

CABLE SYSTEM FRANCHISE AGREEMENT

BETWEEN THE CITY OF FOSTER CITY, CALIFORNIA

AND COMCAST OF CALIFORNIA XII, INC.

December 1, 2005

TABLE OF CONTENTS

SECTION 1. SHORT TITLE AND DEFINITIONS..... 1

 1. Short Title 1

 2. Definitions..... 1

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS5

 1. Grant of Franchise.....5

 2. Grant of Nonexclusive Authority.....5

 3. Competitive Equity6

 4. Lease or Assignment Prohibited7

 5. Franchise Term7

 6. Previous Franchises.7

 7. Compliance with Applicable Laws, Resolutions and Ordinances7

 8. Rules of Grantee7

 9. Territorial Area Involved7

 10. Written Notice.....8

 11. Ownership of Grantee8

SECTION 3. CONSTRUCTION STANDARDS.....8

 1. Registration, Permits Construction Codes and Cooperation.....8

 2. Ongoing Construction.....9

 3. Use of Existing Poles or Conduits9

 4. Minimum Interference10

 5. Disturbance or Damage.....10

 6. Temporary Relocation10

 7. Emergency11

 8. Tree Trimming.....11

 9. Protection of Facilities11

 10. Locating Facilities.....11

 11. City’s Rights12

 12. Facilities in Conflict.....12

 13. Relocation Delays12

 14. Interference with City Facilities.....13

 15. Interference with Utility Facilities13

| | | |
|------------|---|----|
| 16. | Collocation | 13 |
| 17. | Safety Requirements | 13 |
| SECTION 4. | DESIGN PROVISIONS | 14 |
| 1. | Construction: Minimum Channel Capacity | 14 |
| 2. | Interruption of Service | 14 |
| 3. | Emergency Alert Capability | 14 |
| 4. | Technical Standards | 14 |
| 5. | Special Testing | 14 |
| 6. | FCC Reports..... | 15 |
| 7. | Line Extension | 15 |
| 8. | Lockout Device..... | 15 |
| SECTION 5. | SERVICE PROVISIONS | 15 |
| 1. | Regulation of Service Rates..... | 15 |
| 2. | Non-Standard Installations..... | 16 |
| 3. | Sales Procedures | 16 |
| 4. | Consumer Protection and Service Standards | 16 |
| 5. | Subscriber Contracts | 21 |
| 6. | Refund Policy..... | 22 |
| 7. | Late Fees | 22 |
| 8. | Local Office | 22 |
| 9. | Records and Reports | 22 |
| SECTION 6. | ACCESS CHANNEL(S) PROVISIONS | 25 |
| 1. | PEG Access Facilities | 25 |
| 2. | PEG Access Facility Management Entity..... | 25 |
| 3. | Drops to Designated Buildings | 25 |
| 4. | Compliance with Applicable Law | 25 |
| 5. | Itemization of Expenses | 26 |
| 6. | Programming..... | 26 |
| SECTION 7. | OPERATION AND ADMINISTRATION PROVISIONS | 26 |
| 1. | Administration of Franchise | 26 |
| 2. | Franchise Fee | 26 |
| 3. | Not Franchise Fees..... | 27 |
| 4. | Access to Records | 27 |

| | | |
|-------------|--|-----|
| 5. | Reports and Maps to be Filed with City | 27 |
| 6. | Proprietary Information | 28 |
| 7. | Periodic Evaluation..... | 28 |
| SECTION 8. | GENERAL FINANCIAL AND INSURANCE PROVISIONS | 29 |
| 1. | Security Fund..... | 29 |
| 2. | Insurance | 32 |
| 3. | Grantee’s Insurance | 33 |
| 4. | Indemnification | 34 |
| SECTION 9. | SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE | 34 |
| 1. | City’s Power to Revoke | 34 |
| 2. | Appeal of Finding of Revocation..... | 36 |
| 3. | Extended Operation and Continuity of Services..... | 36 |
| 4. | Receivership and Foreclosure | 36 |
| 5. | Removal After Abandonment, Termination or Forfeiture | 37 |
| 6. | Sale or Transfer of Franchise..... | 37 |
| SECTION 10. | PROTECTION OF INDIVIDUAL RIGHTS | 38 |
| 1. | Discriminatory Practices Prohibited | 38 |
| 2. | Subscriber Privacy | 38 |
| SECTION 11. | MISCELLANEOUS PROVISIONS..... | 38 |
| 1. | Franchise Renewal | 38 |
| 2. | Work Performed by Others..... | 38 |
| 3. | Amendment of Franchise Agreement | 38 |
| 4. | Compliance with Applicable Laws | 38 |
| 5. | Nonenforcement by City..... | 39 |
| 6. | Rights Cumulative | 39 |
| 7. | Grantee Acknowledgment of Validity of Franchise | 39 |
| 8. | Force Majeure | 39 |
| SECTION 12. | PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS | 40 |
| 1. | Publication, Effective Date | 40 |
| 2. | Acceptance..... | 40 |
| EXHIBIT A | OWNERSHIP | A-1 |
| EXHIBIT B | GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT | B-1 |

| | | |
|-------------|---|-------|
| EXHIBIT B-1 | SERVICE TO PUBLIC AND PRIVATE BUILDINGS | B-1-1 |
| EXHIBIT C | DESCRIPTION OF SYSTEM..... | C-1 |
| EXHIBIT D | FRANCHISE FEE PAYMENT WORKSHEET | D-1 |
| EXHIBIT E | CORPORATE GUARANTY | E-1 |
| EXHIBIT F | FIBER NETWORK AGREEMENT..... | F-1 |

FRANCHISE AGREEMENT

This Agreement, made and entered into this 1st day of December, 2005, at Foster City, California, by and between the City of Foster City, a municipal corporation of the State of California, and Comcast of California XII, Inc.

RECITALS

1. The City of Foster City, pursuant to Applicable Laws, is authorized to grant or renew one (1) or more non-exclusive revocable franchises to operate, construct, maintain and reconstruct a Cable System within the City of Foster City; and
2. The City of Foster City, after due evaluation of Comcast of California XII, Inc., and after public hearings, has determined that it is in the best interests of the City of Foster City and its residents to renew this Franchise to Comcast of California XII, Inc.
3. NOW, THEREFORE, the City of Foster City hereby grants the renewal to Comcast of California XII, Inc. of this Cable System Franchise in accordance with the provisions of Applicable Laws and this Franchise.

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Agreement shall be known and cited as the Cable Television Franchise Agreement.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.
 - a. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
 - b. “Basic Cable Service” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
 - c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber

interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

- d. “Cable System” or “System” means 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) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) a facility that serves Subscribers without using any public Right-of-Way;
 - (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - (4) an open video system that complies with 47 U.S.C. § 573; or
 - (5) any facilities of any electric utility used solely for operating its electric utility systems.
- e. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.
- f. “City” means City of Foster City, a municipal corporation, in the State of California, acting by and through its City Council, or its lawfully appointed designee.
- g. “City Council” means the governing body of the City of Foster City, California.
- h. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and, by an appropriate selector, permits a Subscriber to view all Subscriber signals included in the Service.
- i. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

- k. “Franchise” or “Cable Franchise” means this Franchise Agreement and the regulatory and contractual relationship established hereby.
- l. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (defined as such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.
- m. “Grantee” is Comcast of California XII, Inc., its lawful successors, transferees or assignees.
- n. “Gross Revenue” means any and all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, or any entity in which Grantee has a financial interest, from the operation of its Cable System to provide Cable Services within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees, 3) late fees, returned check charges, collection agency charges, 4) Installation and reconnection fees, 5) fee payments or other consideration earned by the Grantee from programmers for carriage of Cable Services to the extent consistent with generally applicable accounting principles (“GAAP”), 6) upgrade and downgrade fees, 7) advertising revenue calculated consistent with GAAP, 8) home shopping commissions, 9) Converter and remote control rental fees, 10) Lockout Device fees and 11) guides. The term Gross Revenue shall not include bad debts or any taxes on Services furnished by Grantee imposed upon Subscribers by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with GAAP.
- o. “Installation” means the connection of the Cable System from feeder cable to the point of demarcation including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- p. “Lockout Device” means a parental control or Lockout Device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the Lockout Device at the time of their initial subscription and periodically thereafter. Any device offered shall be at the rate, if any, in compliance with Applicable Laws.

- q. “Nondiscriminatory” means 1) the absence of unfavorable or unfair treatment of a Grantee or Person in comparison to others on the basis of race, sex, color, religion, national origin, age, physical/mental handicap, sexual harassment, sexual orientation or reprisal for opposition to discriminatory practices, or 2) terms and conditions neither more burdensome nor less favorable than those imposed upon other users of the public Rights-of-Way.
- r. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.
- s. “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- t. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally.
- u. “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- v. “Peninsula Television” or “PEN-TV” means the San Mateo County-wide community access organization charged with providing County-wide programming on a specific Channel.
- w. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.
- x. “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means the total of the following:
 - (1) Channels designated for noncommercial public, educational, or government use; and
 - (2) facilities and equipment for the use of such Channel capacity.
- y. “Right-of-Way” or “Rights-of-Way” means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public alley, public sidewalk, public boulevard, public parkway, public drive or any public easement now or hereafter held by the City.

