

**RESOLUTION NO.      SERIES 2004**

**AUTHORIZING THE CITY MANAGER TO EXECUTE  
AN AGREEMENT THE COMCAST CORPORATION TO  
PURCHASE REAL PROPERTY**

WHEREAS, the City of Davis is the owner of approximately .762 acre of unimproved land in the City of Davis, County of Yolo, State of California, which constitutes a portion of Yolo County Assessor's Parcel Number 069-020-66, as more particularly described in the legal description for the Property which shall be included in the Preliminary Title Report; and

WHEREAS, the Comcast Corporation desires to purchase this parcel for the purpose of providing adequate technological and customer service support for the cable, information, and telecommunication services in Davis; and

WHEREAS, the City of Davis finds a compelling community need for cable, information and telecommunications services in Davis;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council:

1. Authorizes the City Manager or his designee to execute a purchase contract and any other document related to the purchase of the parcel for with the Comcast Corporation.
2. Authorizes the City Manager to enter into and if necessary make minor modifications, after consultation with the City Attorney, to any documents necessary to close escrow on the subject property and enter into right of entry agreements to allow early access to the property.

Approved and adopted on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

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Susie Boyd, Mayor

ATTEST:

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Bette Racki, City Clerk

# DRAFT

## AGREEMENT OF PURCHASE AND SALE

By

CITY OF DAVIS  
a municipal corporation  
("Seller")

and Between

COMCAST CORPORATION  
a \_\_\_\_\_ corporation  
("Buyer")

## AGREEMENT OF PURCHASE AND SALE

CITY OF DAVIS, a municipal corporation ("**Seller**"), and COMCAST CORPORATION, a \_\_\_\_\_ corporation ("**Buyer**") agree as follows:

### ARTICLE 1. GENERAL.

1.01. The Purchase Property. Seller is the owner of approximately .762 acre of unimproved land in the City of Davis, County of Yolo, State of California, which constitutes a portion of Yolo County Assessor's Parcel Number 069-020-66, as more particularly described in the legal description for the Property which shall be included in the Preliminary Title Report referred to in Section 4.03 below.

1.02. Purpose. The purpose of this Agreement is to provide for the purchase and sale of the Property.

1.03. Effective Date. The Effective Date of this Agreement shall be the day on which it is executed, including initialing of Section 2.03, by the party who signs it last. Whichever party signs last shall immediately notify the other party and shall promptly send an executed copy of this Agreement to the other party.

### ARTICLE 2. PURCHASE AND SALE.

2.01. Purchase and Sale. Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

2.02. Price and Payment. The purchase price for the Property shall be ONE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$185,000.00). Buyer shall pay the purchase price in full at the close of escrow by applying any deposits made pursuant to Section 2.03 and paying in cash the balance of the purchase price.

2.03. Deposits and Liquidated Damages. Within two (2) business days following the Effective Date, Buyer shall deposit TWENTY THOUSAND DOLLARS (\$20,000.00) in the escrow provided for in Article 3 as the initial deposit on account of the purchase price.

Unless this Agreement is earlier terminated, at the end of the thirty (30)-day Inspection Period described in Section 4.04, the deposit shall be increased by TWENTY THOUSAND DOLLARS (\$20,000.00), to a total of FORTY THOUSAND DOLLARS (\$40,000.00), all of which shall become nonrefundable, except in the event of breach of this Agreement by Seller, and shall be released by Escrow Holder to Seller.

The total deposit and any interest earned thereon while held in escrow, shall be credited against the payment due at close of escrow. If any condition stated in Article 4 below is not satisfied by the deadline therefore, Seller shall instruct Escrow Holder to refund the full amount of the initial deposit to Buyer. Thereafter, the deposits shall be refunded only if Seller willfully or negligently and adversely affects the condition of the Property as to physical or title matters.

**IN THE EVENT BUYER DEFAULTS IN BUYER'S OBLIGATION TO PURCHASE THE PROPERTY WITHIN THE TIME AND IN THE MANNER SPECIFIED IN THIS AGREEMENT, SELLER SHALL BE RELEASED FROM ALL OBLIGATIONS AT LAW OR IN EQUITY TO CONVEY THE PROPERTY TO BUYER. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE AMOUNT OF DAMAGES SUFFERED BY SELLER BECAUSE OF SUCH DEFAULT; THAT FORTY THOUSAND DOLLARS (\$40,000.00) CONSTITUTES A REASONABLE ESTIMATE AND AGREED STIPULATION OF SUCH DAMAGE; THAT SELLER SHALL RETAIN SUCH SUM AS LIQUIDATED DAMAGES AS ITS SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF BUYER'S DEFAULT, WAIVING ANY RIGHT TO SPECIFIC PERFORMANCE.**

\_\_\_\_\_  
**Seller's Initials**

\_\_\_\_\_  
**Buyer's Initials**

ARTICLE 3. ESCROW.

