

RESOLUTION NO. SERIES 2004

**AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT THE COMCAST CORPORATION TO**

1. CONSTRUCT AN INSTITUTIONAL NETWORK IN THE CITY OF DAVIS

WHEREAS, the City of Davis and the Comcast Corporation are willing to provide a network of fiber within the city of Davis aimed at linking community institutions together through a network backbone. Community institutions in Davis include the school district (DJUSD) and all of its facilities (schools), the University of California, Davis campus and their remote (off-campus) sites within the city, other educational institutions, the City of Davis and all of its public facilities, other governmental agencies in Davis and designated non-profit agencies; and

WHEREAS, the Comcast Corporation has agreed to install this fiber backbone as part of the rebuilding and repair of the Davis cable infrastructure; 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 contract with the Comcast Corporation for installation of an institutional network in the City of Davis and any other documents related to the construction of the Institutional Network.
- 2. Authorizes the City Manager if necessary make minor modifications, after consultation with the City Attorney, to any documents necessary to complete the agreement.

Approved and adopted on the ____ day of _____, ____.

BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

Susie Boyd, Mayor

ATTEST:

Bette Racki, City Clerk

INSTITUTIONAL NETWORK AGREEMENT

THIS INSTITUTIONAL NETWORK AGREEMENT (the "Agreement") is entered into by and between the City of Davis, California (the "City") and Comcast of California X, Inc. (previously known as AT&T Broadband, LLC) (the "Grantee") effective as of March __, 2004.

RECITALS

A. The City has granted to Grantee a Cable System Franchise, under which Grantee has certain nonexclusive rights, including the right to construct and maintain a cable system within the City.

B. Grantee is currently embarked upon a program of upgrading the said cable system for its non-governmental customers, including by installing new fiber optic lines and associated equipment and facilities.

C. The City now wishes to engage Grantee to create an institutional network for the use and benefit of governmental agencies within the City.

D. Grantee is willing to undertake to assist the City in the creation of such a network, provided that the City reimburses Grantee as provided in this Agreement for its incremental and other costs in designing, installing, and maintaining such a system.

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 are by the parties hereto mutually 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, as that term is defined below.

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

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

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

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

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

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

"Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

"Franchise" means the Cable System Franchise Agreement entered into between Grantee and the City, under which the City granted Grantee (a) nonexclusive rights to construct, reconstruct, operate, and maintain a Cable System within the Streets and Public Ways in the unincorporated areas of the

City as it is now or may in the future be constituted and (b) the authority to offer to Subscribers any Cable Service or other services that legally may be offered, utilizing the facilities of Grantee's Cable System.

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

"GIS" means governmental information services.

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

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

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

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

"Incremental I-Net Backbone" means those Fiber Optics, which are integrated into the Fiber Optic portion of Grantee's Subscriber Network, from the Headend to each Node in the City, as constructed during the Upgrade.

"I-Net Equipment" means the electronic equipment and associated facilities, including the I-Net Hubs, required to activate the I-Net and control the transmission of signals through the I-Net and to other networks to which it is connected.

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

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

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

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

"Node" means an exchange point in the signal distribution system portion of the Cable System, where optical signals are converted to RF signals.

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

"OTDR" means Optical Time Domain Reflectometer.

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

"Qualified I-Net User" means any of the following which are passed by the Cable System and located in the Franchise Area: (i) the City and its agencies, other governments and their agencies, public libraries, and all State-accredited public schools, and (ii) other entities that Grantee and the City agree in the future may use the I-Net.

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

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

"State" means the State of California.

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

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

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

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

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

"Telecommunications Service" means Telecommunications offered, 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 (as provided in 47 U.S.C. Section 153(46)).

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

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

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

"Upgrade" means improvements to the Cable System, as specifically detailed in Section 4 of the Franchise.

2. General. The I-Net shall be a private communications network, governed by the Franchise and the Cable Act, which may be used (a) only by the City and any Qualified I-Net User, and (b) by such Qualified I-Net Users only to provide any non-commercial service which is both "Technically Compatible" and "Legally Compatible," as those terms are defined below. The City agrees to require all Qualified I-Net Users to stipulate and agree to this limitation.

2.1 "Technically compatible" includes, but is not limited to, the understanding that the I-Net will not be used in any way that will intentionally or unreasonably 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 the I-Net may not be used for Telecommunications Services unless by separate agreement between Grantee and Qualified I-Net Users, and that the Qualified I-Net Users will not resell access to the I-Net; *provided, however,* that the Qualified I-Net Users shall have the right to provide for the internal switching, routing and/or cross connection to Telecommunications carriers of its choice, for its normal voice and data communications operations, unless expressly prohibited by State or federal law. The City shall not make any use of the I-Net that causes Grantee to fall under the jurisdiction of the California State Public Utilities Commission.