- z. “Right-of-Way Ordinance” means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.
- aa. “San Mateo County Telecommunications Authority” or “SAMCAT” means a joint powers agency, of which City is a member, and which has all powers and duties lawfully delegated by the City in the Joint Powers Agreement establishing San Mateo County Telecommunications Authority, as amended.
- bb. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- cc. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.
- dd. “Standard Installation” means an aerial connection extending no more than one hundred twenty-five (125) feet from the potential residential Subscriber’s demarcation point to the point on the Cable System from which Cable Service can be provided to that Subscriber.
- ee. “Subscriber” means any Person who lawfully receives Cable Service via the System consistent with material and lawful terms and conditions of Grantee then in force. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant not the building owner.
- ff. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**SECTION 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS**

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of the City’s Cable TV Ordinance, or any other City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

- b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

3. Competitive Equity.

- a. The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are generally equivalent. If any such additional or competitive franchise is granted by the City, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions.
- b. Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by Section 626 of the Cable Act, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date on which the competitor passes twenty-five percent (25%) of the homes in the Franchise Area and begins providing Cable Service. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the City required. The City and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The City and Grantee shall have all rights and obligations provided under said Section 626. In no event, however, shall the term of this Franchise be reduced to less than eight (8) years from the effective date of this Franchise.
- c. Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

4. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.6 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.
5. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years as set forth in Section 12.1 herein, unless sooner renewed, revoked or terminated as herein provided.
6. Previous Franchises. Upon acceptance by Grantee as required by Section 12 herein, this Franchise shall supersede and replace any previous agreement or other authorization granting a franchise to Grantee.
7. Compliance with Applicable Laws, Resolutions and Ordinances.
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to City's lawful exercise of its police powers. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 11.3 herein.
 - b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Right-of-Way within the City, however, nothing herein waives Grantee's rights to challenge provisions of a Right-of-Way ordinance.
 - c. Nothing in this Franchise shall (i) abrogate the right of the City to perform any public works or public improvements of any description, or (ii) prevent enforcement by City of any codes or ordinances of general applicability promulgated by the City in and to the Rights-of-Way subject to the provisions of 7(b) above.
8. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.
9. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the residents of the potential cable Subscribers or the area in which such group resides.

10. Written Notice. All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given 1) upon delivery if delivered personally to the Person designated below, or 2) on the fifth day following deposit in the United States mail, or 3) on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, or 4) upon acceptance if sent via registered or certified mail, postage prepaid thereon.

If to City: City Manager
610 Foster City Boulevard
Foster City, California 94404

If to Grantee: Director, Government Affairs and Franchising
West Bay Area Division
Comcast of California XII, Inc.
1205 Chrysler Drive
Menlo Park, California 94025

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

11. Ownership of Grantee. Grantee shall provide and maintain a true and correct copy of Grantee’s basic organizational structure which shall be attached hereto as Exhibit A.

**SECTION 3.
CONSTRUCTION STANDARDS**

1. Registration, Permits, Construction Codes, and Cooperation.

- a. Grantee shall comply with the construction requirements of Applicable Laws.
- b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with Applicable Laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and must obtain the necessary permits in accordance with the City’s general permitting practices in a reasonable time after notification to City.
- c. Reimbursement, including Nondiscriminatory permit fees and charges, paid through the permitting process is separate, and in addition to, any other fees included in the Franchise. Grantee, at the time of or prior to applying for permits, shall provide City with a description of the facility to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.
- d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple

grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Manager or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

- e. The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. Permits shall be processed in a Non-Discriminatory manner.
 - f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.
 - g. Prior to performing any work in the Rights-of-Way, Grantee shall give appropriate notice to the Underground Service Alert (“USA”), or any similar type service provider as designated by the City.
 - h. Grantee shall hold meetings upon the City’s written request as necessary but no more than quarterly to coordinate construction plans of both parties for the upcoming year.
2. Ongoing Construction. Grantee shall notify City at least ten (10) business days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.
3. Use of Existing Poles or Conduits.
- a. Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location nor any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures owned by Grantee shall be removed or modified by Grantee at its own expense whenever City determines that the public necessity and convenience would be enhanced thereby. In no event shall the costs and expenses of Grantee associated with removal or modification of poles or structures be borne by the City.
 - b. The Grantee shall place its facilities underground in a manner consistent with those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System

construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will provide cost sharing to the Grantee only to the extent required by and consistent with Rule 20 of the California Public Utilities Commission Rules and Regulations.

- c. Nothing in this section shall be construed to require Grantee to underground its facilities where to do so would impair the performance of the Cable System, however the City can enforce reasonable, nondiscriminatory regulations intended to restrict the visibility of the above-ground structures.

4. Minimum Interference.

- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
- c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. Disturbance or Damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to its original condition prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into its original condition prior to Grantee's work, as reasonably determined by the City. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice thereof.

6. Temporary Relocation.

- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not

limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary.

- b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.
7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager, Public Works Director or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.
8. Tree Trimming. Grantee shall at all times comply with any applicable local ordinances regarding heritage trees and tree trimming. In the absence of a local heritage tree or tree trimming ordinance, Grantee shall not trim any trees or other foliage located on private property prior to obtaining the written consent of the owner of said property. Any trimming of trees or other foliage by the Grantee in the Rights-of-Way shall not occur prior to obtaining the written consent of the City. Such trees or other foliage shall be trimmed at Grantee's own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City.
9. Protection of Facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.
10. Locating Facilities.
 - a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
 - b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

- c. If, during the term of this Franchise, Grantee is contacted by USA, also known as the Underground Service Alert, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities.

11. City's Rights.

- a. Subject to the notice provisions of Section 3.12(a) below, City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Rights-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date reasonably established by City, City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by City due to Grantee's delay. If City requires Grantee to relocate its facilities located within the Rights-of-Way, City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. This section does not apply to underground conversions, see Section 3.3 "Use of Existing Poles or Conduits". If public funds are available to any Person using such Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall upon written request of the Grantee make application for such funds on behalf of the Grantee.
- b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

12. Facilities in Conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:

- a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding thirty (30) days, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.
- b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.

13. Relocation Delays.

- a. Subject to Grantee's compliance with Section 3.12 above or events beyond Grantee's reasonable control, consistent with Section 11.8 hereof, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages

attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City Engineer for a decision. In the event that Grantee disagrees with the City Engineer's decision the matter shall be submitted to the City Manager or the City Manager's designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts. For purposes of this section, "delay" shall not be construed to include Grantee's good faith challenge, in the appropriate forum, to the City's order to relocate pursuant to Section 3.12.

- b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.
14. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.
 15. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
 16. Collocation. Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.
 17. Safety Requirements.
 - a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
 - b. Grantee shall install and maintain its System and other equipment in accordance with City's codes, and consistent with the requirements of the National Electric Safety Code then in effect, and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
 - c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1. Construction: Minimum Channel Capacity.
 - a. Grantee shall operate and maintain for the term of this Franchise a System providing a minimum of 750 MHz capacity. Design specifications found in Exhibit C attached hereto are hereby incorporated as part of this Franchise.
 - b. The System will utilize a hybrid fiber-coaxial architecture. In addition, the System will be designed with the capability to transmit return signals upstream. In conjunction with any upgrade/construction, Grantee shall use standard frequency headend equipment which is technically necessary to meet FCC technical standards.
2. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twelve (12) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.
3. Emergency Alert Capability. Grantee shall immediately provide Emergency Alert capability in full compliance with applicable FCC requirements. Grantee and City shall establish procedures for City access to override video and audio on all Channels of the Cable System to provide emergency messages.
4. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. In addition, Grantee is subject to the technical standards outlined in Exhibit C attached hereto.
5. Special Testing.
 - a. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise at its own cost. In addition, City may require special testing of a location or locations within the System on the basis of complaints received indicating noncompliance with FCC technical standards. Grantee shall be afforded due process including notice and opportunity to cure prior to any request for special testing. City and Grantee shall arrange such special testing so as to minimize hardship or inconvenience to the Subscribers caused by such testing.
 - b. Before requesting such tests, Grantee shall be afforded due process to investigate any potential noncompliance, and at least thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of

concern. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing. If such special testing establishes that the System meets all required FCC technical standards set forth at Section 4.4, the City shall bear the expense for such special testing. If such special testing establishes that the System does not meet all required FCC technical standards set forth at Section 4.4, Grantee shall bear the expense for such special testing.

6. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall also be filed with City or its designee within ten (10) days of the City's written request of such test results.
7. Line Extension.
 - a. Grantee shall design and construct the Cable System in such a manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit within the Franchise Area.
 - b. Except as provided in Section 6.3 and Exhibit B-1 herein, any unit located within one hundred twenty-five (125) feet of the nearest tap on Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber in the City beyond the one hundred twenty-five (125) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional costs.
8. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

SECTION 5. SERVICE PROVISIONS

1. Regulation of Service Rates.
 - a. City may regulate rates for the provision of Cable Service, equipment, or any other Cable Service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.
 - b. Except where authorized by law, Grantee shall not discriminate or grant undue preferences in its rates and charges among Subscribers, groups of Subscribers or potential Subscribers. Nothing in this section shall be construed to prohibit: (A) the temporary reduction or waiving of rates or charges in conjunction with limited promotional campaigns; (B) the offering of reasonable discounts to senior citizens

or economically disadvantaged citizens; or (C) the offering of bulk discounts for multiple dwelling units.

- c. This Franchise shall not in any way be construed to prohibit the Grantee from offering a senior or low income discount should Grantee so desire.
2. Non-Standard Installations. Grantee shall install, at its regular and non-discriminatory time and materials charges, and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met.
 3. Sales Procedures. Grantee shall in its initial communication or contact with a non-Subscriber or current Subscriber seeking alternative options, inform the non-Subscriber of all levels of Service available, including the lowest priced Basic Cable Service tier. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
 4. Consumer Protection and Service Standards. Grantee shall maintain a convenient local customer service and bill payment location in San Mateo County for receiving Subscriber Opayments, handling billing questions, equipment replacement and customer service information. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise that impose higher or additional customer service standards on a cable operator, and shall not contest any decision by the City to enforce the standards set forth herein in accordance with Applicable Laws.
 - a. Cable System office hours and telephone availability:
 - i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 1. Trained Grantee representatives will be available to respond to customer telephone inquiries.
 2. Grantee's representatives at the local office shall, at a minimum, be able to provide immediate billing information, provide for equipment pick-up and drop-off, and customer service information.
 - ii. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - iii. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

- iv. Grantee shall maintain at a minimum the current level of equipment sufficient to measure compliance with the telephone answering standards above.
 - v. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located pursuant to Section 5.4.
- b. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
- i. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.
 - ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall use its best efforts to resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.
 - iii. The "appointment window" alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. Grantee shall schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.
 - iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- c. Service Standards:
- i. Grantee shall render efficient Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the Cable System, preferably between midnight and six A.M. (6:00 A.M.) local time.
 - ii. The Grantee shall maintain a repair force of technicians normally capable of responding to Subscriber requests for Service within the following time frames:

1. For a System outage: Within two (2) hours, including weekends, of receiving Subscriber calls or requests for Service which by number identify a System outage of sound or picture of one (1) or more Channels, affecting at least ten percent (10%) of the Subscribers of the System.
 2. For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for Service identifying an isolated outage of sound or picture for one (1) or more Channels that affects five (5) or more Subscribers. On weekends, an outage affecting fewer than five (5) Subscribers shall result in a service call no later than the next business day.
 3. For inferior signal quality: Within two (2) business days of receiving a request for Service identifying a problem concerning picture or sound quality.
- iii. Grantee shall not charge for the repair or replacement of defective or malfunctioning equipment provided by Grantee to Subscribers, unless the defect was caused by the Subscriber or the equipment is owned by the Subscriber.
- d. Communications between Grantee and Subscribers:
- i. Notifications to Subscribers:
 1. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - a. Products and Services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and Service maintenance policies;
 - d. Instructions on how to use the Cable Service;
 - e. Channel positions of the programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City.
 2. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(d)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result

of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.