3.01. Opening. The purchase and sale of the Property shall be consummated by means of an escrow which is to be opened at \_\_\_\_\_ Title Company, \_\_\_\_\_ Street, Davis, California 95616 ("**Escrow Holder**"). The escrow shall be opened upon payment by Buyer of the initial TWENTY THOUSAND DOLLAR (\$20,000) deposit as provided in Section 2.03 above.

3.02. Instructions. The escrow instructions given to Escrow Holder shall be consistent with the terms of this Agreement and, as between the parties, the terms of this Agreement shall prevail if there is any inconsistency unless typed or handwritten provisions of the instructions expressly otherwise provide.

3.03. Close. Escrow shall close no later than thirty (60) days following the last day of the Inspection Period. The outside deadline for close of escrow shall be ninety (90) days from the Effective Date. "**Close**", "**close of escrow**" or "**closing**" refers to the date when the grant deed for the Property is recorded.

3.04. Costs. Seller and Buyer shall each pay one-half (1/2) of the premium for the standard CLTA owner's title insurance policy, escrow fees, transfer taxes and any other costs of the escrow and closing. If Buyer desires ALTA title insurance, Buyer alone shall pay the additional premium amount, together with the additional costs for any endorsements Buyer may desire. If Buyer decides to require an ALTA title insurance policy, Buyer shall obtain an ALTA survey at its own expense.

3.05. Prorations. Real property taxes, assessments and any similar charges imposed upon the Property shall be prorated as of close of escrow on the basis of thirty (30)-day months, as shall interest on any assessment bonds. If the taxes, assessments and/or bonds cover property in addition to the Property, they shall be prorated on an acreage basis to the nearer one-tenth (1/10) of an acre.

3.06. Disbursements and Deliveries. Upon the close of escrow, Escrow Holder shall promptly:

A. Disburse to Seller all funds deposited with Escrow Holder by Buyer (except those paid by Buyer for its share of closing expenses) after deducting therefrom all funds previously released to Seller and all items chargeable to the account of Seller pursuant to this Agreement;

B. Cause the grant deed to Buyer to be recorded in the official records of Yolo County;

C. Deliver to Buyer an CLTA Owner's Policy of Title Insurance (or ALTA, if specifically requested by Buyer), insuring title in Buyer subject only to exceptions consistent with the terms of this Agreement; and

#### ARTICLE 4. CONDITIONS TO CLOSE OF ESCROW.

4.01. General. The provisions of this Article 4 are conditions to the close of escrow and, unless otherwise provided expressly or by context, are covenants of the party responsible for causing the condition to be satisfied. Unless otherwise specified, the conditions are for the benefit of Buyer and may be waived by Buyer. Buyer must express dissatisfaction or failure of a condition by written notice to Seller. If Buyer fails to express such dissatisfaction or failure of a condition within the time specified herein, the condition shall be deemed approved and satisfied. If any condition fails or is disapproved within any specified approval period, this Agreement shall terminate without further liability to either party, except that the deposit previously paid by Buyer shall be refunded, less any escrow cancellation fee.

4.02. Title. Seller shall cause title to the Property to be conveyed to Buyer by grant deed subject only to taxes, assessments, bonded indebtedness and easements and any other exceptions approved by Buyer pursuant to Section 4.03 ("**Permitted Exceptions**"). Escrow Holder must be ready and able to issue its CLTA (or ALTA, if requested by Buyer) Policy of Title Insurance insuring title in Buyer with liability in the amount of the purchase price. The policy shall list only the foregoing exceptions in addition to the printed exceptions common to the type of policy requested. Buyer must pay for any required ALTA survey.

4.03. Approval of Encumbrances. With respect to existing encumbrances, Buyer shall order from Escrow Holder upon the opening of escrow a Preliminary Title Report and legible copies of all documents referred to therein covering the Property. Buyer shall have fifteen (15) days from the Effective Date within which to disapprove any exceptions listed therein. Failure to give written notice of disapproval of some or all of the exceptions to Seller shall be deemed to be approval of all exceptions. If Buyer disapproves any exception, Seller shall have fifteen (15) days within which to agree to remove the exception. Failure to give written notice of such agreement to Buyer shall be deemed to be refusal, except that Seller shall automatically be deemed to agree to remove monetary liens other than bonds and current taxes and assessments. If Buyer does disapprove any exception(s) and Seller does not agree to remove it (or them), then this Agreement shall terminate unless Buyer waives its objection. If Buyer disapproves any exception(s) and Seller does agree to remove it (or them), Seller shall have until close of escrow to effect the removal. If Seller is unable to remove any such exception to title objected to by Buyer, Buyer may waive its objection or this Agreement shall terminate without further liability to either party and Buyer's deposit shall be refunded.

