3. Agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

2.8. Franchisee Bears Its Own Costs. Unless otherwise provided in this Franchise, all acts that the Franchisee is required to perform under this Franchise or the Cable Ordinance must be performed at its own expense; provided that, nothing contained in this Section 2.8 is intended to restrict or limit Franchisee's rights under Applicable Law to offset, assess, recover or pass through costs to the City, third parties or Subscribers.

2.9. No Waiver.

- 2.9.1. No course of dealing between the Franchisee and the City, or any delay on the part of the City or Franchisee in exercising any rights, shall operate as a waiver of any such rights with respect to any future act, omission or conduct, except to the extent expressly waived; provided that, nothing in this section is intended to affect the operation of any applicable statute of limitations, or alter any renewal protections afforded Franchisee by 47 U.S.C. §546(d).
- 2.9.2. Waiver of a breach of this Franchise is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2.10. No Recourse. Without limiting such immunities as the City or other Persons may have under Applicable Law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Rights-of-Way or other public property, except as may result from the City's or such other persons intentional or willful misconduct.

- 2.11. Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares that any provision of this Franchise is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to enter into good faith negotiations to agree on a modification of this franchise within 60 days of written notice by either party. If the parties are unable to agree on a modification, either party, upon 30 days written notice, may resort to litigation to seek any available equitable relief.
- 2.12. Effect of Change in Law. Subject to Section 2.11, in the event that State or Federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt such provision. In the event such State or Federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

Section 3. Transfers.

- 3.1. No Transfer Without City Approval. Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No Transfer may occur without the prior consent of the City. An Application for a Transfer, containing all information required under Applicable Law, must be filed before a request for a Transfer will be considered by the City.
- 3.2. Application for Transfer To Be Considered In Accordance With Cable Ordinance. Without limiting any provision of Section 3.1 of this Franchise, an Application for a Transfer will be considered in accordance with the standards set forth in the Cable Ordinance, subject to applicable federal law. Requests for approval of a Transfer will not be unreasonably denied.

Section 4. Franchise Fee.

- 4.1. Payment to City. The Franchisee shall pay the City a franchise fee in an amount equal to five percent (5%) of Gross Revenues.
- 4.2. Bundled Services. In the event that Franchisee offers Cable Services at discounted rates, Franchisee may not allocate the discounts for bundled services

in a way that unlawfully allocates the Cable Services portion of the discounted rate for purposes of calculating franchise fees.

- 4.3. Regional Advertising Revenue. Franchisee's Gross Revenues shall include revenues from any Affiliate that is engaged in the business of selling local and regional advertising on Franchisee's Cable System ("Regional Ad Affiliate"). For purposes of computing Gross Revenues, the advertising revenues included shall be the greater of: (1) the amount of "net advertising revenues" actually received by Franchisee from such Regional Ad Affiliate for selling advertising on the Cable System in the Franchise Area, or (2) 50% (the "Discount Percentage") of the full "Subscriber prorated amount" of "net advertising revenue" received by the Regional Ad Affiliate for advertising on Franchisee's Cable System. "Net advertising revenue" shall exclude all fees, commissions and similar charges paid for placement of any advertising. The "Subscriber prorated amount" shall be a fraction, the numerator of which is the number of Franchisee's Subscribers within the Franchise Area, and the denominator of which is the total number of Subscribers on the systems carrying the Regional Ad Affiliate advertisement.
- 4.4. Not in Lieu of Any Other Assessments, Tax or Fee. The franchise fee is in addition to all other fees, assessments, taxes or payments that the Franchisee may be required to pay under any Federal, State, or local law, subject to any limitations set forth under Applicable Law, including, but not limited to, 47 U.S.C. § 542.
- 4.5. Payments. Franchise fees shall be paid quarterly in accordance with the Cable Ordinance, and late payments shall be subject to the additional charges set forth in the Cable Ordinance.
- 4.6. No Accord or Satisfaction. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Franchisee.
- 4.7. Payment Records. The City Auditor, with 60 days written notice may inspect and audit such books and records as are reasonably required to determine whether Gross Revenues and franchise fees have been accurately computed and paid, subject to its agreement to maintain all such information strictly confidential and to cooperate with Franchisee with respect to any review of such confidential information. Franchisee shall make such books and records available at a location within 40 miles of the City. In addition to paying any franchise fees owed plus interest Franchisee shall reimburse the City all costs and expenses incurred by the City Auditor or a third party in performing the audit, up to a total of \$ 5,000 per audit year; provided that (i) no more than one (1) such audit may be performed in any 36 month period, and (ii) to the extent that any costs reimbursed are for internal costs of the City Auditor, the City Auditor shall certify that it has independent authority to assess such costs upon all other franchisees operating in

the City, and that other franchisees operating in the City have been assessed internal audit costs and have paid such assessments during the previous three year period. The Franchisee agrees to provide the City Auditor all requested information required by the City to conduct the audit within 60 days of receipt of the written notice, or within such longer period as the parties may determine. Franchisee shall pay the additional costs of the audit resulting from delay caused by Franchisee in providing any information requested by the City pursuant to this Section 4.7.

- 4.8. Consumer Disclosure. The amount of a Subscriber's total bill assessed as a franchise fee may be listed as a separate line item.

Section 5. Scope of Service.

- 5.1. Provision of Service. The Franchisee shall provide Cable Service to any lawful residential dwelling unit located within the Franchise Area as provided below:

- 5.1.1. upon request of a potential Subscriber, except where it is legally prohibited from doing so,
- 5.1.2. on a month-to-month basis, except as not prohibited by applicable federal or state Law,
- 5.1.3. except as provided in Section 5.1.3.1 and 5.1.3.2 below, for no more than the prevailing installation charge for a Standard Drop, and without charging for any line extension that may be required, to any potential subscriber residing in a lawful dwelling unit in the Franchise Area that exists as of November 1, 2003.

5.1.3.1. Aerial Drops: Franchisee shall provide an aerial drop of up to 150' at no cost to any resident requesting service. Franchisee may assess to such resident the cost of the drop exceeding 150'.

5.1.3.2. Underground Drops: Franchisee shall provide an underground drop of up to 150' at no cost to any resident requesting service in any area where facilities have been placed underground. Franchisee may assess to such resident the cost of the drop exceeding 150'. Franchisee also may assess to such resident any cost to install the drop from the end of the public right-of-way on private property to the exterior wall of the residence in excess of \$1,000.00.

- 5.1.4. All residential dwelling units built prior to November 1, 2003 are eligible for provision of service pursuant to Sections 5.1.3.1 and 5.1.3.2 of this Franchise. For new residential dwelling units constructed after November 1, 2003, Franchisee may charge a pro-rata share of the cost of any necessary line extension. Without limiting the foregoing, Franchisee may not charge for crossing a Right-of-Way to provide service, except for good cause shown to the City. The Franchisee shall have the burden of proving that it cannot legally provide service to a particular location.
- 5.1.5. Upon the request of the developer of a new subdivision or Multiple Dwelling Unit (“MDU”) constructed after the completion of the Cable System rebuild, that satisfies the minimum density requirements set forth in Section 5.1.6, the Franchisee shall extend its Cable System into the subdivision or MDU during construction of such subdivision or complex at no charge to the developer, so long as the developer agrees that Franchisee may offer service for not less than a five year period to any person requesting service within the subdivision or complex; provided that where construction will be underground, this sentence will not apply unless the developer provides ninety (90) days advance notice so that the Franchisee can participate in joint trenching.
- 5.1.6. Franchisee shall not be required to serve any new subdivision or apartment complex constructed after November 1, 2003, without charging for any Line Extension required, where the density is less than 35 residential dwelling units per mile in underground areas and 25 residential dwelling units per mile in aerial areas.
- 5.2. Economic Redlining. Franchisee shall extend its Cable System to low income areas at least as quickly as it is extended to higher income areas.
- 5.3. Drops; prevailing charges. Except as lawful rate orders may otherwise provide, and except with respect to those locations which are entitled to free drops:
 - 5.3.1. The “then-prevailing installation charge” shall be the lowest lawful charge that applies at any given time to a particular class of users.
 - 5.3.2. Where the drop to a Subscriber is not a Standard Drop, in addition to the then-prevailing installation charge for Standard Drops, Franchisee may charge the Subscriber the difference between Franchisee’s cost of installing a Standard Drop and the actual additional cost of installing a drop from the nearest tap, or if closer, the point to which Franchisee could be required to extend its Cable System.
- 5.4. Subscriber Option for Underground Drops. Where the Franchisee may locate a drop above ground, but a potential Subscriber requests that the cable drop be placed underground, the Franchisee shall locate the drop underground, but in

addition to the then-prevailing installation charge may charge the Subscriber for the actual difference in cost of installing the underground drop, rather than an aerial drop. An existing Subscriber may require the Franchisee to relocate an existing aerial drop underground, and Franchisee may charge the requesting Subscriber for the cost of relocating the drop underground.

5.5. System Construction Schedule.

- 5.5.1. The Cable System rebuild required by Section 7 must be entirely completed within forty-eight (48) months of the effective date of this Franchise. For purposes of this Section 5.5, "Completion" means activation, in accordance with Section 7, of all nodes and hubs, and passing of all known and existing lawful residential dwelling units within the City as of November 1, 2003.
- 5.5.2. Franchisee's rebuild shall pass seventy percent (70%) of the existing lawful dwelling units known and existing as of the effective date of this Franchise in the City within 36 months of the effective date of this Franchise. The City acknowledges that Franchisee has satisfied the requirements of this Section 5.5.2.
 - 5.5.2.1. Within 30 days of the effective date of this Franchise, the Franchisee shall provide the City with a firm number of the actual lawful dwelling units within the City, for purposes of measuring compliance with Sections 5.5.1 and 5.5.2.
- 5.5.3. Within 30 days of the effective date of this Franchise, the Franchisee shall submit to the City tentative plans showing, at a minimum, all actual and anticipated hubs, nodes and boundaries in relationship to each Council district, and a tentative construction timetable demonstrating Franchisee's plan for meeting the completion deadlines specified in Sections 5.5.1 and 5.5.2.
- 5.5.4. At the end of each calendar quarter through the completion of the rebuild, the Franchisee shall submit to the City a report indicating the number homes passed and activated, by node and hub. The Franchisee shall notify the subscribers in the segment to be activated of the channel line-up changes and/or additional services to be offered approximately 30 days prior to activation, and shall provide the City with a copy of the form of such notice.
- 5.5.5. Franchisee shall submit as-builts to the City within 30 days after completion of each hub during the rebuild. For purposes of this Section 5.5.5, an "as-built" is a detailed map showing, to scale, the Franchisee's facilities tied to property line, curb line monuments and all addresses of properties, in an electronic format compatible with City software and in hard copy. Franchisee shall submit a report accompanying each as-built certifying that

Franchisee's plant has passed all known and existing legal residences in the area covered in the as-built, and listing the address of each residence passed by street and block number.

- 5.5.6. The City shall reserve the right to review, verify and certify all as-builts and reports submitted by the Franchisee. Upon the City's request for additional information, the Franchisee shall submit the requested information within twenty (20) days.
- 5.5.7. Franchisee shall continue to attend bi-weekly meetings with the City to exchange information and to discuss issues surrounding the Cable System rebuild, including the I-NET construction.
- 5.6. Minimum Conditions. The construction, operation, upgrade, maintenance and repair of the Cable System will be in accordance with all Applicable Laws. At a minimum, Franchisee shall comply with the IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes in effect at the time such portion of the Cable System was installed or most recently upgraded or repaired. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of Federal, State or local law). Franchisee will employ reasonable care at all times, within the meaning of Applicable Law, and will install and maintain in use commonly accepted methods and/or devices to reduce the likelihood of damage, injury, or nuisance to the public. The construction, operation, upgrade, maintenance and repair of the Cable System shall be performed by experienced and properly trained maintenance and construction personnel. In no event shall Franchisee be liable for damage caused by any third party (other than contractors and other third parties affiliated with Franchisee) including, without limitation, any subscriber, provided that Franchisee shall be required to repair such facilities upon discovery by Franchisee or upon notice from the City. If at any time during the term the City believes that facilities are not in compliance with applicable standards and safety codes, it shall notify Franchisee and provide a reasonable period of time for the repair of non-compliant facilities.
- 5.7. Compliance with Laws. Franchisee must install, locate, relocate and remove its Cable System in accordance with the Franchise, the Cable Ordinance and all other Applicable Laws. Franchisee shall not place or maintain its Cable System, including any poles or other structures, in Public Rights-of-Way or on private property except in strict accordance with the requirements of the Franchise, the Cable Ordinance and all other Applicable Laws.
- 5.8. Relocation for Government. Except as provided below, Franchisee will at its cost protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any governmental purpose.