3. All programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments directed to each Subscriber individually through mailed notice or as an insert or addendum to the Subscriber's monthly bill, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.

e. Billing and Information Standards:

- i. Subscriber bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- ii. In case of a billing dispute, the Grantee shall respond to a written complaint from a Subscriber within thirty (30) days.
- iii. Grantee shall, upon request, provide credits or refunds to such Subscribers whose Service has been interrupted for twenty four (24) consecutive hours or more, and upon request to Subscribers whose Service has been interrupted for two (2) or more hours, not necessarily consecutive, within any twenty-four (24) day.

Credits or refunds shall, upon request, be provided by Grantee on a pro rata basis to any Subscriber(s) affected by interruption(s) of Service for more than two (2) hours due to actions or outages under the control of the Grantee, exclusive of scheduled repairs, maintenance or Franchise-required construction that Grantee has provided advance written notice of to Subscribers. In cases where advance written notice is provided to Subscribers, the time period detailed in said notice shall not exceed four (4) hours in any twenty-four (24) hour period. In cases where said notice has been given to Subscribers and the Service Interruption exceeds the period detailed in said notice, the provisions of this section shall apply.

In the event Grantee has improperly or inadvertently disconnected Cable Services to a Subscriber, Grantee shall provide for restoration without charge to Subscriber as soon as possible, but no later than within two (2) days of discovery of disconnection. Grantee shall credit or provide refunds to any Subscriber improperly or inadvertently disconnected from receiving Cable Services for the period of time without Cable Service.

All credits or refunds for Service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For Subscribers terminating Service, refunds shall be issued promptly, but no later than thirty (30) days after the return of any Grantee-supplied equipment.

f. Verification of Compliance with Standards

- i. Grantee shall, upon request, provide City, within thirty (30) days of the end of each quarter with a report, in a form acceptable to the City and specific to the call center serving the City, regarding Grantee's compliance with each of the standards required in Section 5.4(a-e) of this Franchise.
- ii. A repeated or verifiable pattern of noncompliance with the consumer protection standards above, after Grantee's receipt of due notice and a reasonable opportunity to cure, shall be deemed a material breach of this Franchise.
- iii. Grantee shall take necessary steps to ensure that adequate telephone lines and/or staffing are available to permit Grantee to satisfy its obligations under this Franchise. Consideration shall be given for periods of promotional activities or outages. The monthly billing period shall be considered as a normal, daily activity for purposes of determining the availability of adequate telephone lines and/or staffing.

g. Subscriber Complaints and Disputes

- i. Grantee shall establish written procedures for receiving, acting upon and resolving Subscriber complaints without intervention by the City. The written procedures shall prescribe the manner in which a Subscriber may submit a complaint either orally or in writing specifying the Subscriber's grounds for dissatisfaction. Grantee shall provide a copy of these procedures with City upon City's request. The written procedures shall include a requirement that Grantee respond to any written complaint from a Subscriber within thirty (30) days of receipt.
- ii. Upon prior written request, City shall have the right to review Grantee's response to any Subscriber generated complaints referenced to the City in order to determine Grantee's compliance with the Franchise requirements, subject to the Subscriber's right to privacy.
- iii. Subject to Applicable Law, it shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the System, or the City gives notice of intent to terminate or not to renew the Franchise, the Grantee shall act so as to

ensure that all Subscribers receive Cable Service so long as the Franchise remains in force.

- iv. In the event of a change of control of Grantee, or in the event a new operator acquires the System, the original Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of Service to all Subscribers.
- v. Should a Grantee supervisor not be available when requested by a Subscriber, Grantee shall make its best effort to ensure that a supervisor shall respond to the Subscriber's complaint at the earliest possible time, and in no event later than the end of the next business day.
- vi. For complaints received by City and provided by City to Grantee, Grantee shall immediately undertake all reasonable steps to address said complaints and shall, within seven (7) business days, notify City of Grantee's progress in responding to and resolving said complaints.

h. Other Requirements

- i. In the event Grantee fails to fully operate the System for five (5) consecutive days other than for reasons beyond the control of Grantee, without prior approval or subsequent excuse of the City, the City may, at its sole option, operate the System or designate an operator until such time as Grantee restores Service under conditions acceptable to the City or another operator is selected. If the City should fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.
- ii. All officers, agents or employees of Grantee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto Subscribers' premises shall carry a photo-identification card. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee or its major subcontractors shall be clearly identified as working for Grantee.
- iii. City reserves all rights to establish by separate ordinance, additional service standards and standards governing consumer protection not otherwise provided for in this Franchise. A continuing pattern of repeated noncompliance may be deemed a material breach of this Franchise, provided that Grantee shall receive due process in accordance with Section 8.1 hereof, including prior written notification and a reasonable opportunity to cure, prior to any sanction being imposed.

5. Subscriber Contracts. Upon written request, Grantee shall supply City with any standard form Subscriber contract utilized by Grantee. The length and terms of any Subscriber

contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

6. Refund Policy. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than thirty (30) days after the return of the equipment supplied by the Grantee if Cable Service is terminated.
7. Late Fees. Grantee shall abide by State of California requirements with respect to assessment and collection of late fees. Grantee acknowledges the City's right to adopt further customer service requirements by ordinance in the event that the State of California repeals current laws governing late fees to the extent permitted by Applicable Law.
8. Local Office.
 - a. Grantee shall maintain a convenient location in San Mateo County pursuant to Section 5.4, for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open during Normal Business Hours. In addition, Grantee shall maintain a drop box adjacent to Grantee's local office in the City for receiving Subscriber payments after hours.
 - b. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.
9. Records and Reports.
 - a. Grantee shall at all times maintain:
 - i. A written or computer-stored record of all service calls and interruptions or degradation of Service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the Subscriber's right of privacy.
 - ii. If requested by City, a summary of service calls, identifying the number, general nature and disposition of such calls, on a quarterly basis. A summary of such service calls shall be submitted to the City within thirty (30) days following any written request by City, in a form reasonably acceptable to the City.
 - iii. If requested by City, a complaint record which shall contain a semi-annual (January 1 through June 30 and July 1 through December 31) breakdown indicating the total number of escalated complaints received for the

preceding reporting period, and shall indicate the classifications of complaints as follows: construction, billing, customer relations/service and miscellaneous. Escalated complaints shall mean those complaints that are received by the City, or received in writing by Grantee's area management.

- iv. A full and complete record of rates for programming services, equipment, Installations and other Subscriber charges. This information shall include, but not be limited to, rates for the basic service tier, tiers of Service beyond the basic tier, premium service, pay-per-view services, late fees, additional outlets, Converters, remote controls and any charges for Installation or Service at the Subscriber premises.
- v. Upon reasonable written notice to Grantee, and subject to federal Subscriber privacy requirements, the City may review Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Service Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's business office, during Normal Business Hours, and without reasonably interfering with Grantee's business operations.
- vi. Grantee shall make available to the City for inspection all maps and charts of cable locations prepared by or for the Grantee during the duration of the Franchise.
- vii. The City shall have the right to inspect all construction and Installation work performed by a Grantee subject to this Franchise as it shall find necessary to insure compliance with governing ordinances and the Franchise, and shall have the right to inspect a Grantee's Cable System.
- viii. Personally identifiable Subscriber information that is confidential under Section 631 of the Cable Act and so designated by Grantee shall not be subject to review by the City. Subject to the foregoing, access to Grantee's records shall not be denied to the City on the basis that the records contain proprietary information. Subject to Applicable Law, including the California Public Records Act, California Government Code Section 6250 et seq., the City shall keep any information which is marked "proprietary" or "confidential" (and under Applicable Law, deemed "proprietary" or "confidential") submitted by Grantee as required under this Franchise ("Information") in confidence. The City shall not disclose the Information or any part thereof to any third party, government agency or regulatory body seeking to inspect or obtain the Information without first informing Grantee of such request and affording Grantee the opportunity to resist such disclosure at its sole cost and expense. The City shall not be liable to Grantee for any submission or disclosure of such Information to a third party as required by Applicable Law or to a government agency or regulatory body seeking the Information and

claiming jurisdiction in any of these events. Nothing in this section shall limit the right of Grantee to contest disclosure or submission to a third party as required by Applicable Law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected.

b. Reports.

- i. At the City's written request, within ninety (90) days after the end of each calendar quarter, Grantee shall submit a written report to City with respect to the preceding quarter in a form approved by City, including, but not limited to, the following information:
 1. A summary of the previous quarter's (or in the case of the initial reporting quarter, the initial quarter's) activities in development of the Cable System, including but not limited to, Services begun or discontinued during the reporting quarter;
 2. An indication of any residences in Grantee's Service Area where Service is not available, and a schedule for providing Service;
 3. Information as to the number of homes passed;
- ii. Upon written request by City, within ten (10) business days, the Grantee shall submit to City copies of all pleadings, applications and reports received and/or submitted by Grantee to any federal, state or local court, regulatory agency, or other governmental body as well as copies of all decisions issued in response to such pleadings, applications and reports, which are non-routine in nature and which will materially affect its Cable System within the Franchise Area.
- iii. If Grantee is publicly held, a copy of each Grantee's annual and other periodic reports and those of its parent, shall be submitted to City within forty-five (45) days of the publication of such reports.
- iv. Upon City's prior written request, but no more than annually, Grantee shall submit to City a privacy policy indicating all steps taken to assure that the privacy rights of individuals have been protected.
- v. All reports required under this Franchise, except those required by law to be kept confidential, shall be available for public inspection in the City's offices during Normal Business Hours.
- vi. All reports and records required to be delivered to City under this Franchise shall be furnished at the sole expense of Grantee.
- vii. The willful refusal, failure, or willful negligence of Grantee to file any of the reports required as and when due under this Franchise, may be deemed

a material breach of this Franchise if such reports are not provided to City within thirty (30) days after written request therefor, and may subject the Grantee to all remedies, legal or equitable, which are available to City under this Franchise.