4.04. Feasibility, Inspection and Physical Condition. Within five (5) days after the opening of escrow, Seller shall deliver to Buyer copies of all engineering plans, grading plans, soils reports, and other similar items pertaining to the development of the Property which are in Seller's possession. Buyer shall have thirty (30) days from the Effective Date (the "**Inspection Period**") to perform its due diligence review and approve the physical condition of the Property. Such review shall include the right of Buyer to physically inspect the Property, to review any reports, plans, tests and studies that Seller has on the Property and to perform any and all additional reports, plans, tests and studies that Buyer deems necessary to approve the feasibility of the Property for its intended use.

Seller shall have no liability whatsoever with respect to the truth, untruth or omission of any item in any such report, plan, test, study or other documents it delivers to Buyer. Buyer shall independently determine at Buyer's sole cost the desirability of purchasing the Property. Buyer shall determine its satisfaction with respect to all matters pertaining to the ownership and development of the Property, including soil conditions, topography, development requirements, economics, financing, governmental approvals and the environmental conditions on, under and around the Property and shall undertake all such tests, studies, and inspections as Buyer desires in connection with such determinations. If escrow fails to close for any reason other than the sole breach of this Agreement by Seller, Buyer shall turn over to Seller copies of all reports, surveys and other documents developed in connection with Buyer's tests and studies of the Property.

Buyer and its agents may enter the Property for the purpose of inspections, surveys, soils tests and engineering studies at Buyer's sole expense. Buyer shall indemnify, defend and hold Seller harmless against any and all claims, losses, costs, damages, liabilities and expenses, including, without limitation, attorneys' fees and costs, arising out of or incurred in connection with the activities of Buyer and its agents, and shall keep the Property free from any liens arising out of such activities. Notwithstanding any other provision of this Agreement, Buyer's duty to indemnify, defend and hold Seller harmless under this Section shall specifically survive the close of escrow and the recordation of the deed or the termination of this Agreement for any reason.

#### ARTICLE 5. MISCELLANEOUS.

5.01. Commission. Seller and Buyer each warrants to the other that it has not been represented by a real estate agent or broker in connection with this Agreement. Each party shall indemnify and hold the other party harmless from any claim made by any other real estate agent or broker for commission or finder's fee based on any actions or agreements made by or alleged against it.

5.02. "AS-IS" Sale. Buyer is acquiring the Property "**AS-IS**" in its current physical condition without any warranties, express or implied, as to the nature or condition of or title to the Property, including without limitation the presence or absence of any latent or patent condition thereon or therein or any other matters affecting the Property. Buyer is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever. Buyer

shall rely solely upon its own, independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller.

5.03. Authority. Buyer represents that it is duly organized and validly existing under the laws of the State of California. Buyer and Seller each warrants to the other that the persons executing this Agreement on behalf of Buyer and Seller have been duly authorized to sign this Agreement, bind each respective party to this Agreement and perform its terms.

5.04. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided however, that Buyer shall not assign its rights, title, interest or obligations hereunder with the prior written consent of Seller.

5.05. Required Actions of Buyer and Seller. Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof as may reasonably be necessary and appropriate in order to consummate the purchase and sale herein contemplated, in accordance with the provisions hereof.

5.06. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and no addition to or modification of any term or provision shall be effective unless set forth in writing, signed by both Seller and Buyer.

5.07. Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

5.08. Attorneys' Fees; Costs. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

5.09. California Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10. Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.

5.11. Captions. The captions, paragraph and subparagraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Agreement.

5.12. Notices. All notices, approvals, consents or other documents required or permitted under this Agreement shall be effective upon receipt of the party to whom addressed if made in writing and personally delivered or sent by overnight, registered or certified mail, postage fully prepaid, addressed as follows:

Buyer: \_\_\_\_\_  
\_\_\_\_\_

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Seller: City of Davis  
23 Russell Boulevard  
Davis, CA 95616  
Attn: Jerilyn Cochran

with a copy to: Harriet Steiner, City Attorney  
c/o McDonough, Holland & Allen  
555 Capitol Mall, Suite 950  
Sacramento, CA 95814

or to such other address as either party shall, from time to time, specify in the manner provided herein.

5.13. Representations. Seller makes no representation or warranty regarding the Property. It is the intention and understanding of the parties that Buyer shall satisfy itself with respect to all conditions pertaining to the Property within the title and feasibility periods specified in Article 4 hereof.

5.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated beside their signatures.

**SELLER:**

CITY OF DAVIS

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**BUYER:**

COMCAST CORPORATION, a \_\_\_\_\_  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Property**

**ACKNOWLEDGMENT AND CONSENT BY ESCROW HOLDER**

The undersigned Escrow Holder hereby acknowledges receipt of a fully-executed Agreement of Purchase and Sale and agrees to follow the terms and conditions of the Agreement of Purchase and Sale as they relate to Escrow Holder.

\_\_\_\_\_ Title Company

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_