5.8.1. Except in an emergency, the City will provide written notice describing where the work is to be performed at least two (2) weeks before the deadline for performing the work; Franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

5.9. Abandonment. The Franchisee may abandon any property in Public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Administrator, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of Public Rights-of-Way and facilities in Public Rights-of-Way will be adversely affected. Abandonment shall be in a manner acceptable to the City Administrator.

5.10. Potholing. Franchisee must bear costs of potholing for any City project (whether undertaken by the City alone, or jointly). Within thirty (30) days after receiving the City's written request, unless the City agrees otherwise, Franchisee will expose its subsurface Cable System facilities by potholing (digging a test hole) to a depth of one (1) foot below the bottom of such facilities.

Section 6. Utility Relocations.

6.1. Generally. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person authorized to use Public Rights-of-Way, Franchisee will, after fifteen (15) days' advance written notice, take action to effect the necessary changes requested by such Person.

6.1.1. Unless (i) the matter is governed by a valid contract with Franchisee or under Applicable Law, or (ii) the Franchisee's Cable System was improperly installed and if installed properly, the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by the Person requesting the removal, relaying, or relocation, and Franchisee will have the right to estimate such costs and require payment of the same in advance.

6.1.2. The City may direct Franchisee to remove, relay, or relocate its facilities pending resolution of a dispute as to responsibility for costs upon posting of a bond by the Person requesting such removal, relaying or relocation in the amount of Franchisee's estimated costs.

6.2. Emergencies. In an emergency, or where a Cable System creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of that Cable System without prior

notice; however, the City will make reasonable efforts to provide prior notice to Franchisee and to permit Franchisee to supervise or perform such work.

- 6.3. Permit Holders. Upon the request of a Person holding a valid permit, a Franchisee will temporarily raise or lower its wires to allow buildings or other objects to be moved. The requesting Person will pay for any expense associated with such temporary removal or raising or lowering of wires. Franchisee will have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. The Franchisee will be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes.
- 6.4. Repair of Disturbances and Damage. The Franchisee shall, within 30 days of receipt of notice from the City, repair any disturbance or damage to public property or private property caused by Franchisee's construction, operation or repair of the Cable System promptly and to a condition as good or better than existed before such disturbance or damage. Franchisee must repair all disturbance or damage to the Public Rights-of-way to a condition consistent with City standards that are applicable to all Persons performing construction or excavation in the Public Rights-of-way, as such standards and conditions may be lawfully applied. Without limiting the foregoing, or provisions of Section 5.9, Franchisee agrees to compensate any entity whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation or repair of the Cable System where the property is not fully restored by Franchisee to a condition as good or better than existed before the damage.
- 6.5. Pole Attachments and Conduits. Franchisee will provide free and useable access to its poles and conduits to the City for PEG (including I-NET) Uses. All wires and attachments must comply with all applicable federal, state, and local laws and standards. If any such attachments cause an increase in Franchisee's pole attachment rates or fees, City shall reimburse Franchisee for such increase.
- 6.6. Notice of Use. Franchisee will notify the City when it enters into an agreement for use of its poles and conduits. Copies of agreements for use of Franchisee's conduits or poles in Public Rights-of-Way will be made available for review upon the City's request.
- 6.7. Contractors and Subcontractors. Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the Cable System is properly licensed under laws of the State and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise and Applicable Law if the work were performed by Franchisee. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise and Applicable Law, shall be responsible for all acts or omissions of contractors or subcontractors, and shall be

responsible for promptly correcting acts or omissions by any contractor or subcontractor. This section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise and Applicable Law.

Section 7. System Facilities, Equipment and Services.

7.1. General System Design.

- 7.1.1. Franchisee shall rebuild its Cable System so that all active components on the Subscriber Network have a capacity of no less than 860 MHz and all passive components have a capacity of no less than 1 GHz.
- 7.1.2. Equipment and facilities should be installed so that the rebuilt Cable System is capable of transporting at least one hundred fifty (150) video programming channels (which could be a combination of digital or analog channels).
- 7.1.3. The Cable System rebuild must use a fiber-to-the-neighborhood node design, or a design that brings fiber closer to the Subscriber location. A node may serve a maximum of 1,200 dwelling units may be passed by the distribution system fed from each node. The Cable System must be designed so that, it can be easily segmented without substantial additional construction so that a maximum of 300 dwelling units may be passed by the distribution system fed from each node.
- 7.1.4. Upon completion of the upgrade there must be reliable, continuous, auto-start back-up power at the headend. Standby power shall be provided to all active components of the Cable System to sustain their individual loads for a *minimum backup capability of three (3) hours*.
- 7.1.5. The Cable System must include the facilities and equipment required to provide full system status monitoring of power supplies at the nodes as activated. The status monitoring equipment must, at a minimum, permit the Franchisee to identify where and when power outages affecting the node have occurred, and when and where the Cable System has switched to battery back-up power supplies.
- 7.1.6. In connection with the upgrade, Franchisee must install and maintain facilities and equipment (including but not limited to modulators, antennae, amplifiers and other electronics) that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the system shall include components such that a signal received at the headend in color may be received by a

Subscriber in color, and a stereo signal in stereo). Without limiting the foregoing, facilities and equipment should be installed and operated so that Subscribers can receive closed captioning and secondary audio.

- 7.1.7. Franchisee shall comply with all Applicable Laws concerning system compatibility with consumer electronics equipment.
- 7.1.8. Upon completion of the Cable System rebuild, the system facilities and equipment must be capable of continuous twenty-four hour daily operation, without severe material degradation of signal, except during extremely inclement weather, or immediately following extraordinary storms which adversely affect utility services or which damage major Cable System components.
- 7.1.9. The Cable System, as rebuilt, must utilize facilities and equipment generally used in high-quality, reliable, systems of similar design (except where inconsistent with the specific requirements of the Franchise). Upon completion of the upgrade, the Cable System must have the level of reliability required to support a high-quality, broadband information service.
- 7.1.10. In connection with the Cable System rebuild, the Franchisee shall replace all parts of its existing network, including drops, splitters, and other equipment that do not conform to the design requirements, and any other portion of the network that could materially diminish the performance or reliability of the Cable System. To the extent that portions are retained, those portions need to be visually inspected and fully tested where possible; any corroded parts or parts showing excessive wear, or parts that do not perform to manufacturer's specifications shall be replaced.
- 7.1.11. Upon completion of the upgrade, the Cable System must provide two way activated capability.
- 7.2. Transmission Technologies. Franchisee may use any transmission technology (as that term is defined in federal law), provided that the Cable System is designed and rebuilt so that it will have characteristics that in all relevant respects meet or exceed the characteristics of the Cable System described in Section 7.1. If Franchisee does not rebuild the Cable System as required by Section 7.1, the City may declare a material breach of the Franchise, and, in addition to exercising any other remedy available to it, order the Franchisee to further rebuild the Cable System by a time specified by the City, and require such cash securities as are necessary to ensure the work is timely performed.
- 7.3. Emergency Alert System. Franchisee must install and maintain an emergency alert system in accordance with applicable federal and state law that can override audio and video on all Channels to provide an emergency alert to all Subscribers in the City. The City and the Franchisee shall meet periodically to discuss

operational procedures for use of the emergency alert system. As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system. It should be integrated to the extent reasonably possible with other emergency alert systems the Franchisee is required to provide under applicable Federal and State law.

- 7.4. Parental Controls. In addition to satisfying any obligations that it has under Applicable Law to provide parental control devices, or otherwise block programming on the Cable System, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to discourage children from ordering programming without parental consent.
- 7.5. Support Equipment and Facilities.
 - 7.5.1. Franchisee must have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and the trained and skilled personnel required so that the Cable System complies with each and every requirement of Applicable Law, including applicable technical standards, maintenance standards and requirements for responding to system outages. This includes the facilities, equipment and staff required to: (i) properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and (ii) be able to respond to customer complaints and resolve system problems.
 - 7.5.2. The Franchisee must install and maintain equipment necessary to measure its performance with applicable customer services standards.
 - 7.5.3. Franchisee must ensure that its headend has adequate space, and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under the Franchise.
- 7.6. Technical Standards. The Cable System must meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, provided that, nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.
- 7.7. Future Upgrades. Franchisee shall make such commercially practicable improvements to its Cable System as Franchisee, in its discretion, deems reasonable to provide Subscribers advanced cable services that may develop during the term of this Franchise and become available in communities in the San Francisco Bay Area with population over 200,000. In determining whether and/or when to deploy such advanced cable services Franchisee may consider a variety of factors, including, without limitation, the then current technical configuration and performance of the Cable System, the cost of upgrade, relative demand for services, penetration levels within the City, the outstanding term remaining under

the Franchise, availability of funding from any parent entity or third party, and anticipated plans for deployment of such cable services in the San Francisco Bay Area.

7.8. Tests during Construction.

7.8.1. Franchisee shall conduct acceptance tests on each newly constructed or upgraded segment prior to Subscriber connection or activation.

7.8.2. Franchisee shall test random samples of components before installation.

7.8.3. Upon written request, Franchisee shall prepare reports sufficient to show the testing required in Sections 7.8.1 and 7.8.2 have been completed, and shall make these reports available to the City for review within 30 days of such request.

7.9. System Maintenance.

7.9.1. Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Subscriber's service problems, only after a minimum of forty-eight hours' prior notice to Subscribers and the City of the anticipated service interruption; provided, however, that the minimum prior notice period shall be twenty-four hours, rather than forty-eight hours, for planned maintenance that (i) is not intended to require more than two hours' interruption of service; and (ii) occurs between the hours of 1:00 a.m. and 6:00 a.m.

7.9.2. Franchisee shall adopt comprehensive maintenance guidelines which shall include procedures for preventative maintenance. Franchisee shall maintain a copy of comprehensive maintenance guidelines, and upon request, permit the City to review the same.

7.9.3. Inspection and Testing. The City shall have the right to inspect the Cable System during and after the upgrade to ensure compliance with the Cable Ordinance, this Franchise, and applicable provisions of local, State and Federal law. The City (i) may require the Franchisee to perform tests based on the City's investigation of Cable System performance or on Subscriber complaints; and (ii) may require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under Applicable Law.

7.10. FCC-Mandated Testing. Franchisee shall notify the City in advance of conducting any Proof-of-Performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results

and any supporting documentation regarding the tests and testing equipment and procedures within 30 days of the test.

Section 8. I-NET.

- 8.1. Institutional Network. Franchisee will construct an institutional network as part of the Cable System rebuild. The specifications, terms and conditions for the I-Net are as described in the I-Net Agreement, attached as Schedule 8.1.

Section 9. Interconnections.

- 9.1. Generally. In the event another Cable Communications System in the City cannot obtain PEG programming by installation of a direct feed, the City may require Franchisee to interconnect temporarily with such other Cable Communications Systems in the City for the sole purpose of facilitating the delivery of PEG programming. Franchisee shall be entitled to assess reasonable rates for such facilities and service. Such temporary links shall be for a period of not more than 2 years, subject to such other reasonable terms and conditions as the Franchisee may determine.
- 9.2. Relief from Obligations. Franchisee may obtain relief from an interconnection requirement where Franchisee demonstrates that it is technically infeasible or commercially impracticable to perform, or that the other Cable Communications System can access PEG programming through reasonable alternate means. Franchisee may also obtain relief from the interconnection requirement where the interconnection requires a contract between the Franchisee and a third party, and the third party and Franchisee are unable to agree upon interconnection terms. In such a case, Franchisee must promptly notify the City that it has been unable to reach an interconnection agreement and must provide to the City in writing a detailed explanation of the reasons why an agreement could not be reached.

Section 10. Subscriber Network Channels and Facilities for PEG Use.