- viii. Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Franchise may be deemed a material breach of the Franchise and may subject Grantee to all remedies, legal or equitable, which are available to City.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

1. PEG Access Facilities. The Grantee shall provide resources for PEG Access Facilities including Channel capacity, funding, necessary interface equipment and cabling to permit operation as specified herein in Exhibit B.
2. PEG Access Facility Management Entity. The City may delegate the responsibility for PEG access facility management to an entity that it designates or establishes, not limited to, but including PEN-TV and/or SAMCAT.
3. Drops to Designated Buildings.
 - a. Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop to a demarcation point within the location, one (1) cable outlet, one (1) Converter, if necessary to receive standard cable, and standard cable which consists of Basic Cable Service and expanded basic cable service consisting of approximately seventy (70) channels or its future equivalent, excluding pay-per-view, pay-per-channel (premium) programming offered by Grantee, without charge to the locations identified on Exhibit B-1 attached hereto and made a part hereof, and such other public locations, including state accredited public schools within two hundred (200) feet of Grantee's existing cable plant, and subsequently designated by City as determined in City's sole discretion.
 - b. Locations may add outlets at their own expense, as long as such Installation meets Grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of the City's written request of additional accredited schools or public institutions or relocations to complete construction and Installation.
4. Compliance with Applicable Law. In accepting this Franchise, the Grantee agrees that the commitments indicated in this Section 6 and the attached Exhibit B are voluntarily entered into. Consistent with Applicable Law, Grantee and City agree that any and all PEG access capital support referenced in this Section 6 and Exhibit B will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations shall not be deemed to be (i) "payments in kind" or any

involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7 hereof.

5. Itemization of Expenses. Grantee shall not pass-through to Subscribers, by way of line itemization, surcharge or addition to an otherwise permissible rate, or charge to City, any amounts relating to any provision of this Franchise unless expressly authorized by Applicable Laws.
6. Programming. All programming transmitted over PEG Access Channels shall be non-commercial in nature. Grantee and City agree that City, or the producer or distributor of such programming, may include acknowledgments for Persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship and underwriting information provided on the Public Broadcasting System (PBS) and consistent with Applicable Laws.

SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise to the extent allowed by Applicable Law. Nothing herein shall prevent Grantee from challenging any delegated act or function as an improper delegation of City authority.
2. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay City a quarterly Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each quarter together with a report showing the basis for the computation in form and substance substantially the same as Exhibit D attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to one and one-half percent (1.5%) per month or as otherwise allowed by Applicable Laws. Failure to remit the undisputed Franchise Fee to the City shall be considered a material breach of this Franchise and subject Grantee to all available enforcement provisions of this Franchise and Applicable Laws.
 - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Section 7.4 of this Franchise and such

review indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City.

3. Not Franchise Fees. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and such Franchise Fees shall not be deducted from, or credited or offset against, any taxes, fees or assessment of general applicability levied or imposed by City or any other governmental agency, and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.
4. Access to Records. The City shall have the right to inspect, upon reasonable written notice and during Normal Business Hours, or require Grantee to provide within a reasonable time a reasonable number of copies of any non-confidential records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. City shall notify Grantee whenever confidential, proprietary documents are sought at least fourteen (14) business days prior to the intended release, so that Grantee may seek protection in accordance with state law. Grantee shall produce such books and records for City's inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the San Francisco Bay Area Market. To the extent it is necessary for City to send a representative to a location outside of the City to inspect Grantee's books and records, Grantee shall be responsible for reasonable travel costs, including airfare, hotel, meals, car rental, etc. For purposes of this section, "reasonable travel costs" shall mean those costs incurred in a manner consistent with the City's internal guidelines for travel expense reimbursement.
5. Reports and Maps to be Filed with City.
 - a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit D attached hereto.
 - b. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.
 - c. If requested by City, Grantee shall furnish to and file with City Manager the maps maintained in the ordinary course of business of the location of all cable routing,

including trench routes, and Grantee shall file with City updates of such maps annually, upon written request, if material changes have been made in the System. Such information shall be provided in a read only electronic form so long as in a computer aided software format consistent with the ordinary course of business for a cable operator and franchising authority, and marked proprietary and confidential.

6. Proprietary Information. The City agrees to treat any information disclosed and clearly labeled by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the City receives a request under a state “sunshine”, public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request.
7. Periodic Evaluation.
 - a. City may require evaluation sessions not more than once every five (5) years during the term of this Franchise, upon forty-five (45) days written notice to Grantee.
 - b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.
 - c. As part of any periodic evaluation proceeding the City shall have the right to visit and/or inspect, during reasonable business hours and upon reasonable notice, the Grantee’s headend facility, customer service center and any other facilities of Grantee whether or not located in the City, to the extent such facilities are reasonably related to Grantee’s ability to provide Cable Services to the City.
 - d. As a result of a periodic review or evaluation session, upon notification from City, Grantee and the City may agree to meet and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise. Nothing in this section shall obligate Grantee to agree to any proposed modifications of the Franchise.

SECTION 8.
GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Security Fund.

- a. Upon the effective date of this Franchise, Grantee shall establish and provide to City a security fund or other security satisfactory to City (e.g., collateral assignment of C.D.), as security for the faithful performance by Grantee of all material provisions of this Franchise. The security fund shall consist of two (2) parts. The first part shall consist of a performance bond of Two Hundred Fifty Thousand Dollars (\$250,000) to cover the Cable System construction, as may be required herein.

The bond shall be in a form acceptable to the City.

The second part of the security fund shall be in the amount of at least One Hundred Thousand Dollars (\$100,000) and shall be in the form of a performance bond drawn on a California bank.

- b. The security shall be maintained as follows:
- i. The Two Hundred Fifty Thousand Dollars (\$250,000) bond shall be maintained until the completion of any System construction as provided for in Section 4 and Exhibit C herein at which time the bond shall be released, provided there are then no outstanding material violations of this Franchise.
 - ii. The performance bond shall be maintained at the One Hundred Thousand Dollars (\$100,000) level throughout the term of this Franchise, provided that at intervals no more often than each three (3) years, City shall have the right to require that this amount be increased to reflect changes in the San Francisco Metropolitan Area Consumer Price Index during the prior three (3) year period. If the performance bond has an expiration date, it shall be renewed not less than thirty (30) days prior to the expiration, and if Grantee fails to renew, City may draw entire performance bond. If performance bond is drawn upon Grantee must restore to the full performance bond amount.
 - iii. The security fund may be assessed by City for Franchise breaches, provided that Grantee has received written notice to cure any material violations prior to any assessment, in accordance with Section 8.1 herein. As long as the City follows the procedures specified herein for assessing and/or withdrawing funds from said security fund, Grantee shall not initiate litigation or non-City administrative action to prevent or impair City from accessing those funds. Grantee's recourse, in the event Grantee believes any taking of security funds is improper, shall be through legal

action after the security has been drawn upon. If the City's action or taking is found to be improper by any court or agency of competent jurisdiction, Grantee shall be entitled to a refund of the funds plus interest and/or any other award which such court or agency shall make.

- iv. Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's public Rights-of-Way. However, during construction of the System required by Section 4 and Exhibit C herein, the bonding requirements of paragraphs (a) and (b) above may be used by Grantee to satisfy any bonding requirements of City permits. Subsequent to the time period designated for completion of the System construction indicated in Section 4, Grantee shall be responsible for satisfying any bonding requirements made of all contractors working within the City's Rights-of-Way.

c. Liquidated Damages.

- i. Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the City elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for the specific violation for which the liquidated damages were imposed. Nothing in this section shall preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.
- ii. Prior to assessing any liquidated damages, the City shall mail to the Grantee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Grantee shall have a reasonable time or no more than thirty (30) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. The time to cure will be specified by City and will be based on the nature of the violation and the complexity of the cure required, but in no case will be more than thirty (30) days, except for those violations which are not curable, or which are repeated or ongoing violations for which an opportunity to cure has already been provided.
- iii. The City may not assess any liquidated damage if the Grantee has reasonably responded to the complaint and cured or commenced to cure, as may be appropriate, the violation within the time frame provided in the notice or within such other reasonable time, as agreed upon by the parties.

In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages assessed. Subject to Section 8.1(a), if Grantee does not pay the damages assessed within thirty (30) days, the City in its sole discretion may collect the damages from the performance bond.

- iv. Notwithstanding any cure period, liquidated damages shall begin to accrue as of the date of the notice provided pursuant to Section 8.1(c)(ii), provided that, accrual of liquidated damage shall be tolled during a reasonable investigation period or no more than thirty (30) days if Franchisee has filed a written response refuting the violation pursuant to Section 8.1(c)(ii).
- v. Grantee may appeal (by pursuing judicial relief or other relief afforded by the City) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal, but shall continue to accrue until and unless the violation has been cured, up to the cap provided in Section 8.1(c)(vi).
- vi. In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.
- vii. Pursuant to the requirements outlined in the foregoing sections, liquidated damages shall not exceed the following amounts:
 - 1. For failure to extend Cable Service within the Franchise Area as required by this Franchise: Seventy-five Dollars (\$75) per day.
 - 2. For failure to provide any capability for PEG access use of the Cable System required in this Franchise: One Hundred Dollars (\$100) per day.
 - 3. For violation of applicable customer service standards: One Hundred Dollars (\$100) per day.
 - 4. For failure to provide reports, maps and information as required under this Franchise: Fifty Dollars (\$50) per day.
 - 5. For failure to obtain all required permits for Grantee's work in the Right-of-Way or otherwise fail to comply with the construction standards set forth in Section 3 of this Franchise: One Hundred Dollars (\$100) per day.