- 10.1. Initial Government Access Channel Dedicated to the City. Upon the effective date of this Franchise, Franchisee shall continue to make one (1) full-time downstream analog video Channel, available exclusively for Government Access use to be programmed at the sole discretion of the City.
- 10.2. Initial Public Access Channel Dedicated to the City. Within three (3) months of receipt of a written request by the City, another full-time downstream analog video Channel will be provided for Public Access use; provided that, prior to making such request the City Administrator shall meet with Franchisee to review and consider whether the needs of the Public Access community reasonably could be met through alternative means, such as sharing capacity on other existing PEG channels, or use of other broadband distribution technologies, or use of a digital

video channel. The City may, in its discretion, delegate to a non-profit entity the authority to program and manage Public Access.

- 10.3. Initial Educational Access Channels Dedicated for the Joint Use of the City and City Schools. Franchisee shall continue to dedicate and make available to the City three (3) full time downstream analog video channels for Educational Access Use, which the City has elected to be programmed at the sole discretion of the governing authority of the Oakland Unified School District.
 - 10.3.1. The governing authority of the Oakland Unified School District shall direct the use of the Channels dedicated to City Schools. The governing authority of the Oakland Unified School District shall continue to cooperate with other school districts or educational institutions serving residents of the City in order to fully program the channels allocated pursuant to Section 10.3. Underused Channels may be utilized by the Franchisee pursuant to Section 10.7.
- 10.4. Additional PEG Channels. Franchisee shall provide additional downstream analog PEG Access Channels to be programmed at the sole discretion of the City or the governing authority of the Oakland Unified School District, subject to the following triggers. The City may request an additional Channel when the channel set aside pursuant to Section 10.1 is programmed at least eighty percent (80%) of the cumulative time of sixty hours per week over a consecutive sixteen (16) week period with original, non-duplicative programming. The City may request an additional Educational Access channel when the channels set aside pursuant to Section 10.3 are each programmed at least eighty percent (80%) of the cumulative time of sixty hours per week over a consecutive sixteen (16) week period with original, non-duplicative programming. The City may trigger a cumulative total of two additional downstream analog PEG Access Channels under this Section 10.4. The City agrees that prior to making any request for an additional analog PEG Channel under this Section 10.4, the City Administrator will meet with Franchisee to review the potential impact that any additional PEG Channel may have on Franchisee's existing channel line-up, and shall consider whether the needs of the City or Oakland Unified School District could be met through alternative means, such as sharing capacity on other existing PEG Channels, or use of other broadband distribution technologies, or use of a digital video channel. The City and Franchisee agree to consider third party mediation in the event that any dispute arising from this Section 10.4 cannot be resolved by the parties.
- 10.5. Digital PEG Capacity. Unless the parties agree otherwise, Franchisee shall deliver PEG Access channels to Subscribers in an analog format and PEG Access channels must be receivable by Subscribers without special expense, other than the expense required to receive basic service, unless and until all other channels on the Cable System are delivered in a digital format. At such time that all other channels on the system are delivered in digital format, the Franchisee shall be responsible for all costs associated with converting the Cable System and related

facilities to a digital format; provided that the City shall be responsible for the costs of any modified or other equipment at the PEG facilities required to accomplish such conversion. When such digital conversion of the PEG Channels occurs, Franchisee shall make available up to 15 total digital channels, with any additional channels being offered under the trigger formula specified in Section 10.4.

- 10.6. Two-Way PEG Capabilities. If Franchisee offers interactive services to its Subscribers on more than 66% of its downstream video Channels on the Cable System, then the City may use up to 1/3 of its PEG Channels to deliver similar interactive services if feasible. The City or the Designated Access Provider will be responsible for the cost of any equipment necessary to convert the PEG Channels to interactive status and for any equipment needed by Subscribers to receive or use such interactive PEG Channels; provided, however, that the City or Designated Access Provider will not need to supply the Subscriber equipment if such is the same needed to receive the interactive services provided by Franchisee. Franchisee shall provide the upstream bandwidth on the Cable System necessary for the City or the Designated Access Provider to provide the interactive services for the PEG Channels allowed under this Section.
- 10.7. Underused PEG Channels. Franchisee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Franchisee to use underutilized time on the PEG Channels. If Franchisee believes that any PEG Channel has underutilized time, Franchisee may file a request with the City, or, in the case of Channels dedicated to the School District, to the Board of Education ("Board") to use that time. In response to the request, the City or Board will consider a combination of factors, including but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the Channel. The City or Board will also consider, taking into account the mission of the PEG Programming, whether it is feasible to cluster PEG Programming into blocks of time such that the Channel space can be compatibly shared between the PEG Programming provider and the Franchisee and/or if several PEG Programming providers can combine their programming onto a single PEG Channel. The City or Board shall render its decision regarding the matter within ninety (90) days of receiving the request. Should the City or Board find that the PEG Channel or portion of the Channel may be used by the Franchisee, then Franchisee may begin using such Channel immediately if it is not in use, and as soon as practicable (but in no event more than ninety (90) days after receipt of the decision) if that channel is in partial use. Any permission granted pursuant to this subsection for use of a PEG Channel or a portion thereof shall be considered temporary.
- 10.8. Return of PEG Channels. At such time as a PEG Programming provider (including the City and the School District) believes that it has the resources and ability to utilize any PEG Channel currently used by the Franchisee pursuant to this subsection, the PEG Programming provider may request that the City, or if

applicable, the Board, return such PEG Channel or portion of a PEG Channel being used by the Franchisee to the PEG Programming provider. In response to the request, the City or Board will consider a combination of factors, including but not limited to, the community's needs and interests, the quantity and schedule of the programming the applicant proposes to carry on the PEG Channel, and the applicant's ability and resources to acquire or produce the proposed PEG Channel programming. The City or Board will also consider whether it is feasible for the PEG Programming provider to cluster programming into blocks of time such that the PEG Channel can be compatibly shared between the PEG Programming provider and the Franchisee and/or if several PEG Programming providers can combine their programming onto a single PEG Channel. The City or Board shall render its decision regarding the matter within ninety (90) days of receiving the request. Should the City or Board find that the evidence exists to support the return of a PEG Channel or portion of a PEG Channel to the PEG Programming provider, then the Franchisee shall surrender the requested time on the PEG Channel within ninety (90) days of receiving the decision.

- 10.9. No Commercial Purposes. Communications on PEG Channels granted under this Franchise may not contain any commercial matter. For purposes of this Section 10.9, "commercial matter" means the selling or advertising for sale of any product or service unless otherwise permitted under Applicable Law.
- 10.10. PEG and I-Net Capital Funding. Franchisee shall provide the City with a total of up to \$17,400,000 for PEG and I-Net Capital and Equipment Funding over the Franchise term, as follows:
 - 10.10.1. Within thirty (30) days of the Effective Date of this Franchise, the Franchisee shall provide to the City a one-time capital payment of \$2,400,000 to fund the City's purchase of PEG and/or I-NET capital equipment. Such funding shall be used only for PEG and I-Net capital equipment budgeted for purchase within 3 years of the Effective Date. Any unused portion of such payment not expended within 3 years of the Effective Date shall reduce the amount available for draw by the City in the 4th year after the Effective Date.
 - 10.10.2. Franchisee shall provide the City with construction credits for purposes of I-Net fiber construction in an amount of up to \$5,400,000 (the "I-Net Construction Credit"). Construction shall be completed in accordance with the I-Net Agreement to be executed between the City and the Franchisee on the Effective Date. If the City's total I-Net construction costs are less than \$5,400,000, the remaining amount shall be made available to the City for PEG and I-Net capital in accordance with Section 10.10.3.

10.10.3. The balance of \$9,600,000 plus any amounts remaining under Section 10.10.2 (the “PEG Capital Balance”) shall be made available to the City after the 3rd anniversary of the Effective Date of the Franchise for PEG and I-Net capital projects and capital equipment, subject to the following terms and conditions:

10.10.3.1. Commencing on the 3rd anniversary of the Effective Date, the Franchisee shall make up to \$960,000 available each year (through the stated 13 year initial term of this Franchise) for PEG and I-Net capital requirements identified by the City in accordance with the terms of this Section 10.10.3. The City shall have three (3) years in which to request and spend any such annual allocation, provided that (i) if the City demonstrates that a PEG capital project will take longer than three (3) years to construct as a result of reasons wholly outside of the control of the City, the City shall have four (4) years in which to request and spend monies designated for that specific project, and (ii) in no event shall the City accrue more than two years (\$1.92 million) in unspent funds at any one time. Any sums not requested within such three (3) year period (or four (4) year period if applicable) shall lapse and no longer be available to the City. Any sums received by the City and not spent in such three (3) year period (or four (4) year period if applicable) shall reduce the amount available for draw by the City in the next successive year (except in the last two years of the stated term of the Franchise when such sums shall be credited against franchise fees due under this Franchise).

10.10.3.2. Commencing in the third year after the Effective Date, and at least once during each fiscal year thereafter during the term of this Franchise, the City Administrator shall provide a comprehensive written report to the City Council on the status of the Franchise, which shall include an accounting of how PEG and I-Net capital funds previously received or credited have been spent, and specifically identifying all funds that have been received but have not been spent or allocated for use in the then current and next succeeding fiscal year; a projection of PEG and I-Net capital needs for the current and next succeeding fiscal year; and,

if appropriate, a request that the City Council authorize the City Administrator to request from Franchisee a payment from the PEG Capital Balance as required to fund the PEG and I-Net capital needs up to the amount available for disbursement under Section 10.10.3.1. A copy of said report shall be provided to Franchisee at the same time it is provided to City Council, but in no event less than 30 days prior to City Council taking any action with respect thereto. City Council shall approve, deny, or modify the allocation request in public session. No request for PEG and I-Net capital funding shall be made in the absence of funding to operate the applicable PEG and I-Net facilities. Upon request made by the Franchisee no less than 15 days prior to the date of the noticed City Council meeting, the City Administrator will provide Franchisee with a projection of all anticipated operating expenses, and the anticipated sources, associated with the use of the capital facilities that are the subject of the funding request.

10.10.3.3. The Franchisee shall pay the City the full amount of funding requested by the City Administrator pursuant to Section 10.10.3.2 within sixty (60) days of its receipt of such request in writing.

10.10.3.4. No more than \$1,920,000 of the PEG Capital Balance shall be available for disbursement and/or shall be disbursed after the twelfth year anniversary of the Effective Date. All sums in excess of such amount shall be forfeited.

10.10.3.5. If the City identifies a PEG capital need that requires the immediate draw of two years of PEG support under Section 10.10.3.1 to fund a major PEG capital project, the City shall submit a request for special authorization to Franchisee. Franchisee shall not unreasonably withhold its consent, provided that only two such requests may be made during the term of the Franchise.

10.10.4. The City acknowledges that it is Franchisee's intent to pass-through all (or if the Franchisee elects in its sole discretion, less than all) of the amounts to be paid under this Section 10.10 as a

separate line item on Subscribers' bills. Franchisee shall have the sole discretion to determine such pass-through amount.

- 10.10.5. If the pass-through nets an amount in excess of the funding paid (or credited) to the City over the term of this Franchise, then Franchisee, at its discretion, may use any such additional recovery of funds to offset its actual carrying costs and other unrecovered expenses related to the provision of PEG and I-NET funding to the City.
- 10.10.6. All interest accrued on funding received by the City under this Section 10.10 by shall be used to further support PEG capital needs of the City only, except that annually up to \$75,000 of such interest may be used to fund a single position to manage the capital funding provided under this Section 10.10.

10.11. Miscellaneous PEG Requirements.

- 10.11.1. 10.11.1. Franchisee and the City will cooperate to help promote the use and viewership of the PEG Channels. Franchisee shall provide the City with no less than thirty (30) days advance written notice of any change in PEG channel assignment.
- 10.11.2. The City, or Designated Access Provider (other than a cable operator), shall adopt reasonable rules regarding the use of PEG Channels pursuant to 47 U.S.C. §531(d). Such rules shall allow Franchisee to use any PEG Channel when not being used to deliver PEG communications. The City shall have the authority to resolve any disputes regarding allocation of PEG Channels.
- 10.11.3. Except as expressly permitted by Applicable Law, Franchisee shall not exercise any editorial control over the content of communications on the designated PEG Channels (except for such communications as Franchisee may produce and cablecast on such Channels).
- 10.11.4. The PEG Channels and the communications carried on them, when feasible, shall be carried on any channel listing programming services offered by Franchisee, but it is the responsibility of the Designated Access Provider to provide information that it wishes to have carried in a timely manner.
- 10.11.5. Except as otherwise provided under Sections 10.5 and 10.6 of this Franchise, if Franchisee makes changes to its Cable System that necessitate modifications to PEG facilities and equipment (including but not limited to the upstream paths), Franchisee shall

provide any additional facilities or equipment necessary to implement such modifications within 30 days of the date that the system changes are made, so that PEG facilities and equipment may be used and operated as intended, including, among other things, so that live and taped communications can be produced and cablecast efficiently to subscribers. By way of example, and not limitation, should the Franchisee cease delivery of all signals in an analog format to Subscribers, it will provide the facilities and equipment at its head end necessary so that PEG signals can be delivered in a digital format.