- viii. The collection of damages by the City shall in no respect affect the Grantee's obligation to comply with all of the provisions of this Franchise or Applicable Law.
- ix. In conformance with the procedural requirements herein, the City shall be entitled to draw upon the Grantee's performance bond or any security to collect the foregoing damages.

2. Insurance.

- a. Grantee shall procure and maintain for the duration of the Franchise insurance against claims for injuries to persons or damages to property which may arise from or in connection with the operation of the Franchise by the Grantee, its agents, representatives, employees or subcontractors.
- b. Grantee shall maintain limits no less than:
 - i. General Liability: Two Million Dollars (\$2,000,000) per occurrence for bodily personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Franchise or the general aggregate limit shall be twice the required occurrence limit.
 - ii. Automobile Liability: Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage.
 - iii. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
- c. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials and employees or the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- d. The general liability and automobile liability policies are to contain all the following provisions:
 - i. City, its officers, officials, employees and agents are to be covered as insureds as respects to any liability arising out of activities performed by or on behalf of Grantee; products and completed operations of Grantee; premises owned, occupied or used by Grantee; or automobiles owned, leased, hired or borrowed by Grantee. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees or agents, and shall name City as additionally insured.

- ii. For any claim related to this Franchise, Grantee's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or agents shall be excess of Grantee's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees or agents.
 - iv. Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.
 - vi. Insurance shall be placed with insurers which are "admitted" in the State of California and have a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
 - vii. Grantee shall furnish the City with original endorsements effecting coverage required by this section. The endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by City. All endorsements are to be received and approved by City before activity commences.
- e. City reserves the right to adjust the limit coverage requirements no more often than every three (3) years. Any such adjustment by the City will be no greater than the increase in the San Francisco Metropolitan Area Consumer Price Index (all consumers) for such three (3) year period.
 - f. Grantee shall submit to City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
 - g. Grantee hereby indemnifies City for any damage resulting from failure of either Grantee or any subcontractor to obtain and maintain such insurance.
3. Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

4. Indemnification.

- a. Grantee shall indemnify, defend and hold harmless the City, its officers, employees, elected officials, volunteers and agents from and against any liability, claims, actions, judgments, settlements or losses that in any way arise out of Grantee's construction, operation, maintenance or removal of the Cable System or Grantee's provision of Cable Service, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within fifteen (15) business days of service on the City of a written claim or summons and complaint for a lawsuit. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.
- b. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of Grantee's operations referred to in this Franchise, regardless of whether or not insurance policies have been determined to be applicable to any such damages or claims for damages.
- c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
- d. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (ii) above.

SECTION 9.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Power to Revoke.

- a. City may revoke the Franchise granted pursuant to this Franchise and rescind all rights and privileges associated with it in the following circumstances, each of

which shall represent a default by Grantee and a material breach under the Franchise:

- i. If Grantee fails to perform any of its material obligations under this Franchise and continues such failure to perform after receipt of due notice and a reasonable opportunity to cure;
 - ii. If Grantee fails to provide or maintain in full force and effect the insurance coverage or security fund as required in this Franchise;
 - iii. If Grantee violates any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's Franchise, unless such order or ruling is being contested by Grantee in good faith in an appropriate proceeding;
 - iv. If Grantee practices any material fraud or deceit upon City;
 - v. If Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
- b. After completing the procedures set forth in Section 9.1 above, the City Manager may make a formal request before the City Council that the Grantee's Franchise be revoked. The Council shall cause to be served on the Grantee written notice of its intent to consider revoking Grantee's Franchise. Such notice shall be served on Grantee at least thirty (30) days prior to the date of the hearing on the issue. The notice shall contain the time and place of the hearing and shall be published at least once in a newspaper of general circulation within the Franchise Area ten (10) days prior to the hearing date.
- c. The City Council shall hear any Person(s) interested in the revocation and within ninety (90) days after the date of the hearing shall make its determination whether the Grantee has committed a material breach of the Franchise.
- d. If the City determines that the Grantee has committed a material breach, then the City may:
- i. Declare the Franchise revoked and any security fund and bonds forfeited;
or
 - ii. If the material breach is curable by the Grantee, direct the Grantee to take appropriate remedial action within the time and manner and under the terms and conditions reasonably specified by the City.

The termination and forfeiture of the Grantee's Franchise shall in no way affect any right of City to pursue any remedy under the Franchise or any provision of law.

2. Appeal of Finding of Revocation. The Grantee may appeal a finding of a revocation made pursuant to Section 9.1 to an appropriate State of California court of jurisdiction. Any such appeal must be taken by the Grantee in accordance with Applicable Law, specifically CCP 1094.6.
3. Extended Operation and Continuity of Services. Upon expiration or revocation of the Franchise, the City shall have the discretion to permit Grantee to continue to operate the Cable System for an extended period of time. Grantee shall continue to operate the System under the terms and conditions of this Franchise and to provide the regular Subscriber Service and any and all of the Services that may be provided at that time. It shall be the right of all Subscribers to continue to receive all available Services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted Service to its Subscribers, including operation of the System during transition periods following Franchise expiration or termination.
4. Receivership and Foreclosure.
 - a. At the option of the City and subject to Applicable Laws, a Franchise granted hereunder may be revoked one hundred twenty (120) days after appointment of a receiver(s) or trustee(s) to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:
 - i. the receivership or trusteeship shall have been vacated within said one hundred twenty (120) days; or
 - ii. such receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults under the Franchise or provided a plan for the remedy of such defaults which is satisfactory to the City; or
 - iii. such receivers or trustees shall, within said one hundred twenty (120) days, have executed an agreement duly approved by the court having jurisdiction whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise.
 - b. In the case of a foreclosure or other judicial sale of the Cable System, in whole or in part, the City may serve notice of revocation upon Grantee and the successful bidder at such sale, and all rights and privileges of the Grantee hereunder shall be revoked thirty (30) days after service of such notice, unless:
 - i. City shall have approved the transfer of the Franchise, in the manner provided by law; and

- ii. the successful bidder shall have covenanted and agreed with City to assume and be bound by all terms and conditions of the Franchise.

5. Removal After Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
- b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

6. Sale or Transfer of Franchise.

- a. Neither the Grantee nor any other Person may, sell, transfer or assign the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. No change in control of the Grantee shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld. The term "change of control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Grantee.
- b. In the event Grantee chooses not to file FCC Form 394 when seeking approval of a sale, transfer, assignment or change of control, Grantee shall file all necessary contracts, agreements, and documentation required to understand the nature and purpose of the transaction as well as appropriate evidence and information regarding the legal, technical and financial qualifications of the proposed transferee.
- c. In no event shall a sale, transfer, assignment or change of control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City (outlined in Exhibit E attached hereto).

- d. No franchise may be transferred if City determines Grantee is in noncompliance with the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer, sale, assignment or change of control pursuant to this section shall not be deemed to waive any of City's rights to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.

**SECTION 10.
PROTECTION OF INDIVIDUAL RIGHTS**

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, ethnicity, sex, age, status as to public assistance, sexual orientation, medical condition or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.
2. Subscriber Privacy. The Grantee shall comply with all applicable federal and state privacy laws, including Section 531 of the Cable Act and regulations adopted pursuant thereto. Grantee shall notify City of any material changes in its annual privacy notification. City shall have authority to specifically enforce the provisions of this section pursuant to the procedures set forth in Section 8.1.

**SECTION 11.
MISCELLANEOUS PROVISIONS**

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Agreement. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee mutually agree that such an amendment is required due to changes in Applicable Laws; provided, however, nothing herein shall restrict City's exercise of its police powers.
4. Compliance with Applicable Laws.
 - a. If any Applicable Laws or regulations shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as

soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to Applicable Laws and regulations and rules regarding cable communications as they become effective.

- b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (include termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, hurricane, tornado or other catastrophic act of nature, failure of utility service necessary to operate the Cable System, governmental,

administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to control.

SECTION 12.
PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with Applicable Laws. The effective date of this Franchise shall be December 1, 2005 and the expiration date shall be December 1, 2020.
2. Acceptance.
 - a. Grantee shall accept this Franchise within thirty (30) days of its approval by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance by Grantee does not take place this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
 - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
 - c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.

IN WITNESS WHEREOF, City and Grantee have executed this Franchise the date and year first above written.

APPROVED AS TO FORM:

CITY OF FOSTER CITY, CALIFORNIA

By: J. L. B. Sawyer
City Attorney

By: Buck Wykorski
Mayor

Date: 12/20/05, 2005

Date: 12-1-05, 2005

(SEAL)

ATTEST:

By: Cherese Colic
City Clerk

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

COMCAST OF CALIFORNIA XII, INC.

Date: January 6, 2005-2006

By: Jelky
Its: UP-Finance

~~SWORN TO BEFORE ME this
__ day of __, 2005.~~

see attached certificate of Acknowledgment

~~NOTARY PUBLIC~~

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa } ss.

On January 6, 2006, before me, Mitzi Givens-Russell, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared James D. Carney, Vice President of
Name(s) of Signer(s)
Finance

personally known to me

~~proved to me on the basis of satisfactory evidence~~ to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Mitzi Givens-Russell
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

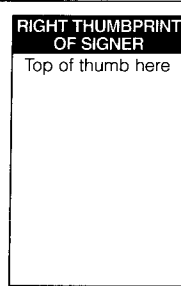
Description of Attached Document
 Title or Type of Document: Cable System Franchise Agreement Foster City

Document Date: December 1, 2005 Number of Pages: 46

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

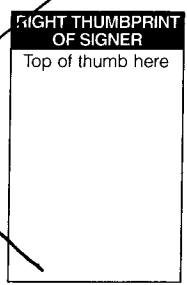
Signer's Name: James D. Carney
vice President
 Individual
 Corporate Officer — Title(s): Finance
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing:
Comcast of California
XII, Inc.