10.11.6. The facilities, equipment and capacity provided for PEG Use (except as expressly provided with respect to the I-NET) shall be available at no charge to users, including the City, the public school districts and any entity that manages a PEG Channel.

10.11.7. Franchisee must transmit the PEG Channels so that they can be received by subscribers at the same quality levels as the other channels delivered over the Cable System.

10.12. Cable Outlets for Educational and Government Facilities. Franchisee shall, without charge, provide the following to the City and to each School building, municipal government building, Access center, and City courthouse identified on a schedule to be provided by the City to Franchisee within ninety (90) days of the Effective Date of this Franchise and which currently receives free standard cable service from Franchise: (i) at least one activated Standard Drop and one outlet; and (ii) standard cable service, as that term is known as of the Effective Date of this Franchise. If, in the future, Franchisee ceases to offer standard cable service, or otherwise repackages its service offerings such that standard cable service is no longer available, then Franchisee shall continue to provide to the buildings described in this Section 10.12, at a minimum, all analog, PEG, and must-carry channels. At such time as all such channels are offered only in digital format, Franchisee shall provide any special equipment (including but not limited to, decoder boxes) needed to receive the channels, at no cost to the City, provided that Franchisee is not required to provide amps, internal wiring, or other equipment necessary to deliver the signal beyond the outlet required. The City agrees that all new requests for service must come from the City's Cable Franchise office.

10.13. Costs Not Franchise Fees. The parties agree that costs to the Franchisee associated with providing support for PEG and I-Net Capital funding required under Section 10.10 of this Franchise, and under Section 10.12 of this Franchise, are not intended to be a franchise fee within the meaning of 47 U.S.C. § 542, and are intended to fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2). From time to time, within sixty (60) days of Franchisee's written request, the City shall certify to the Franchisee in writing that (i) all payments

received by or credited to the City pursuant to Section 10.10 that have been used or applied since the last certification have been used to fund, finance or support capital costs (as defined in accordance with generally accepted accounting principals) for PEG Access equipment or facilities , and (ii) to the extent such payments or credits have been used for any other purposes, the amount and purposes for which such sums were used. Once every 24 months, the Franchisee further may request that the City's (or its designee's) books and records related to PEG Use funding be audited by Franchisee or any independent audit or designated by the Franchisee in order to review the City's use of the funding made available under Section 10.10, and the City shall cooperate with the Franchisee in the prompt completion of such audit. The Franchisee shall not be obligated to request such certification or to audit the City's books and records. The City acknowledges that, to the extent it fails to use any payments or credits for capital costs for PEG Access equipment and facilities, Franchisee may, following notice and opportunity for the City to respond and to cure, pursue any remedies available to it under Applicable Law, including reduction of future franchise fee or PEG payments to the extent of any overpayment..

Section 11. Operation and Reporting Provisions.

- 11.1. Open Books and Records. Franchisee agrees that it will collect and make available books and records related to its provision of Cable Services and the Franchise Fee payable hereunder for inspection and copying by the City in accordance with the Cable Ordinance.
- 11.2. Time for Production. Books and records shall be produced to the City at City Hall, or such other location as the parties may agree. Notwithstanding any provision of the Cable Ordinance, if documents cannot be copied or moved because (i) they are too voluminous; (ii) of security reasons; or (iii) the requested records contain trade secrets, then the Franchisee may request that City inspection of such records take place at some other location mutually agreed to by the City and the Franchisee, provided that:
 - 11.2.1. The Franchisee must make necessary arrangements for copying documents selected by the City after its review; and
 - 11.2.2. The Franchisee must pay all reasonable travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee.
 - 11.2.3. The parties agree that any amounts paid pursuant to this Section 11.2 are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions listed in 47 U.S.C. § 542(g)(2).

- 11.3. Reports Required. The Franchisee shall file reports in accordance with the Cable Ordinance. In addition, the franchise shall file reports as provided in Schedule 11.3, attached hereto.
- 11.4. Uses of System. Franchisee must advise the City of all non-Cable services Franchisee and any third party provides via the Cable System at least 60 days after either the effective date of this Franchise or the date on which such services are made commercially available. The City acknowledges that Franchisee intends to offer high speed internet access and/or telephony services over the Cable System, however, this acknowledgment is not a waiver of the City's right to require separate authorization for any or all of those services, to the extent permitted by Applicable Law.
- 11.5. Records Maintained. The Franchisee shall maintain records sufficient to comply with the requirements of the Cable Ordinance, and to show compliance with all the provisions of this Franchise.
- 11.6. Retention of Records; Relation to Privacy Rights. Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under Applicable Law or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require a Franchisee to violate 47 U.S.C. § 551 or other Applicable Law governing privacy. Franchisee shall be responsible for redacting any data that State or Federal law prevents it from providing to the City. Records shall be kept for at least five (5) years, except that service call logs may be retained for three (3) years, so long as the information contained therein is reflected in other documents.

Section 12. Customer Service Standards.

Franchisee must comply with all applicable state and federal customer service standards. In addition, Franchisee must comply with the following customer service standards. In the event of a conflict between provisions, the stricter standard will apply.

- 12.1. Scheduling Work.
 - 12.1.1. Appointments. All appointments for service, installation, or disconnection will be specified by date. Franchisee will specify a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four (4) hours in length. Franchisee also may, upon request, schedule service installation calls outside normal business hours, for the convenience of the Subscriber.
 - 12.1.2. Rescheduling Appointments. If at any time an installer or technician anticipates that a scheduled appointment time will be missed, an attempt to contact the Subscriber will be made and the appointment rescheduled at a

time convenient to the Subscriber, if rescheduling is necessary. It is Franchisee's responsibility to demonstrate it met the appointment or made an attempt to contact the Subscriber to reschedule. Late arrivals by an installer where the installer did not comply with this provision will be considered a missed appointment, unless such late arrival results from circumstances beyond the reasonable control of the installer, technician or Franchisee.

12.1.3. Cancellation of Appointments. Franchisee will not cancel a service or installation appointment with a Subscriber after the close of business on the business day preceding the scheduled appointment. Appointments cancelled in violation of this provision will be considered a missed appointment.

12.1.4. Missed Appointments. Franchisee will offer priority rescheduling of an appointment for the next business day, and provide to Subscribers who have experienced a missed appointment (where the missed appointment was not the Subscriber's fault) any one or more of the following options:

- (1) Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged; or
- (2) A twenty dollar (\$20.00) credit; or
- (3) An opportunity to elect remedies under California Civil Code 1722 as may be amended, if applicable.

In lieu of the above, Franchisee may offer such other goods or services as are from time to time customarily offered in the cable industry for such infractions. No liquidated damage or penalty may be assessed by the City for a missed appointment if Franchisee complies with the provisions of this Section 12.1.4.

12.2. Prorated Billing. Franchisee's first billing statement after a new installation or service change will be prorated as appropriate; and any security deposit will be reflected no later than the second billing statement.

12.3. Acknowledging Service Request. Under normal operating conditions, requests for services, repair and maintenance must be acknowledged by a trained customer service representative before the end of the next business day.

12.4. Acknowledging Other Inquiries. Franchisee will respond, in writing if requested by the Subscriber, to all other inquiries (including billing inquiries) within twenty (20) days of the inquiry or complaint.

12.5. Credit for Service Interruption.

- 12.5.1. Prorated Credit. A Subscriber's account will be credited a prorated one-day share of the monthly charge for the service, upon Subscriber request, for each time a Subscriber's service is interrupted for a continuous period exceeding four (4) hours during any twenty-four (24) hour period. For a pay-per-view event, a Subscriber's account will be credited the full amount of the event, upon Subscriber request, when the Subscriber's service is interrupted for an aggregate period exceeding 50% of the length of the event.
- 12.5.2. Impairment Caused by Subscriber. Franchisee need not credit Subscriber where loss of service or impairment is caused by the Subscriber or by Subscriber-owned equipment (not including, for purposes of this Section, in-home wiring installed by the Franchisee).
- 12.6. Billing Refunds. Refunds to Subscribers will be issued no later than thirty (30) days following the resolution of the refund request; or, where applicable, (ii) the date of return of all equipment to Franchisee, if Cable Service has been terminated.
- 12.7. Credits for Cable Service. Credits for Cable Service will be issued no later than the later of (i) thirty (30) days, or (ii) the Subscriber's next billing cycle after the determination that the credit is warranted.
- 12.8. Disconnection and Downgrades. A Subscriber may terminate service at any time, unless otherwise agreed to by the Subscriber in a long-term service contract. Franchisee will promptly disconnect from the Franchisee's Cable System or downgrade any Subscriber who so requests. No charges for services may be assessed against the Subscriber more than seven (7) days after the date on which Subscriber requests the termination of service to be effective. No charge for services that can be disconnected or downgraded remotely without the need for a service call shall be assessed more than 24 hours after the date on which Subscriber requests the termination of service to be effective. Any downgrade or disconnection charges will conform to Applicable Law.
- 12.9. Disabled Services. With regard to Subscribers with disabilities, Franchisee will arrange for pickup and/or replacement of converters or other equipment at the Subscriber address at no cost to the Subscriber, within 30 days of request of the Subscriber.
- 12.10. Service Upgrades. Requests for additional outlets, service upgrades, downgrades, or other connections (e.g., DMX, VCR, A/B switch) separate from the initial installation will be performed within five (5) business days after an order has been placed.

- 12.11. Security Deposit. Any security deposit and/or other funds, including interest, if applicable, due a Subscriber that disconnects or downgrades service will be returned to the Subscriber in accordance with Applicable Law.
- 12.12. Disconnection Due to Nonpayment. Franchisee may not disconnect a Subscriber's Cable Service for non-payment unless:
- 12.12.1. A separate, written notice of impending disconnection, postage prepaid, has been sent to the Subscriber at least seven (7) days before the date on which service may be disconnected, at the premises where the Subscriber requests billing;
 - 12.12.2. The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
 - 12.12.3. No pending inquiry exists regarding the bill to which Franchisee has not responded in writing.
- 12.13. No Disconnection if Payment Made. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, Franchisee will not disconnect service, except as permitted under Applicable Law.
- 12.14. Reinstating Service. After disconnection (except as noted below), upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, Franchisee will promptly reinstate service, unless otherwise permitted under Applicable Law.
- 12.15. Disconnection Without Just Cause. If a Subscriber's service is erroneously disconnected from Cable Service without just cause, Franchisee shall, upon notification and acknowledgement of the error, immediately offer the Subscriber free reconnection at the service tier subscribed to prior to disconnection. If a service call is necessary to reconnect the Subscriber, Franchisee shall offer the Subscriber a priority appointment for the next business day.
- 12.16. Immediate Disconnection. Franchisee may immediately disconnect a Subscriber if:
- 12.16.1. The Subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with Franchisee's Cable System, or has installed or attached equipment that is causing any interference or degradation in performance of the Cable System and the Subscriber refuses to remove such equipment or installation;