Signer's Name: _____

Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

EXHIBIT A OWNERSHIP

Grantee must maintain on file with City an accurate chart outlining its complete ownership structure. Ownership structure at execution of this agreement is as follows:

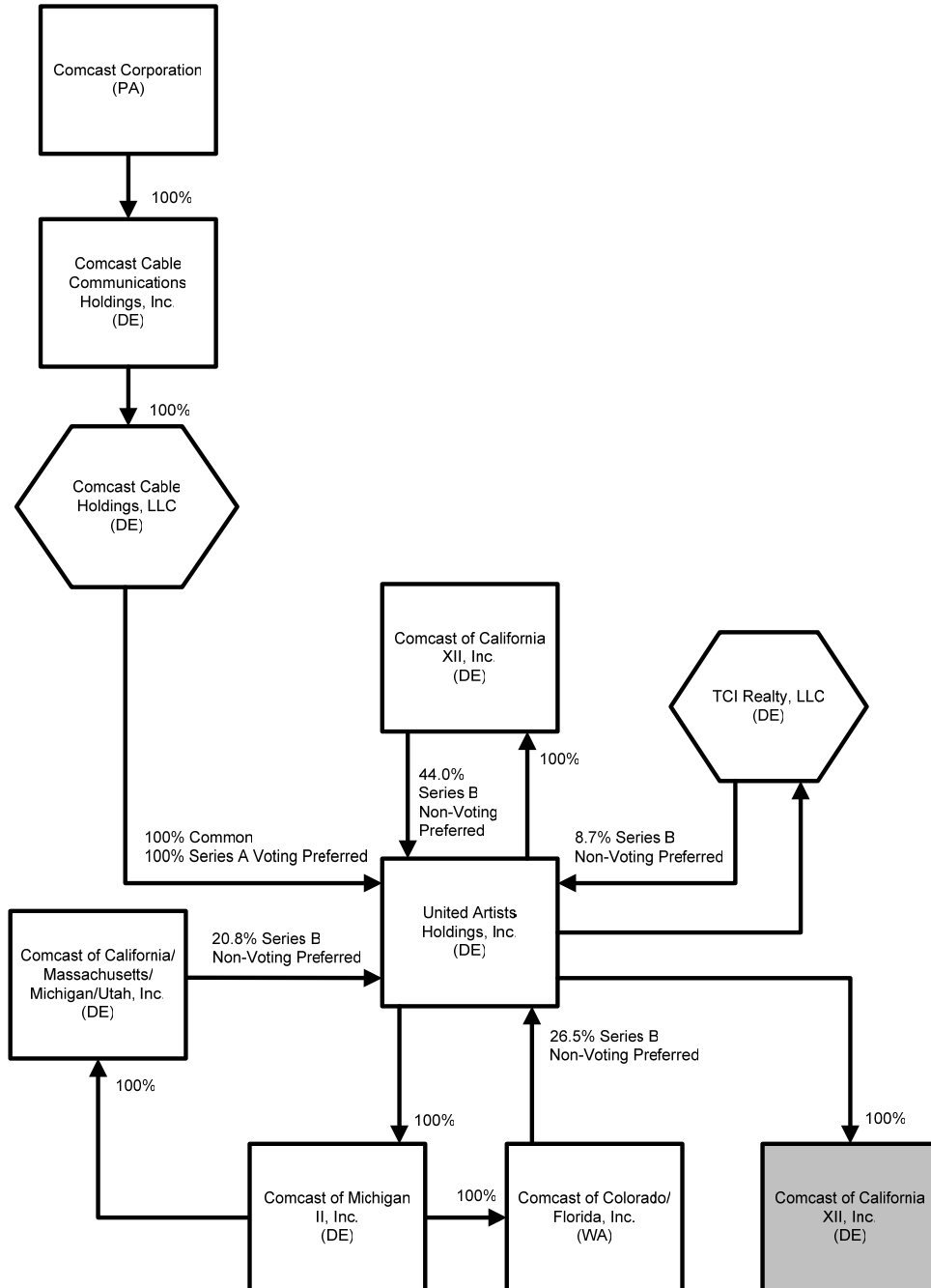


EXHIBIT B
GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PEG ACCESS CHANNELS.

- a. PEG Access Channels. On the effective date of this Franchise, Grantee shall make two (2) Channel(s) available exclusively for PEG access use throughout the term of the Franchise.
 - i. No sooner than January 1, 2007, following receipt of one hundred twenty (120) days advance written notice from City, Grantee shall provide the City with a third PEG Channel which may be located on Grantee's digital tier of service.
 - ii. No sooner than twenty-four (24) months after implementation of a third PEG Channel, following receipt of one hundred twenty (120) days advance written notice from City, Grantee shall provide a fourth PEG Channel which may be located on Grantee's digital tier of service.
 - iii. Grantee shall not be required to carry the third and fourth PEG Channels on the Basic Service tier until after Grantee converts its entire System to a digital format.
- b. City reserves the right to designate, establish or join one (1) or more Designated Access Organizations (as defined herein) and to delegate authority for developing, managing, administering and using all or any part of any PEG access Channel or Channels such a Designated Access Organization to the extent authorized by Applicable Law. As used in this paragraph, "Designated Access Organization" means any non-profit entity or joint powers authority, including without limitation SAMCAT, to which the City, in its discretion, decides to delegate authority to develop, manage, administer or use all or any part of any PEG access Channel or Channels.
- c. PEG Access Capital Grant. Grantee shall provide City with capital grants in support of PEG access in the following amounts:
 - i. Within thirty (30) days of the effective date of the Franchise: \$139,701
 - ii. On or before January 31, 2006: \$139,701
 - iii. On or before January 31, 2007: \$90,806
 - iv. On or before sixty (60) months from the effective date of the Franchise: \$95,251

- v. On or before one hundred twenty (120) months from the effective date of the Franchise: \$95,251

2. Fiber Network.

- a. Grantee shall provide City with a construction capital credit for the construction of a fiber network connecting PEG origination sites that will be completed by Grantee on or before December 31, 2007. Once constructed this fiber network may be utilized by City for any lawful, non-commercial use for governmental or educational purposes, as determined in City's sole discretion. This construction capital credit shall include funding for edge and switching equipment to enable the activation of origination points for the fiber network. The City shall have the right to require Grantee to construct the fiber network to the below listed sites pursuant to the terms and conditions set forth in Exhibit F:

- i. Foster City City Hall, 600 Foster City Boulevard
- ii. North Peninsula Jewish Campus, 800 Foster City Boulevard
- iii. Brewer Island School Gym, 1151 Polynesia Drive
- iv. Foster City School MPR, 461 Beach Park Boulevard
- v. Audubon School MPR, 841 Gull Avenue
- vi. Bowditch Middle School, 1450 Tarpon Street
- vii. Sea Cloud Park, Sea Cloud Drive
- viii. Corporation Yard, 100 Lincoln Center Drive
- ix. Leo Ryan Park/Recreation Center, 650 Shell Boulevard
- x. Hillbarn Theatre, 1285 East Hillsdale Boulevard

The total amount dedicated for construction costs shall be \$354,893 ("Construction Cost"). The Construction Cost consists of \$235,387 dedicated to constructing the ten (10) locations listed above, \$5,403 which is the City's allocated portion of the costs associated with origination sites for PEN-TV and \$114,103 as the City's allocated portion of edge and switching equipment necessary to enable the activation of origination sites for voice, video and data use throughout the entire fiber network.

- b. To the extent City chooses to apply the construction credits to construct the fiber network, Grantee agrees to build the network at a cost "not to exceed" that specified in paragraph 1(d)(i) of this Exhibit B.
- c. The City is permitted to reduce the Construction Cost of the network and reallocate the funds for additional PEG access capital funds for the City's use.

In determining whether to transfer funds from network Construction Cost to local PEG equipment use the City agrees that it will make a final decision regarding the transfer of funds on or before ninety (90) days following the effective date of this Franchise. City acknowledges that it must coordinate the elimination of any specified locations with Grantee to determine the precise financial impact such

modification may have on the total Construction Cost. Grantee agrees to promptly provide cost information for specified locations to facilitate City's decision. Any funds transferred from Construction Cost to PEG access capital funds shall be paid to the City on or before January 31, 2007.

3. PEG Access Support Fee.

- a. Grantee shall have the right to assess Subscribers a monthly fee to recover all costs associated with the PEG access capital grants and the Construction Costs associated with the fiber network, including seven percent (7%) cost-of-capital throughout the term of the Franchise. This seven percent (7%) cost of capital component which Grantee reserves the right to add to the pass-through will not occur anytime prior to January 1, 2007.
- b. Any and all payments by Grantee to City as capital support for PEG and for the construction of the fiber network shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). The PEG Access Support Fee is intended to conform to the provisions of Section 611 of the Cable Communications Policy Act of 1984, and further is intended to be payments of the type described in Section 622(g) (2) (B) and (C) of said Act, and not to be or to constitute Franchise Fees.

4. Existing Live and Taped Programming. Grantee shall maintain all Cable System connections existing on the effective date of this Franchise to permit such live or recorded coverage of events within the City. The locations capable of inserting live and taped programming are as follows:

- i. Foster City Council Chambers, 620 Foster City Boulevard
- ii. Foster City Community Center, 1000 East Hillsdale Boulevard

a. PEG Operations.

- i. City shall be responsible for all programming requirements, including but not limited to: scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.
- ii. City or its designee may negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions, or others to share PEG operating expenses, as appropriate. City or its designee may negotiate an agreement for management of PEG facilities, if so desired.

b. Title to PEG Equipment. Grantee shall transfer to City all existing PEG equipment located in the City provided with funding made available in any prior franchise agreements by and between the City and Grantee, or Grantee's predecessor in interest. Grantee shall also provide to SAMCAT all existing PEG

production equipment located at KCSM and the SamTrans studio provided with funding made available in any prior franchise agreements by and between the City and Grantee, or Grantee's predecessor in interest.