- 12.16.2. The Subscriber is not authorized to receive a service and is receiving it and/or is facilitating, aiding or abetting the unauthorized receipt of service by others;
- 12.16.3. Any other reason permitted by Applicable Law.
- 12.16.4. After disconnection, Franchisee will restore service after the Subscriber provides adequate assurance that it has ceased, and shall not resume, the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed Franchisee for damage to its Cable System or equipment.
- 12.17. Customer Service Minimum Performance Standards. Franchisee must comply with all applicable state and federal customer service standards. In addition, Franchisee must comply with the following customer service standards. In the event of a conflict between provisions, the stricter standard will apply.
- 12.17.1. Telephone Answering Time. Under normal operating conditions, telephone answering time will not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative after Subscriber has made any selections through Franchisee's IVR will not exceed an additional thirty (30) seconds.
- 12.17.2. Busy Signal. Under normal operating conditions Subscribers will receive a busy signal less than three (3%) of the time.
- 12.17.3. Meeting Standards. Under normal operating conditions, the standards set out in Sections 12.17.1 and 12.17.2 will be met ninety (90) percent of the time, measured quarterly. The phrase "of the time" refers to the percentage of calls to the Franchisee during normal operating conditions, so that if 1000 calls are received by Franchisee, 900 of those calls must be answered within the time limits specified in Section 12.17.1, and fewer than 30 should receive a busy signal as specified in Section 12.17.2.
- 12.17.4. Repairing Outages. Under normal operating conditions, repairs and maintenance for outages or service interruptions must be commenced within twenty-four (24) hours after the outage or interruption becomes known to Franchisee where Franchisee has adequate access to facilities to which it must have access in order to remedy the problem.
- 12.17.5. Service Problem Repairs. Under normal operating conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem

- 12.17.6. Abnormal Operating Conditions. When normal operating conditions do not exist, Franchisee will complete the work in the shortest time possible.
- 12.17.7. Time for Extension of Service. Except as this Franchise or any other agreement between Franchisee and the City otherwise provides, Cable Service must be extended upon request to any residential dwelling unit or to any government building in the Franchise Area (i) within seven (7) days of the request, where service can be provided by activating or installing a standard drop; (ii) within ninety (90) days of the request where an extension of one-half mile or less is required, subject to the City's timely prosecution of applicable permits; or (iii) within six (6) months where an extension of one-half mile or more is required, subject to the City's timely prosecution of applicable permits.
- 12.17.8. Service Standards to Be Met. Under normal operating conditions, the service standards set out in Sections 12.17.4 through 12.17.7 will be met at least ninety-five percent (95%) of the time, measured on a quarterly basis. The phrase "of the time" refers to the number of service requests received by the Franchisee, so that if the Franchisee receives 100 service requests, at least 95 of those requests must be scheduled and/or completed within the applicable time limits specified.
- 12.17.9. Notice to Subscribers regarding Service. Franchisee will provide each Subscriber clear and accurate written information regarding the following at the time Cable Service is installed and annually thereafter:
- a. On placing a service call, filing a complaint, or requesting a credit, refund or adjustment;
 - b. Providing a schedule of rates and charges (including standard discounts), Channel positions, services provided, a copy of the service contract, delinquent Subscriber disconnect and reconnect procedures; and notifying Subscribers of the availability of parental control devices, and the conditions under which they will be provided and the cost (if any) charged;
 - c. Describing conditions that must be met to qualify for discounts;

- d. Describing any other of the Franchisee's policies in connection with its Subscribers;
- e. Describing any discounts, services, or specialized equipment available to Subscribers with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.

Franchisee shall provide to Subscribers thirty (30) days advance notice of a change in rates and/or channel lineups, and Franchisee shall make reasonable efforts to provide the written information required under this Section 12.17.9 in multiple languages.

12.17.10. Notices to City. Franchisee will provide the City with copies of all notices provided to Subscribers pursuant to this article annually, and in the event of a change in channel lineups, rates or location of PEG channels since the annual notice Franchisee will provide to the City a separate detailed notice in writing 30 days in advance of such change.

12.17.11. Response Time for Complaints Filed by the City. Franchisee shall respond to every complaint filed by the City on behalf of a Subscriber in writing within twenty (20) days of the date the complaint is received by the Franchisee, and must advise the City of the status of the complaint within the same time period.

12.17.12. Interruptions of Service.

12.17.12.1. Franchisee shall notify the City and Subscribers of planned interruptions affecting more than 5 Subscribers, provided, however, that planned maintenance that does not require more than two (2) hours interruption of service and that occurs between the hours of 1:00 a.m. and 5:00 a.m. will not require such notification to Subscribers or the City. For all other planned interruptions, the Franchisee shall provide affected Subscribers at least 24 hours advance notification, provide 24 hours advance notification to the City by e-mail or fax. In addition, upon request, Franchisee will provide to the City a written report stating the duration of the outage, the location and the number of Subscribers affected.

12.17.12.2. For emergency unplanned outages, Franchisee shall provide verbal notification to the City as soon as

practicable after Franchisee becomes aware of the outage. Emergency unplanned outages shall be defined as equipment and/or system failures caused by forces unrelated to the cable system and infrastructure. For all unplanned outages, Franchisee shall provide the City a written report stating the duration of the outage, the location, the number of Subscribers affected, and the cause, and whether Franchisee believe an abnormal operating condition existed, within 24 hours of the outage's repair; provided that, if the Franchisee determines that a repair will take longer than 24 hours, the Franchisee shall provide to the City, every 24 hours, an updated report indicating the number of Subscribers still affected, and an estimate of when the repair will be completed.

12.18. Office Availability.

12.18.1. Walk-in Hours. Franchisee will maintain an office in the City that will be open for walk-in traffic based upon reasonably anticipated traffic, Monday through Friday, with some evening and weekend hours, to allow Subscribers to pay bills, drop off equipment and to pick up equipment. Franchisee shall make reasonable efforts to provide multilingual customer service personnel.

12.18.2. Service Call Hours. Franchisee will perform service calls, installations, and disconnects at least eight (8) hours per day Monday through Saturday, except legal holidays, provided that a Franchisee will respond to outages twenty-four (24) hours a day, seven (7) days a week.

12.19. Telephones. Franchisee will establish a publicly listed toll-free telephone number. Customer service representatives must answer the phone at least eight (8) hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service, inquiries, and complaints from Subscribers. After such business hours the phone will be answered so that Subscribers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Franchisee can respond to service outages as required herein.

12.20. Restoration of Premises. Upon completion of any service call to a Subscriber, the Franchisee shall promptly return the Subscriber's premises to its original condition.

12.21. Truth in Advertising. Each Franchise shall comply with applicable state and federal law with respect to truth in advertising.

12.22. Public Inspection of File. Franchisee will maintain a file open for public inspection containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. The notices and offers will be kept in the file for at least one (1) year from the date of such notice or promotional offer.

12.23. Franchisee's Property. Except as Applicable Law may otherwise provide, Franchisee may remove its property from a Subscriber's premises within thirty (30) days of the termination of service.

Section 13. Rate Regulation. The City may regulate Franchisee's rate and charges, and order refunds of unreasonable rates charged, as expressly authorized by Applicable Law. All rates that are regulated by the City must be reasonable and, except as Applicable Law provides otherwise, can only be established or changed with the prior approval of the City.

Section 14. Insurance; Indemnification.

14.1. Insurance.

14.1.1. Franchisee agrees to maintain insurance during the entire term of the Franchise as required by the Cable Ordinance in the following amounts:

- a. Commercial General Liability - \$2,000,000
- b. Worker's Compensation -- Statutory Limits
- c. Comprehensive Auto Liability - \$1,000,000

14.1.2. The insurance requirements are material terms of this Franchise.

14.2. Indemnification.

14.2.1. To the extent permitted by Applicable Law, Franchisee will, at its sole cost and expense, fully indemnify, hold harmless, and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief in any way arising out of:

14.2.1.1. Construction, repair, or operation of the Franchisee's Cable System;

14.2.1.2. Any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation;

- 14.2.1.3. Violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation, including a failure by the Franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System;
- 14.2.1.4. The conduct of the Franchisee's business in the City; or
- 14.2.1.5. The Franchisee's enjoyment or exercise of its Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by Applicable Law or this Franchise.

14.2.2. Notwithstanding the foregoing Section 14.2.1, the Franchisee need not indemnify the City in cases where liability is:

- 14.2.2.1. Solely caused by the active negligence of the person or persons covered by the indemnity;
- 14.2.2.2. Results from communications contributed or produced by the City and transmitted over the Cable System; or
- 14.2.2.3. Results from communications carried on any Channel set-aside for PEG Use, or Channels leased pursuant to 47 U.S.C. § 532, except for communications contributed or produced by the Franchisee.

14.2.3. The City will notify the Franchisee in writing of its duty to indemnify in any case subject to the indemnity in which the Franchisee is not a named defendant or plaintiff. The Franchisee will employ competent counsel, reasonably acceptable to the City Attorney.

14.3. No Limit of Liability. The provisions of this Section 14 shall not be construed to limit the liability of Franchisee for damages.

Section 15. Performance Guarantees and Remedies.

15.1. Security Bond.

15.1.1. In satisfaction of the security fund requirements of Section 2.430(G) of the Cable Ordinance, the Franchise shall, within 30 days of the effective date of

this Franchise, provide a Security Bond, pursuant to Section 2.430(H) of the Cable Ordinance, in the amount of One Million Dollars (\$1,000,000). Franchisee shall maintain the security bond throughout the term of this Franchise. The security bond shall state that there are no restrictions on the City's ability to assess the bond in accordance with the Cable Ordinance as it existed on the effective date of this Franchise, provided that the City shall provide Franchise no less than forty eight (48) hours notice prior to drawing on the bond.

15.1.2. Upon termination of the Franchise, the City shall authorize the Franchisee to terminate the performance bond within one hundred eighty (180) days of Franchise termination, provided that there is then no outstanding obligation secured by the performance bond; provided that the performance bond shall be deemed forfeited if the Franchise is revoked or the Cable System is abandoned.

15.2. Performance Bond.

15.2.1. Before undertaking the Cable System upgrade required by this Franchise, Franchisee shall obtain a performance bond in the amount equal to \$500,000.

15.2.2. The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City; and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

15.2.3. The Franchisee may apply for elimination of the bond required by Section 15.2.2 at any time after the completion of the upgrade. The City shall either eliminate the bond, or permit Franchisee to reduce it to the amount of \$100,000 if it determines that the Franchisee has faithfully completed the upgrade of the Cable System, and is otherwise in material compliance with the terms and conditions of this Franchise.

15.2.4. In addition to the performance bond required by Section 15.2.1, Franchisee shall obtain, prior to any Cable System construction, or other work in Public Rights-of-Way, bonds in the amounts and subject to such terms established by the City consistent with its normal practices, based upon the work to be performed. The City will respond to the application to reduce such bonds in accordance with its ordinary practices for bond reduction.

15.3. Material Term. The required performance bond and security bond are material terms of this Franchise.

15.4. Liquidated Damages.

15.4.1. Because the Franchisee's failure to comply with provisions of its Franchise will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Franchisee agree to the following liquidated damages for the following violations, which represent both parties' best estimate of the damages to the City resulting from the specified injury. The parties further agree that the damages specified are to the City, and are recoverable by the City. Damages accrue from the date of the failure to cure the violation; provided that, nothing herein prevents Franchisee from raising a defense to the imposition of liquidated damages based upon laches, waiver, statute of limitations, or any other similar defense. Liquidated damages are not Franchise Fees.

15.4.1.1. For failure to complete construction of the Cable System in accordance with Section 5.5.1 of this Franchise, or failure to timely complete construction of 70% of the rebuild in accordance with Section 5.5.2: One Thousand Dollars (\$1,000) for each day the violation continues not to exceed Three Hundred Thousand Dollars (\$300,000) in the aggregate.

15.4.1.2. For failure to comply with the provisions of Section 5.1 of this Franchise: Two Hundred Dollars (\$200) per day for each occurrence, for each day the violation continues after written notice and opportunity to cure, not to exceed Fifteen Thousand Dollars (\$1,500) in the aggregate for each occurrence.

15.4.1.3. For failure to make available any PEG Channel required to be made available under Section 10: Two Hundred Fifty Dollars (\$250) for each violation for each day or portion thereof that the violation continues not to exceed Fifteen Thousand Dollars (\$15,000) in the aggregate for any violation.

15.4.1.4. For any violation of the customer service standards set forth in Sections 12.17.1 or 12.17.2, subject to the provisions of Section 12.17.3, 12.17.6 and 12.17.8, as applicable, \$2,000 per calendar quarter. For violation of the same standard in a second consecutive quarter, \$3,000 per calendar quarter. For violation of the same standard in a third or

subsequent consecutive calendar quarter, \$4,000 per calendar quarter.