- c. PEG Programming Guide. Program schedule information for each PEG Access Channel shall be listed in the electronic program guide provided by Grantee to Subscribers, in the same manner as the program schedule information for other cable Channels listed. Grantee shall provide the City access to third party providers to include PEG Access Channel listings in their electronic program guide. The City shall be responsible for the timely provision and updating of these listings. Any fees associated with this service shall be paid for by the City, including any special placement or handling beyond the standard manner of presenting program schedule listings shall be the responsibility of the City.
 - d. At such time as the Grantee converts its Basic Cable Service tier from an analog to a digital format, the City's PEG access Channels will be carried on the digital platform and Grantee shall install, at its sole cost, such headend equipment to accommodate such Channels. Such PEG Channels shall be accessed by Subscribers through use of standard digital equipment compatible with Grantee's Cable System.
5. **INTERCONNECTION.** Grantee shall maintain existing interconnections of the Cable System with any or all other Cable Systems in the City for the sole purpose of transmitting PEG access Channels. If interconnection to the other System is subsequently denied or becomes unfeasible, then Grantee shall connect directly to the point of origin of the applicable PEG access programming at the City's direct cost.

EXHIBIT B-1
SERVICE TO PUBLIC BUILDINGS

| <u>Facility</u> | <u>Address</u> |
|-------------------------------------|---|
| City Hall/Fire Station | 1040 E. Hillsdale Boulevard and/or 610 Foster City Boulevard |
| City Council Chambers | 600 Foster City Boulevard |
| Police Station | 1030 E. Hillsdale Boulevard |
| Community Center | 1000 E. Hillsdale Boulevard |
| Senior Center | 650 Shell Boulevard |
| William J. Walker Recreation Center | 650 Shell Boulevard |
| Teen Center | 650 Shell Boulevard |
| Corporation Yard | 100 Lincoln Centre Drive |
| Sea Cloud Park Maintenance Office | Sea Cloud Drive |
| Audubon School | 841 Gull Avenue |
| Foster City School | 461 Beach Park Boulevard |
| Brewer Island Elementary | 1151 Polynesia Drive |
| Bowditch Middle School | 1450 Tarpon Street |

EXHIBIT C
DESCRIPTION OF SYSTEM

1. The Cable System shall be designed and constructed to meet or exceed the requirements of the most current editions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2).
2. General Requirements. Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design.
3. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with 750 MHz of bandwidth, capable of delivering a minimum of eighty (80) Channels of programming. The System will be two-way active.

EXHIBIT D
FRANCHISE FEE PAYMENT WORKSHEET

| <u>Analog/Digital Revenue</u> | <u>Jan.</u> | <u>Feb.</u> | <u>Mar.</u> | <u>Apr.</u> | <u>May</u> | <u>June</u> | <u>July</u> | <u>Aug.</u> | <u>Sept.</u> | <u>Oct.</u> | <u>Nov.</u> | <u>Dec.</u> | <u>Total</u> |
|-----------------------------------|-------------|-------------|-------------|-------------|------------|-------------|-------------|-------------|--------------|-------------|-------------|-------------|--------------|
| Standard Service | | | | | | | | | | | | | |
| Limited Basic | | | | | | | | | | | | | |
| Bulk Basic | | | | | | | | | | | | | |
| Other Basic | | | | | | | | | | | | | |
| Pay | | | | | | | | | | | | | |
| Bulk Pay | | | | | | | | | | | | | |
| Digital | | | | | | | | | | | | | |
| PPV | | | | | | | | | | | | | |
| Equipment | | | | | | | | | | | | | |
| Installation | | | | | | | | | | | | | |
| Guide | | | | | | | | | | | | | |
| Late Fee | | | | | | | | | | | | | |
| Other Revenue (CSG) | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| Add: Shopping Channel Commissions | | | | | | | | | | | | | |

| <u>Analog/Digital Revenue</u> | <u>Jan.</u> | <u>Feb.</u> | <u>Mar.</u> | <u>Apr.</u> | <u>May</u> | <u>June</u> | <u>July</u> | <u>Aug.</u> | <u>Sept.</u> | <u>Oct.</u> | <u>Nov.</u> | <u>Dec.</u> | <u>Total</u> |
|---|--|-------------|-------------|-------------|------------|-------------|-------------------------|-------------|--------------------|-------------|-----------------------|-------------|--------------|
| Add: Advertising Revenue | | | | | | | | | | | | | |
| Other Revenue (Non CSG) | | | | | | | | | | | | | |
| TOTAL REVENUE SUBJECT TO FRANCHISE FEES | | | | | | | | | | | | | |
| FEE PERCENTAGE | | | | | | | | | | | | | |
| TOTAL FRANCHISE FEE DUE | | | | | | | | | | | | | |
| Payment: | Payment Schedule | | | | | | <u>Liability</u> | | <u>Paid</u> | | <u>Balance</u> | | |
| Interpretation of Agreement: | 1 st Quarter Franchise Fees | | | | | | \$ | | \$ | | \$ | | |
| Reporting Requirements: | 2 nd Quarter Franchise Fees | | | | | | \$ | | \$ | | \$ | | |
| Vendor: | 3 rd Quarter Franchise Fees | | | | | | \$ | | \$ | | \$ | | |
| | 4 th Quarter Franchise Fees | | | | | | \$ | | \$ | | \$ | | |
| | | | | | | | <u>\$</u> | | <u>\$</u> | | <u>\$</u> | | |

Confidential and Proprietary – Not for disclosure to third parties without prior written consent

EXHIBIT E
CORPORATE GUARANTY

THIS AGREEMENT is made this ___ day of _____, 20___, between _____ (“Guarantor”), the City of Foster City, California (“Franchising Authority”), and Comcast of California XII, Inc. (“Company”).

WITNESSETH

WHEREAS, the Franchising Authority has entered into a Cable Television Franchise Agreement dated December 1st, 2005 with the Company pursuant to Resolution No. 2005-91 (“Franchise Agreement”), pursuant to which the Franchising Authority has granted the Company a Franchise, to own, operate, and maintain a cable television system (“System”); and

WHEREAS, Guarantor is the parent company of the Company and has a substantial interest in the System and the conduct of the Company in complying with the Franchise Agreement and any and all amendments thereof and any agreements related thereto, which Franchise Agreement and amendments are hereby specifically referred to, incorporated herein, and made a part hereof; and

WHEREAS, the Guarantor desires to provide its unconditional guaranty of Company’s obligations under the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby unconditionally guarantees the due and punctual payment and performance of all of the debts, liabilities and obligations of Company contained in the Franchise Agreement (“Indebtedness”).

This Agreement, unless terminated, substituted, or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise Agreement, except as expressly provided otherwise in the Franchise Agreement.

Upon substitution of another Guarantor reasonably satisfactory to the Franchising Authority, this Agreement may be terminated, substituted, or canceled upon thirty (30) days prior written notice from Guarantor to the Franchising Authority and the Company.

Such termination shall not affect liability incurred or accrued under this Agreement prior to the effective date of such termination or cancellation.

The Guarantor will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the Guarantor against the Company or any other Person liable for payment of the Indebtedness any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

The Guarantor will pay or reimburse the Franchising Authority for all costs and expenses (including reasonable attorneys’ fees and legal expenses) incurred by the Franchising Authority

in connection with the protection, defense or enforcement of this guarantee in any arbitration, litigation or bankruptcy or insolvency proceedings.

Whether or not any existing relationship between the Guarantor and the Company has been changed or ended and whether or not this guarantee has been revoked, the Franchising Authority may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Guarantor and without any notice to the Guarantor. The liability of the Guarantor shall not be affected or impaired by any of the following acts or things (which the Franchising Authority is expressly authorized to do, omit or suffer from time to time, without notice to or approval by the Guarantor): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to the Company, any delay or lack of diligence in the enforcement of any Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, the Company or any other guarantor or other Person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Franchising Authority under § 1111(b)(2) of the United States Bankruptcy Code.

The Guarantor waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Franchising Authority shall not be required first to resort for payment of the Indebtedness to the Company or other Persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty. The Guarantor will not assert, plead or enforce against the Franchising Authority any defense of discharge in bankruptcy of the Company, statute of frauds, or unenforceability of the Guaranty which may be available to the Company or any other Person liable in respect of any Indebtedness, or any setoff available against the Franchising Authority to the Company or any such other Person, whether or not on account of a related transaction.

Any notices given pursuant to this Agreement shall be addressed to the Guarantor and Company at _____, _____ and to the Franchising Authority, City Council, City of Foster City, 610 Foster City Boulevard, Foster City, California 94404.

IN WITNESS WHEREOF, the Company, Franchising Authority, and Guarantor have executed this Corporate Guaranty as of the day, month and year first above written.

GUARANTOR:

By: _____

Its: _____

COMPANY:

By: _____

Its: _____

FRANCHISING AUTHORITY:

CITY OF FOSTER CITY, CALIFORNIA

By: _____

Its: _____

EXHIBIT F
FIBER NETWORK AGREEMENT

THIS FIBER NETWORK AGREEMENT (the “Agreement”) is entered into by and between the City of Foster City, California (the “City”) and Comcast of California XII, Inc. (the “Grantee”) effective as of December 1, 2005.

RECITALS

1. The City has granted to Grantee a Cable System Franchise Agreement, under which Grantee has certain nonexclusive rights, including the right to construct and maintain a cable system within the City.
2. 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.
3. 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 7.2 hereof have 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.

“City Hub” means an intermediary exchange point in the signal distribution portion of the Fiber Network.

“Construction Credits” means the credits available to the City for Fiber Network construction cost as set forth in Exhibit B of the Franchise.

“Construction Costs” means all of Grantee’s labor, materials and construction costs for installing the Fiber Network between the Foster City City Hall and the sites identified in Exhibit B.

“Dedicated Fiber” means fiber originally requested and paid for, in accordance with the terms of this Agreement, by the City for Fiber Network 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 Fiber Network uses.

“Demarcation Point” means the termination block or other termination device at each Fiber Network site, which represents the interface between the Fiber Network and the Qualified Fiber Network 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 Network” 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 Fiber Network ceases to be used as a public building, such building shall be disconnected from the Fiber Network at the City's expense.

“Fiber Network Equipment” means the electronic switching and edge equipment and associated facilities required to activate the Fiber Network and control the transmission of signals through the Fiber Network.

“Fiber Network Node” means an exchange point in the signal distribution system where optical signals are converted to RF signals.

“Fiber Network Plant” means dedicated single-mode fiber, splicing, passive components, and support structures, which will generally be installed by Grantee and made available for Fiber Network uses.