- 15.4.1.5. For any violation of the remaining provisions of Section 12, \$100 per day not to exceed \$1000 for any single violation, provided that, for violations that can be cured, no such liquidated damage shall be assessed if Franchise has cured such violation within thirty (30) days of written notice from the City.
- 15.4.1.6. For failure to provide any reports, maps, data, or other information required by this Franchise or the Cable Ordinance: One Hundred Fifty Dollars (\$150) per day for each violation for each day the violation occurs not to exceed Three Thousand Dollars (\$3,000); provided that no such liquidated damage shall be assessed if Franchisee has cured such violation within five (5) business days of written notice from the City.
- 15.4.1.7. For all other material violations of the Franchise for which actual damages may not be ascertainable: One Hundred Dollars (\$100) per day for each violation for each day the violation continues after written notice and not less than thirty (30) days opportunity to cure has been afforded, not to exceed Five Thousand Dollars (\$5,000) in the aggregate per violation.

The City may impose liquidated damages, and may draw upon the Security Bond required by Section 15.1 to collect the liquidated damages if Franchisee does not pay the same within thirty (30) days of the City's written demand therefor. Before doing so, the City must provide the Franchisee notice of the alleged violation, and provide the Franchisee with an opportunity to be heard, to show either that a violation has not occurred or that damages should not be imposed.

- 15.5. Revocation or Termination of Franchise. In addition to all other rights of the City under this Franchise, the City shall have the right to revoke the Franchise for the reasons specified in the Cable Ordinance as of the effective date of this Franchise, pursuant to the revocation procedures specified in the Cable Ordinance.
- 15.6. Remedies Cumulative. All remedies under the Cable Ordinance and this Franchise are cumulative unless otherwise expressly stated; provided that the City may not seek or impose any other remedy under the Franchise or Cable Ordinance for a breach for which liquidated damages apply, except in the event of repeated

and willful violations of the same Franchise provision where the Franchisee has failed and refused to cure the violation, or for a violation that remains uncured when a cap on liquidated damages for the violation has been reached. The exercise of one remedy shall not foreclose use of another. The City is not entitled to recover damages for the same injury under two separate sections where doing so would result in a double recovery to the City.

- 15.7. Relation to Insurance and Indemnity Requirements. Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.
- 15.8. Mid-Term Performance Evaluations. In year 7 of the Franchise term, the City, at its sole discretion, may conduct a detailed review of the Franchisee's performance under this Franchise. Franchisee agrees to cooperate with the City in this review, including but not limited to timely providing all relevant reports and other data as requested by the City as part of the review process. In addition, the City reserves the right to review Franchisee's performance on an annual basis.

Section 16. Rights of Individuals Protected.

- 16.1. General Obligations. Franchisee shall comply with all provisions of the Cable Ordinance and Applicable Law regarding nondiscrimination, privacy and protection from exposure to indecent or obscene programming.
- 16.2. Respect for Property. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the written permission of the owner or the lawful occupant of the property involved (except in those cases where the Franchisee is permitted by federal or state law or regulations to install such facilities and equipment inside the structure without permission).
- 16.3. Non-discrimination. Without limiting Section 16.1, Franchisee agrees as follows:
 - 16.3.1. Franchisee will not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or residents of the City on the basis of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, marital status, or sexual orientation.
 - 16.3.2. Neither the City nor Franchisee will unlawfully discriminate among Persons or take any retaliatory action against a Person or the other party to this Franchise because of the exercise of any right the Person or may have under

Applicable Law, nor may the Franchisee require a Person to waive such rights as a condition of taking service.

16.3.3. Franchisee will not deny access or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

16.3.4. Except to the extent the City may not enforce such a requirement, a Franchisee is prohibited from unlawfully discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers.

16.3.4.1. Franchisee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise Area.

16.3.4.2. Franchisee also may, in its sole discretion, offer discounts on basic service to senior citizens, disabled persons or to subscribers eligible for Social Security Insurance or Social Security Disability Insurance benefits.

16.3.4.3. Franchisee also may offer such other discounts as it is entitled to provide under Applicable Law.

16.3.4.4. Franchisee will not refuse to employ, discharge from employment, or unlawfully discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, marital status, or sexual orientation. Franchisee will comply with all Applicable Law governing equal employment opportunities.

Section 17. Continuity of Service.

17.1. The Franchisee shall ensure that all Subscribers receive continuous uninterrupted Cable Service.

17.2. At the City's request, the Franchisee shall operate its System for a temporary period (the "transition period") following the termination of its Franchise or any transfer as necessary to maintain Cable Service to Subscribers, and shall

cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and to build a replacement Cable System, and shall not be longer than thirty-six (36) months, unless extended by the City for good cause. During the transition period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Franchise and Applicable Laws and regulations, and will be deemed to have the necessary authorization required from the City to enable it to provide Cable Service.

17.3. If the Franchisee abandons its Cable System during the Franchise term or any transition period, or fails to operate its Cable System in accordance with the terms set forth in Section 17.4 below, the City, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Franchisee agrees to restore and restores continuous Cable Service in compliance with the Franchise and the Cable Ordinance or until the Franchise is revoked and a new entity selected by the City is providing Cable Service.

17.4. The City shall be entitled to exercise its rights under Section 17.3 if the:

17.4.1. Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for one hundred twenty (120) consecutive hours, unless such failure is due to force majeure or the City authorizes a longer interruption of service; or

17.4.2. The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

17.5. Rights Upon Franchise Termination or Revocation. If the City revokes the Franchise or the Franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under Applicable Law:

17.5.1. The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under Applicable Law.

17.5.2. The City, by the City Council resolution, may acquire ownership under the procedures of the Cable Act and at the price determined by the Cable Act. 47 U.S.C. § 547.

Section 18. Miscellaneous Provisions.

- 18.1. Governing Law. This Franchise shall be governed and construed in accordance with the statutes and laws of the State of California.
- 18.2. No Pledging of City's Credit. Under no circumstances shall Franchisee have the authority or power to pledge the credit of City or incur any obligation in the name of City. Franchisee shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Franchisee under this Franchise.
- 18.3. Venue. In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the Alameda County Superior Court, or, where otherwise appropriate, exclusively in the United States District Court for the Northern District of California.
- 18.4. Conflict of Interest. Franchisee certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Franchisee and that no person associated with Franchisee has any interest that would conflict in any manner or degree with the performance of this Franchise. Franchisee represents that it presently has no interest and shall not acquire an interest, direct or indirect, which could conflict in any manner or degree with the provisions of California Government Code Section 87100 et seq., and certifies that it does not know of any facts which constitute a violation of said provisions. Franchisee will advise City if a conflict arises; provided, however, nothing herein shall be deemed to create a duty for Franchisee to disclose any publicly traded securities of Franchisee which may be held by any such City employee or officer and which are obtained through ordinary public market transactions, without any financial or special assistance from Franchisee.
- 18.5. Force Majeure. The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible or impracticable by war or riots, civil disturbances, floods or other causes beyond the Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety and integrity of the Franchisee's employees or property, or the health, safety and integrity of the public, Public Rights-of-Way, Public Property, or private property.
- 18.6. Level Playing Field. The City shall comply with the provisions of California Government Code Section 53066.3(d).
- 18.7. Notices. Unless otherwise expressly stated herein, notices required under this Franchise shall be mailed first class, postage prepaid, or sent overnight delivery to

the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

18.7.1. Notices to the Franchisee shall be mailed to:

18.7.2. Notices to the City shall be mailed to:

City of Oakland

18.8. Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

18.9. Time of Essence; Maintenance of Records of Essence. In determining whether the Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Franchise. The maintenance of records and provision of reports in accordance with the Franchise is also of the essence to this Franchise.

18.10. Captions. The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise.”

Introduction Date: **DEC - 6 2005** !

IN COUNCIL, OAKLAND, CALIFORNIA, **FEB 21 2006**, ~~2005~~

PASSED BY THE FOLLOWING VOTE:

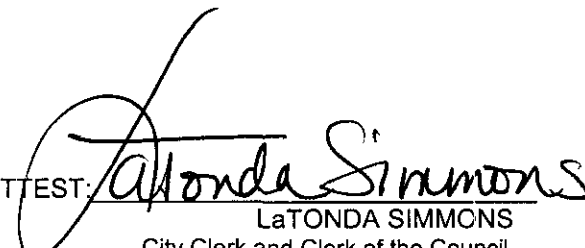
AYES- ~~BROOKS~~, BRUNNER, CHANG, ~~KERNIGHAN~~, NADEL, QUAN, ~~REID~~, and PRESIDENT DE LA FUENTE **-5**

NOES- **0**

ABSENT- **0**

ABSTENTION- **Brooks, Reid -2**

Recused- Kernighan -1

ATTEST: 
LaTONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

SCHEDULE 2.1.3

1

ACCEPTANCE

COMCAST OF CALIFORNIA/COLORADO, LLC hereby accepts and agrees to be bound by all the terms and conditions of the Franchise granted by Ordinance No. _____, as adopted by the Oakland City Council.

[Name]

[Title]

Date: _____

SCHEDULE 8.1

INSTITUTIONAL NETWORK AGREEMENT

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INSTITUTIONAL NETWORK AGREEMENT

THIS INSTITUTIONAL NETWORK AGREEMENT (the "Agreement") is entered into by and between the City of Oakland, California (the "City") and Comcast of California/Colorado, LLC (the "Grantee") effective as of _____, 2005.

RECITALS

- A. The City has granted to Grantee a Cable System Franchise, under which Grantee has certain nonexclusive rights, including the right to construct and maintain a cable system within the City.
- B. Grantee is currently embarked upon a program of upgrading said cable system.
- C. The City now wishes to engage Grantee to construct fiber optic connections to government facilities for use and benefit of governmental agencies within the City.
- D. Grantee is willing to undertake to assist the City in the creation of such a network in accordance with the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows.

1. Definitions. For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"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 and Educational Access as those terms are defined below.

"Activation" means that the information and documentation required by Section 7.4 hereof has been supplied and that the facility is capable of being activated.

"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.

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

"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 Subscribers 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 Subscribers 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 Subscribers, 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.

"Construction Credits" means the credits available to the City for I-Net construction cost as set forth in Section 10.10.2 of the Franchise.

"Dedicated Fiber" means fiber originally requested and paid for, in accordance with the terms of this Agreement, by the City for I-Net use and which shall, during the term specified in Section 4.1 of this Agreement, according to actual use, be available to the City for approved I-Net uses.

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

"Educational Access" means Access where educational institutions or their designees are the primary users having editorial control over programming and services.

"Fiber Optic" means the physical fiber optic strands which are used as a transmission medium , capable of carrying services by means of electric lightwave impulses.

"Franchise" means the Cable System Franchise Agreement entered into between Grantee and the City on _____.

"Franchise Area" has the same meaning as set forth in the Franchise.

"GIS" means governmental information services.

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

"Headend" means the primary facility used by Grantee for signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, and processors for broadcast signals.

"Hub" means an intermediary exchange point in the signal distribution portion of the Cable System (including the I-Net), located between the Headend and the Nodes.

"City Hub" means an intermediary exchange point in the signal distribution portion of the I-NET.

"Incremental Construction Costs" means all of Grantee's labor, materials and construction costs for installing the I-Net Plant that would not have been incurred but for the construction of the I-Net Plant.

"I-Net Equipment" means the electronic equipment and associated facilities required to activate the I-Net and control the transmission of signals through the I-Net.

"I-Net Plant" means dedicated single-mode fiber, splicing, passive components, and support structures, which will generally be installed by Grantee and made available for I-Net uses.

"I-Net Site" means one of the sites listed in Exhibit A to this Agreement.

"Institutional Network" or "I-Net" means the facilities or capacity designed for connecting public buildings within the Franchise Area as is described in greater detail in this Agreement. If any building connected by the I-Net ceases to be used as a public building, such building shall be disconnected from the I-Net at the City's expense.

"Integrated I-Net Backbone" means those Fiber Optics which are dedicated to the City that are integrated into the Fiber Optic network of Grantee's Subscriber Network, from the Headend to each Node in the City.

"Legally Compatible" has the meaning given in Section 2.2.

"I-Net Node" means an exchange point in the signal distribution system where optical signals are converted to RF signals.

"Node Area" means a geographic area served by a Node.

"OTDR" means Optical Time Domain Reflectometer.

"Person" means any individual, sole proprietorship, partnership, association, limited liability company, corporation, or other form of governmental or private entity or organization.

"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 its agencies, other governmental

agencies, public libraries, and Oakland Unified School District facilities located within the City and identified on Exhibit A.

"Residential Subscriber" means any Subscriber who receives Cable Service delivered to a dwelling unit.

"Separate I-Net Backbone" means those Fiber Optics which are in separate sheaths and not integrated into or attached onto the Fiber Optic portion of Grantee's Subscriber Network.

"State" means the State of California.

"Street" or "Public Way" or "Public Rights-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

"Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and who pays the charges therefor.

"Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

"Technically Compatible" has the meaning given in Section 2.1.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Service" means the offering of Telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"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.

"Total Costs" means the actual final Incremental Construction Costs plus all the costs described in Section 6.2.

"Total Estimated Costs" means the aggregate of the estimated Incremental Construction Costs plus all the estimated costs described in Section 6.2.

2. General. The I-Net shall be a private communications network, governed by this Agreement, the Franchise and the Cable Act, which may be used only by the City and any other Qualified I-Net User to communicate among themselves in a manner that is both Technically

Compatible and Legally Compatible. The City agrees to require all Qualified I-Net Users to stipulate and agree to this limitation.

2.1 "Technically Compatible" includes, but is not limited to, the understanding that the I-Net will not be used in any way that will interfere with the signal quality and the normal operation of the Subscriber Network.

2.2 "Legally Compatible" includes, but is not limited to, the understanding that, except as expressly provided herein, the I-Net may not (i) be used to provide or receive Telecommunications Services; (ii) be used by or to serve any member of the general public except for governmental or educational uses as provided in Section 4.2(d) of this Agreement (iii) be interconnected with any other institutional network or other similar system except for governmental or educational uses as provided in Section 4.2 of this Agreement. The I-Net may be connected to City owned and operated, internal switches which allows Telecommunications use among the City and Qualified I-Net Users, and which will permit interconnection between the City and Qualified I-Net Users with carriers of Telecommunications Services certificated by the California Public Utilities Commission or information service providers, provided that the City pays a fee for the transmission of data or Telecommunications to such third party providers. Notwithstanding the foregoing, if at any time it is determined by a court or agency or legislature of competent and controlling jurisdiction that the use or provision of the I-Net constitutes a Telecommunications Service, or that the provision of the I-Net by Grantee in accordance with this Agreement or the Franchise is unlawful, such use or provision of the I-Net shall cease immediately upon written notice from Grantee.

3. Engagement and Compensation of Grantee.

3.1 The City hereby engages Grantee to create and install the I-Net on the terms and subject to the conditions set forth in this Agreement.

3.2 In exchange for its services as provided in this Agreement, the City shall compensate Grantee as provided in Sections 6, 7, and 8 hereof.

4. I-Net Use.

4.1 The City is hereby granted the irrevocable right of continued use of the Fiber Optics provided specifically for City use and described in this Agreement, during the term of the Franchise and any extensions or renewals thereof.

4.2 Appropriate uses of the I-Net include all Legally Compatible uses, including, by way of example and not limitation:

(a) High-speed transmission of GIS and other data to and from City departments and to and from other Qualified I-Net Users;

(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 Qualified I-Net Users;

(c) Providing video conferencing among governmental and educational locations and to other locations for governmental and educational purposes;

(d) Linking public libraries within the City, and providing terminals at library and government locations that allow members of the public to access library and government databases only;

(e) Providing for remote origination of Public, Government or Educational Access programming;

(f) Facilitating connections for intra-governmental or educational telephone systems, security systems and other critical public entity communications applications;

(g) Connecting to any educational or governmental facility within the corporate boundaries of the City for transmission to and from educational and government data bases.

4.3 Except as expressly set forth in this Agreement, no utilization charges shall be imposed for City's or any other Qualified I-Net User's use of the I-Net in accordance with this Section 4. For the purposes of this Agreement, City-owned and/or occupied facilities, located within the geographic limits of the City shall be deemed as being within the City's jurisdictional area.

5. Backbone Fiber. The Integrated I-Net Backbone, Separate I-Net Backbone, and Node to Node Backbone each will consist of six (6) dedicated Fiber Optic strands, as follows:

5.1 Integrated I-Net Backbone. The Integrated I-Net Backbone will be owned and maintained by Grantee. Grantee shall provide a through-put of 6 dedicated Fiber Optic strands constructed from the Headend to each individual Hub a through-put of 6 dedicated Fiber Optic strands d from each Hub to each I-Net Node served by such Hub.

5.2 Separate I-Net Backbone. Although the physical Fiber Optic plant which constitutes the Separate I-NET Backbone will be constructed separate from Grantee's s Subscriber Network, the Separate I-Net Backbone will be owned, operated, and maintained by the Grantee. Grantee shall provide a through-put of 6 Fiber Optic strands to the Demarcation Point of each I-Net Site identified on Exhibit A.

5.3 I-Net Sites. The applicable Qualified I-Net User, will provide the route and the access from the property line of the I-Net Site into the facility. Reasonable efforts will be undertaken by Grantee and the City to cause the I-Net distribution system and drops to share common paths with Grantee's Subscriber Network in order to minimize costs to the Qualified I-Net Users. I-NET Sites may pass through another I-

NET Site to return to a Node (provided that the effect shall in no way increase the number of Fiber Optic strands at any point in the I-Net with a through-put above six (6)). This portion of the I-Net will be owned and maintained by Grantee. Final route selection will be at the sole discretion of Grantee. The Qualified I-Net User will provide all underground conduits and, where installation is to be by an aerial attachment, the Qualified I-Net User must confirm that the fiber can be placed aerial. Qualified I-Net Users also will supply Grantee, in advance, with blueprints of the building indicating demarcation location on the exterior of the building. Grantee will provide construction to the demarcation point at a cost to be paid by the Qualified I-NET User on a site by site and bid by bid basis. The City shall determine if and to the extent that the Qualified I-Net User may use PEG/I-Net support made available under the Franchise Agreement to pay such costs.

5.4 Multiple Facilities at an I-Net Site. In some locations where the Qualified I-NET User may have multiple facilities at a single I-NET site as listed in Exhibit A, Grantee may be requested by the City to construct Fiber Optics between two or more facilities at the Qualified I-NET User's cost (i.e., such sums shall not be paid from any PEG/I-Net support made available under the Franchise). These components will be owned by the City, provided that no part of such I-Net facilities are tied into or attached to Grantee's aerial plant or underground conduit. City shall be required to obtain all necessary permits for such construction.

5.5 Headend Interconnection to City Hub(s). Grantee shall provide, at a cost to be paid by the Qualified I-NET User, an interconnection consisting of through-put of six Fiber Optic strands between the I-Net Facilities at Grantee's Hubs and the City Hub(s).

5.6 Network Equipment. Grantee shall not install or be responsible for any I-Net equipment.

5.7 New I-Net Locations. The City may, at any time during the term of the Franchise request that new or additional public facilities in the City be connected to the I-Net beyond those sites identified in Exhibit A. Within ninety (90) days of receipt of a request from the City, Grantee shall provide a quotation as to the then-current Incremental Construction Cost for connection of such new or additional location. For all new requests not identified in Exhibit A the City shall pay all related costs to provide a quote for the Incremental Construction Cost. If the public agency elects to be connected and agrees to pay the full cost of such connection, or if construction credits are available, Grantee shall complete such connection, in a timely manner after receipt of the City's written acceptance of the quoted connection charge and, in any event, within ninety (90) days of receipt by Grantee of all permits or other governmental authorizations required to complete the connection. In no event shall such connection exceed a through-put of 6 strands of Fiber Optics.

6. Determination of I-Net Costs. The City or the Qualified I-Net User shall pay the following in return for Grantee's construction of the I-Net, excluding as provided under Sections 5.4, 5.5, 5.6 and 5.7.

6.1 Incremental Construction Costs. Initial I-Net Plant (as required to build to the I-Net Sites identified in Exhibit A) construction costs will be at Grantee's actual Incremental Construction Costs. The I-Net Plant should be designed and installed to take maximum advantage of the incremental cost formula described in this Section 6, except where it would be more cost-effective for the Grantee to do otherwise.

(a) Where the I-Net Plant follows the exact routing of Grantee's aerial fiber plant, Incremental Construction Costs shall be limited to the incremental material cost of the dedicated fiber strands and all labor costs to splice the fiber, plus any costs required to make sufficient space available on the utility pole (including additional anchors).

(b) Except as provided in paragraph (c), below:

(i) where the I-Net Plant follows the exact routing of the Grantee's underground conduit structure (installed or planned), the Incremental Construction Costs will be limited to the incremental material and all labor costs of the dedicated fiber strands, but

(ii) where the I-Net Plant follows the exact routing of the Grantee's underground plant where conduit is not installed or planned, the Incremental Construction Costs will be the costs of the fiber, plus labor costs to install and splice the fiber.

(c) Notwithstanding paragraph (b), above, where the I-Net Plant follows the exact routing of Grantee's underground plant, and either (i) there is no conduit and Grantee does not install and does not plan to install conduit; or (ii) there is conduit, but it is fully physically occupied by plant in place and Grantee does not remove or intend to remove that plant, and does not install or intend to install additional conduit, then in addition to the costs described in paragraph (b), above, the Incremental Construction Costs shall include the direct additional labor and materials costs required to construct necessary support structures for the I-Net Plant that would not have been incurred otherwise e.

(d) Where the I-Net Plant does not follow the routing of the Grantee's aerial or underground plant and there are no support structures that can be used for a cable system, the Incremental Construction Costs shall include, in addition to the costs specified in paragraph (a), above, all additional labor and materials costs required to construct necessary support structures for the I-Net Plant that would not have been incurred otherwise, including trenching, conduit placement, pole rentals, pole line engineering, permitting, make ready, and all labor and materials necessary to install and splice the fiber in or on such support structures. .

(e) Where the City and the Grantee have a mutual interest in building out to a particular location, the Incremental Construction Costs shall be split by the City and Grantee in proportion to the amount of fiber optic strands in the sheath that are dedicated to each party.

6.2 Equipment Costs. The City shall compensate Grantee as follows for all I-Net Equipment purchased or installed pursuant to this Agreement.

(a) Integrated I-Net Backbone. The City is responsible for all costs related to obtaining and installing any I-Net Equipment, which is required for the basic operations of the Integrated I-Net Backbone.

(b) Separate I-Net Backbone. The City shall bear all costs for obtaining and installing any I-Net Equipment which is required for the operation of the Separate I-Net Backbone, and shall reimburse Grantee therefor upon receipt of an invoice as provided in Section 7.5, below.

(c) Termination Equipment. The City shall bear all costs for obtaining and installing any I-Net Equipment which is Termination Equipment

(d) Cost Amounts. The parties mutually agree that all Incremental Construction Costs to be borne by the City hereunder shall be calculated as follows.

6.3 Equipment and Material Costs. The costs borne by the City for any I-Net Equipment supplied as provided herein shall be the actual costs to Grantee for such equipment.

(a) Labor Costs. The labor costs borne by the City shall be all direct and indirect costs incurred by Grantee.

(b) Maintenance Charges. Whenever Grantee provides maintenance services to the City or any Qualified I-Net User pursuant to the terms of this Agreement Grantee shall receive compensation for such services in an amount which is equal to the actual cost (including but not limited to costs for all labor and material) to Grantee of providing such services.

(c) Estimate and Design Costs. All actual costs incurred by Grantee to design any portion of the I-Net and to provide the City with estimated costs for construction, whether or not the City ultimately decides to perform the construction.

7. Initial I-Net Construction.

7.1 The I-Net shall be constructed in phases, as follows:

(a) City shall as soon as practicable and no later than sixty (60) days of the date of this Agreement, provide Grantee a final document, which specifies the sites to be served by the I-Net.

(b) Upon receipt of said document Grantee will have sixty (60) days to provide City with Total Estimated Cost for construction of the I-Net to those sites

to be constructed in the first phase, and to the best of Grantee's ability will work with City to prioritize the I-Net Locations for construction purposes.