“Fiber Network Site” means one of the sites listed in Exhibit A to this Agreement.

“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 December 1, 2005.

“Franchise Area” has the same meaning as set forth in the Franchise.

“GIS” means geographical information systems.

“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 Fiber Network), located between the Headend and the Nodes.

“Integrated Fiber Network 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.

“Maintenance” means maintenance of the Fiber Network in conjunction with the Subscriber Network, according to FCC standards. Maintenance will be limited to the Grantee's demarcation point at each Fiber Network site.

“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 private entity or organization.

“Qualified Fiber Network User” means any of the following which are passed by the Cable System and located in the Franchise Area or served by the fiber network: the City and its agencies, other governmental agencies, public libraries, and School District facilities and school administrative offices located within the City and identified on Exhibit A of this Agreement.

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

“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 Fiber Network and the Qualified Fiber Network User’s local network or end user electronics.

2. General. The Fiber Network 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 Fiber Network User to communicate among themselves in a manner that is both Technically Compatible and Legally Compatible. The City agrees to require all Qualified Fiber Network Users to stipulate and agree to this limitation.
 - 2.1 “Technically Compatible” includes, but is not limited to, the understanding that the Fiber Network 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 Fiber Network 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; (iii) be interconnected with any other institutional network or other similar system except for governmental or educational uses. The Fiber Network may be connected to City owned and operated internal switches which allows Telecommunications use among the City and Qualified Fiber Network Users, and which will permit interconnection between the City and Qualified Fiber Network Users with carriers of Telecommunications Services certificated by the California Public Utilities Commission or information service providers, provided that the City pays any legally required 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 Fiber Network constitutes a Telecommunications Service, or that the provision of the Fiber Network by Grantee in accordance with this Agreement or the Franchise is unlawful, such use or provision of the Fiber Network 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 Fiber Network on the terms and subject to the conditions set forth in this Agreement.
4. Fiber Network 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 Fiber Network include all Legally Compatible, non-commercial uses.
 - 4.3 Except as expressly set forth in this Agreement, no utilization charges shall be imposed for City’s or any other Qualified Fiber Network User’s use of the Fiber

Network 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. Fiber Network. Fiber construction shall consist of two (2) dedicated fibers connected between the sites identified in Attachment A and the City of Foster City City Hall.
 - 5.1 Fiber Owned by Grantee. The Fiber Network will be owned and maintained by Grantee.
 - 5.2 Fiber Network Sites. The applicable Qualified Fiber Network User will provide the route and the access from the property line of the Fiber Network Site into the facility. Reasonable efforts will be undertaken by Grantee to cause the Fiber Network distribution system and drops to share common paths with Grantee's Subscriber Network in order to minimize costs to the Qualified Fiber Network Users. Fiber Network Sites may pass through another Fiber Network 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 Fiber Network with a through-put above two (2)). This portion of the Fiber Network will be owned and maintained by Grantee. Final route selection will be at the sole discretion of Grantee. The Qualified Fiber Network Users will provide all underground conduits and, where installation is to be by an aerial attachment, the Qualified Fiber Network User must confirm that the fiber can be placed aerially. Qualified Fiber Network Users also will supply Grantee, in advance, with blueprints, if available, or a diagram 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 Fiber Network User on a site by site and bid by bid basis for time, labor and materials. Service and Maintenance will be provided on a time, labor and materials basis. The City shall determine if and to the extent that the Qualified Fiber Network User may use Fiber Network Construction Credits available under the Franchise Agreement to pay such costs, as these costs were not included in the computation for the amount of Construction Credits by site.
 - 5.3 Network Equipment. Grantee shall not install or be responsible for any Fiber Network equipment; however, the City may use the Construction Credits to the extent set forth in Exhibit A for the purchase of edge and switching equipment, at its discretion.
 - 5.4 New Fiber Network 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 Fiber Network 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 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 design and quote for the 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 two (2) strands of fiber.

6. Construction Credits. The City has been granted \$354,893 in Construction Credits to install the Fiber Network to the locations outlined in Attachment A . These credits will be made available in two (2) installments. On January 31, 2006, \$182,415 in Construction Credits will be available for the City's use in constructing the Fiber Network. On January 31, 2007, \$172,478 in Construction Credits will be available to the City's use in constructing the Fiber Network.

6.1 The Grantee agrees that the cost to construct the Fiber Network will not exceed the estimated costs in Exhibit B of the franchise agreement.

6.2 Change in Allocation of Construction Credits – The City has ninety (90) days from the Effective Date of the Franchise Agreement to provide the Grantee with its final list of Fiber Network Sites. If any sites are eliminated from the list of Fiber Network Sites, the Grantee will provide the City with the amount of Construction Credits which may be used towards PEG Equipment. City and Grantee agree that the reallocation of Construction Credits will take into consideration any increased construction costs as a result of the elimination of the Fiber Network Site from the Fiber Network. The reallocation of Construction Credits will be paid in accordance with Exhibit B, Section 2 c of the Franchise Agreement.

7. Fiber Network Construction.

7.1 The Fiber Network shall be constructed in phases, as follows:

(a) In accordance with Section 6.2, City shall as soon as practicable and no later than ninety (90) days of the date of this Agreement, provide Grantee a final document, which specifies the sites to be served by the Fiber Network. The Grantee will inform the City within sixty (60) days of receipt of the City's final document as to the schedule of phased in construction of the Fiber Network.

(b) Upon receipt of said final document Grantee will have sixty (60) days to provide City with the Reallocation of Construction Credits to the City's PEG Equipment Capital Grant. The reallocation of Construction Credits will be paid in accordance to Exhibit B 2 c of the Franchise Agreement.

7.2 Construction and Activation. The construction of the Fiber Network shall be substantially completed on or before December 31, 2007. Fiber Network

activation will occur as the City procures equipment necessary for activation. For purposes of this paragraph, Fiber Network Activation shall mean that all the necessary equipment to activate the Fiber Network site has been installed and tested in accordance with Section 7.3, below, by Grantee, excluding the installation and activation of any end user equipment required to utilize the Fiber Network.

- 7.3 Fiber Network Testing/Certification. All Fiber Network 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 Fiber Network 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 Fiber Network 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.
- 7.4 If the City's Fiber Network Site connectors are not installed in a timely fashion, the Grantee shall test the continuity of the fiber without the connectors and the Site shall be deemed completed.
- 7.5 Construction Credit Declining Balance.
- (a) Grantee shall provide to the City, on a quarterly basis, the assessments made against the City's Construction Credits for Fiber Network construction.
 - (b) Any changes to the initial construction location after initial installation will be charged to the City at the Grantee's time and material costs. An estimate for such costs will be provided to the City within sixty (60) days of a written request.
 - (c) If the City requests relocation of any portion of the Grantee's Fiber Network in accordance with a State of California Rule 20 relocation request, the City shall pay the prorated cost for splicing the Fiber Network.
- 7.6 Alternative Procedures. Nothing in this Agreement shall be read to prevent the parties from agreeing to different procedures for Fiber Network construction, as long as those procedures (a) permit the Fiber Network 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 Fiber Network Construction or Upgrades. After the Fiber Network has been completed, the City may request Grantee upgrade the Fiber Network or construct additional Fiber Network Sites at any time throughout the initial term of the Franchise and any extension thereof. After receiving a request for additional Fiber Network 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. 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. Fiber Network Maintenance and Service. The City agrees that all Qualified Fiber Network Users will exhaust any and all troubleshooting of the Fiber Network equipment and their own equipment connected to the Fiber Network in accordance with manufacturer guidelines before contacting Grantee for service or maintenance on the Fiber Network. Grantee shall provide maintenance of the Integrated Fiber Network Backbone at no cost to the City. In the event that the Grantee determines that the maintenance or service was caused by the City or Qualified Fiber Network User, the Grantee shall be paid for all service and maintenance on a time and material basis. This includes any interruption in service caused by the City or Qualified Fiber Network User and/or its contractors. No such payment may be made from the PEG/Fiber Network support made available under the Franchise Agreement.
 - 9.1 Average Response Time to an Outage. Subject to force majeure delays, Grantee shall respond to Qualified Fiber Network User's requests for repair of an Fiber Network outage as follows:
 - (a) For physical Fiber related failure between the Headend and Hubs where the Fiber Network 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 and maintenance obligations with respect to the Subscriber Cable System shall take precedence.
 - 9.2 Performance of Maintenance and Service. Maintenance and service of the Fiber Network will be performed by Grantee as necessary to conform to any Federal or State technical requirements. Maintenance and service of the Fiber Network may not be performed by any other person without Grantee's prior consent in writing.
10. Miscellaneous.

- 10.1 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.
- 10.2 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.
- 10.3 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 Fiber Network 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.
- 10.4 Audit of Fiber Network 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 Fiber Network Users' use of the Fiber Network, and all records of the City and Qualified Fiber Network Users necessary to determine compliance. If the City or any Qualified Fiber Network 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 Fiber Network User repeatedly breaches the terms of this Agreement, Grantee may disable the Fiber Network connection to the Fiber Network 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 Fiber Network 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.
- 10.5 Excused Performance. If Grantee or the City is delayed or interrupted in the performance or 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.
- 10.6 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.

- 10.7 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.
- 10.8 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.
- 10.9 Amendments. This Agreement may not be modified, amended, or supplemented except by a writing that has been signed by both parties hereto.
- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 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 one and the same instrument.
- 10.14 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.

10.15 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.

ATTACHMENT A

List of Fiber Network Sites

- i. Foster City City Hall, 600 Foster City Boulevard
- ii. North Peninsula Jewish Campus, 800 Foster City Boulevard
- iii. Brewer Island School Gym, 1151 Polynesia Drive
- iv. Foster City School MPR, 461 Beach Park Boulevard
- v. Audubon School MPR, 841 Gull Avenue
- vi. Bowditch Middle School, 1450 Tarpon Street
- vii. Sea Cloud Park, Sea Cloud Drive
- viii. Corporation Yard, 100 Lincoln Center Drive
- ix. Leo Ryan Park/Recreation Center, 650 Shell Boulevard
- x. Hillbarn Theatre, 1285 East Hillsdale Boulevard