(c) No later than September 1 of each year thereafter, the City shall provide to the Grantee a document which specifies the I-Net sites to be constructed in the next phase. Upon receipt of this document, the Grantee shall have sixty (60) days to provide the City with Total Estimated Cost for construction of the I-Net to such sites, and the total funds available for construction in that year; provided that, in no case shall the total funds available in any year be less than one quarter ($\frac{1}{4}$) of the total funds allocated for construction of the project identified in Section 10.10.2 of the Franchise.

(d) Following receipt of each of the Estimated Cost and Design Notice, the City shall have sixty (60) days to deliver to Grantee written notice that the City either (i) has finally approved the proposed I-Net Total Estimated Costs and the associated maps and routing diagrams, or (ii) give Grantee written notice that it intends to request Grantee to make such changes to the number and location of sites as may be required to ensure that the I-NET construction is consistent with the City's requirements. The City recognizes that if it does not deliver the notice within sixty days, the Total Estimated Costs may change.

(e) If the City does not so notify Grantee within sixty (60) days after its receipt of an Estimated Cost and Design Notice, Grantee shall not be required to construct the I-Net sites submitted therein; *provided, however*, that the City may later direct Grantee to construct that portion of the I-Net in accordance with Section 8 hereof.

(f) If the City approves the phase as described in the Estimated Cost and Design Notice, Grantee shall proceed with the I-Net construction phase so described.

(g) If the City elects to order changes to the design described in such an Estimated Cost and Design Notice, Grantee shall have an additional thirty (30) days in which to provide the City with (i) revised preliminary written Total Estimated Costs for the revised design ordered by the City and (ii) maps showing the revised design and routing, for each City-identified I-Net site or component (the "Revised Notice").

(h) Following its receipt of a Revised Notice, the City shall follow the procedures described in paragraph (d), above, except that the City shall have only thirty (30) days in which to deliver to Grantee a notice of acceptance or further amendment.

(i) Grantee shall provide, on a quarterly basis, an update of construction costs incurred to date. If an unforeseen condition occurs that will substantially increase the estimated cost for a particular site, the Grantee shall notify the City prior to completion of such work. For purposes of this Section

7.1(h), a ten percent (10%) increase in the estimated cost shall be considered a substantial increase.

7.2 Change Orders. The City may, up to the point where Grantee begins construction on the City Hub where a given I-Net portion is located, direct Grantee to construct or not construct any specific portions or segments of the I-Net, or to change its equipment requirements. Except as otherwise provided in Section 6.1(e), the City shall be responsible for all costs associated with any such change. All time delays to reach agreement on the sites to be constructed including but not limited to; City review of construction costs, Change Orders and Grantee time to produce revised cost estimates shall add an equal number of days to the length of the time allotted for completing the project.

7.3 Construction and Activation. The construction of the I-Net shall be substantially completed within 48 months from the effective date of the franchise with the exceptions stated in Section 7.2. I-NET activation will occur as the City procures equipment necessary for activation. For purposes of this paragraph, I-Net Activation shall mean that all the necessary equipment to activate the I-Net site has been installed and tested in accordance with Section 7.4, below, by Grantee, excluding the installation and activation of any end user equipment required to utilize the I-Net.

7.4 Initial I-Net Fiber Optic Testing/Certification. All I-Net Fiber Optics installed either on an incremental build or separate build will have OTDR testing performed, and OTDR printouts will be included in the final documentation package to certify that an I-Net location is deemed activated. Specifically, the I-Net Fiber Optics will be tested for end-to-end attenuation at both 1310nm and 1550nm, using an optical power source and optical power meter. Tests will be performed after the connectors have been installed and will be from the jumper side of the termination panel bulkhead connector, at the Fiber Optic origination point and through and to the jumper side of the bulkhead connectors at each I-Net location's Demarcation Point Fiber Optic termination panel. Maximum loss will not exceed manufacturers' passive cable system attenuation, adjusted for cable length, splice loss (maximum loss per splice is .2dB) and connector loss. The maximum connector pair loss is assumed to be .5dB.

7.5 Invoices.

(a) Grantee shall provide to the City, on a monthly basis, a copy of all invoices and supporting documentation received from a contractor, or in the case of Grantee's internal costs, an accounting of costs, which are to be assessed against the Construction Credits by Grantee for I-Net construction.

(b) Within thirty (30) days of receipt of a completed invoice, submitted in accordance with paragraph (a), above, the City shall either (i) accept the Total Costs specified in the completed invoice or (ii) give Grantee written notice, as provided in Section 7.7, below, that the said invoice is disputed. Failure to provide such written notice shall constitute acceptance of the invoice as submitted by Grantee.

7.6 Dispute Procedures.

(a) The City may not dispute any invoice, except for pointing out errors or omissions, unless it shows actual Total Costs that are more than ten percent (10%) in excess of the Total Estimated Costs previously submitted by Grantee for the work involved. If the City elects to dispute any invoice, it shall pay any amounts that are not disputed, and within the time provided in Section 7.5(b) provide a written and itemized explanation as to the amount(s) disputed (the "Dispute Notice").

(b) If Grantee receives a Dispute Notice within the time provided in Section 7.5(b), above, and the Parties cannot, within twenty (20) days, resolve the dispute, the Parties shall submit the dispute to Judicial Arbitration & Mediation Services, Inc. ("JAMS") for non-binding mediation. The fees of the mediator shall be shared equally by the parties. In order to commence mediation, the Parties shall give written mediation demand to the other party.

7.7 Alternative Procedures. Nothing in this Agreement shall be read to prevent the parties from agreeing to different procedures for I-Net construction, as long as those procedures (a) permit the I-Net to be constructed efficiently and cost-effectively and (b) are incorporated in a written document which is executed by each of the parties hereto.

8. Future I-Net Construction or Upgrades. After the I-Net has been completed, the City may request Grantee upgrade the I-Net or construct additional I-Net Plant at any time throughout the initial term of the Franchise and any extension thereof. After receiving a request for additional I-Net work, Grantee will provide the City an estimate of the Total Costs associated with the additional work which may include up to a 20% mark-up over Incremental Construction Costs, except as provided in Section 6.1(e). If the City then, in writing, requests Grantee perform the work and accepts the Total Cost and estimated time for completion of such work, Grantee will perform it subject to payment therefor by the City.

9. Warranties/Acceptance. The acceptance of any I-NET plant , or reimbursement therefor, shall not waive any defect in the work or constitute acceptance of work or equipment not in compliance with the applicable design and specification requirements. In its contracts, Grantee shall provide (a) warranties of the work and equipment satisfactory to the City, and (b) for the enforcement of such warranties and for the correction of work or equipment not provided in accordance with applicable design and specification requirements or which is otherwise defective.

10. I-Net Service and Maintenance. The City agrees that all Qualified I-Net Users will exhaust any and all troubleshooting of the I-NET equipment and their own equipment connected to the I-NET in accordance with manufacturer guidelines before contacting Grantee for service or maintenance on the I-NET plant Grantee shall provide service and maintenance of the Integrated I-NET Backbone at no cost to the City. Grantee shall be paid for all service and maintenance on a time and material basis for service and maintenance provided for the Separate

I-NET Backbone in accordance with standard rates established by Grantee. No such payment may be made from the PEG/I-Net support made available under the Franchise Agreement.

10.1 Average Response Time to an Outage. Subject to force majeure delays, Grantee shall respond to Qualified I-Net User's requests for repair of an I-Net outage as follows:

(a) For physical Fiber related failure between the Headend and Hubs where the I-Net is sheathed or carried with Subscriber Network Fiber Optics, and for multiple site outages, Grantee shall respond within four (4) hours of notification.

(b) For any other physical Fiber related single site failures, Grantee shall respond within twenty-four (24) hours of notification.

(c) Notwithstanding the foregoing, it is understood that Grantee's service, repair and maintenance obligations with respect to the Cable System shall take precedence.

10.2 Maintenance. Maintenance of the I-NET plant will be performed by Grantee as necessary to conform to any Federal or State technical requirements. Service and maintenance of the I-Net may not be performed by any other person without Grantee's prior consent in writing.

11. Miscellaneous.

11.1 Binding Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

11.2 Force Majeure. If Grantee or City shall be delayed or interrupted in the performance or completion of the work hereunder by an embargo, war, fire, flood, earthquake, epidemic, or other calamity, act of God or of the public enemy, or by any strike or labor dispute, or by the inability to secure governmental licenses, permits or priorities, or by the unavailability of sources of supply to Grantee or City, or by any other outside cause which is beyond the control of Grantee or City and without its fault or negligence, then it shall be excused from any delay or failure to perform under the Agreement.

11.3 Right to Stop Work or Termination by City. City may for any reason whatsoever terminate performance under this Agreement by Franchisee. City shall give a thirty (30) day written notice of such termination to Franchisee specifying when termination becomes effective and whether the termination relates to all work contemplated by this Agreement or only to work related to a specific phase of Franchisee's I-Net construction or maintenance. City must pay for work actually performed to the date of notice, but shall incur no further obligations in connection with the work and the Franchisee shall stop work on City's account when such termination becomes effective. Franchisee shall also terminate outstanding orders and subcontracts to

the extent possible. City shall settle the liabilities and claims arising out of termination of such subcontracts and orders.

11.4 Audit of I-Net Usage. Grantee reserves the right to audit the City's compliance with terms and conditions of this Agreement, including, without limitation, the City's and any Qualified I-Net Users' use of the I-Net, and all records of the City and Qualified I-Net Users necessary to determine compliance. If the City or any Qualified I-Net User breaches this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice, or if the City or any Qualified I-Net User repeatedly breaches the terms of this Agreement, Grantee may disable the I-Net connection to the I-Net User that is in non-compliance in addition to seeking any other remedy available to it at law or in equity. Before doing so, the Grantee must provide the I-Net user with notice of the alleged violation, and provide an opportunity to be heard, to show either that a violation has not occurred or that termination shall not be imposed.

11.5 Excused Performance. If Grantee or the City is delayed or interrupted in the performance of completion of the work hereunder by any neglect or default of the other, then the affected party shall be excused from any delay or failure to perform under this Agreement caused by such a neglect or default.

11.6 Successors and Assigns. Grantee and the City each bind themselves, their successors, assigns and legal representatives, to the other party hereto and to the successors, assigns, and legal representatives of such other party, in respect to covenants, agreements, and obligations contained in this Agreement. Neither Grantee nor the City shall assign this Agreement without the written consent of the other party, which consent shall not unreasonably be withheld. If the Franchise is properly assigned to another party, this Agreement shall also be assigned with no further action required by the parties hereto.

11.7 No Third Party Beneficiaries. The terms and provisions of this Agreement shall create no right in any Person other than the parties and their respective successors and permitted assigns of the Agreement and no third party shall have the right to enforce or benefit from the terms hereof.

11.8 Waiver. The failure of any party hereto to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive such party of the right thereafter to insist upon strict adherence to such term or any other term of this Agreement. Any waiver must be in writing.

11.9 Amendments. This Agreement may not be modified, amended, or supplemented except by a writing that has been signed by both parties hereto.

11.10 Invalid Clause. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

11.11 Construction. Each of the parties to this agreement represents and acknowledges that it has been represented by counsel of its choosing in connection with the drafting and execution of this Agreement, which has been fully negotiated among them. Accordingly, this Agreement shall be construed in accordance with its terms, and no principle of construction shall be applied to favor or disfavor either party hereto.

11.12 Governing Law. This Agreement shall be governed by, and constructed in accordance with, the laws of the State of California, without reference to the choice of laws or conflicts of laws rules or principles of that or any other jurisdiction.

11.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute on and the same instrument.

11.14 Facsimile Signatures. The parties agree that the execution and transmittal of this Agreement by facsimile shall be of the same binding effect as the handwritten execution upon an original copy of the Agreement.

11.15 Captions. All captions contained in this Agreement are for convenience only and are not to be deemed part of the agreement or to be referred to in connection with the interpretation of this Agreement.

IN WITNESS WHEREOF, this Institutional Network Agreement has been executed by the undersigned on behalf of Grantee and the City, respectively, each of the undersigned being thereunto duly authorized, to be effective as of the date first written above.

THE CITY

CITY

By: _____

Name: _____

Title: _____

GRANTEE

COMCAST OF CALIFORNIA/COLORADO LLC

a California corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

List of I-Net Sites