3. Engagement and Compensation of Grantee.

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

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

4. I-Net Use.

4.1 The City is hereby granted the irrevocable right of continued use of the I-Net described in this Agreement, during the term of the Franchise and any extensions or renewals thereof. If, at any point, Grantee ceases to operate or maintain the I-Net during the term of the Franchise and any extensions or renewals thereof, the City may operate and maintain the I-Net.

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

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

(b) Transmitting live and stored instructional materials (whether in the form of data, video or otherwise) for distance learning and staff training purposes to and from Qualified I-Net Users;

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

(d) Linking public libraries and providing terminals at library locations that allow members of the public to access library databases, kiosks and other remote databases;

(e) Providing for remote origination of Access programming;

(f) Facilitating connections for telephone systems, security systems and other critical public entity communications applications, so long as such systems are not providing Telecommunications Services.

(g) High speed transmission of City programs and information to the members of the public.

(h) Nothing contained herein shall prohibit the City from interconnecting its I-Net with other governmental I-Nets.

4.3 Save and except as expressly set forth in this Agreement, no utilization charges shall be imposed for Grantor's use of the I-Net for appropriate interactive network communications. For the purposes of this Agreement, City-owned and/or occupied facilities, whether located within the geographic limits of any incorporated municipality in the City or in unincorporated areas, shall be deemed as being within the City's jurisdictional area and shall not be subject to any network usage charges.

5. New I-Net Components. The City has indicated an interest in constructing a new I-Net during the period that Grantee will be performing the Upgrade. In order to take advantage of concurrent construction: (i) Grantee will provide the City with a construction schedule setting forth the estimated commencement date of any upgrade construction within the areas affecting the City, and shall update the construction schedule from time to time through the completion of the construction; and (ii) the City has delivered to Grantee a document which specifies the sites to be served by the I-Net and the performance specifications needed at each site, such as capabilities for bi-directional video, voice, and low- and high-speed data communications. A general description of the proposed City I-Net is attached hereto as Exhibit B.

5.1 Incremental Backbone. The Incremental Backbone will be owned and maintained by Grantee.

5.2 Separate Backbone.

(a) Although portions of the Fiber Optics and related electronic components which constitute the Separate Backbone may be constructed separate from Grantee's s Subscriber Network, the Separate I-Net Backbone will be owned, operated, and maintained by the Grantee.

5.3 Main City Data Center to I-Net Site. Distribution from the City Data Center to designated Qualified I-Net User sites will be as directed by the City. The Qualified I-Net User will provide the route and the access from the property line of the I-Net site into the facility. Efforts will be made by Grantee and the City to ensure that the I-Net distribution system and drops share common paths with Grantee's Subscriber Network where it is possible to do so, in order to minimize costs to the Qualified I-Net Users. This portion of the I-Net will be owned and maintained by Grantee. (Final route selection will be at the sole discretion of Grantee.) The I-Net user will provide all underground conduits and, where installation is to be by an aerial attachment, the I-Net user must confirm that the fiber can be placed aerial. I-Net users will also supply Grantee, in advance, with blueprints of the building indicating demarcation location.

5.4 I-Net Site to I-Net Site. In some locations, Grantee may be directed by the City to construct Fiber Optics between two I-Net sites. These I-Net components will be owned by the City, provided that it shall be operated and maintained by Grantee at the City's sole cost, provided that no part of the I-Net facilities are tied into or attached to Grantee's aerial plant or underground conduit. City shall be required to obtain all necessary permits for such construction.

5.5 Network Equipment. Working in cooperation, Grantee and the City shall determine the network equipment that is necessary for the operation of the I-Net. Grantee shall not install or be responsible for any I-Net end user equipment past the Demarcation Point.

5.6 New I-Net Locations. The City may, at any time during the term of the Franchise and any renewal or extension thereof, request that new or additional public facilities be connected to the I-Net. Upon request from Grantor, Grantee shall, within ninety (90) days of receipt of the request, provide a quotation as to the then-current cost of connection for such new or additional location. If the public agency elects to be connected and agrees to pay the full cost of such connection, 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.

6. Determination of I-Net Costs. The City or the Qualified I-Net User shall pay the following in return for Grantee's construction of the I-Net.

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

(a) Where the I-Net Plant follows the exact routing of Grantee's aerial fiber plant, Incremental Construction Costs shall be limited to the incremental material cost of the dedicated fiber strands and all labor costs to splice the fiber, plus any costs required to make sufficient space available on the utility pole (including additional anchors), if required solely as a result of the additional I-Net Plant, plus a proportionate share of any pole rental fees. For purposes of determining whether additional space on the utility poles and anchors are required solely as a result of the additional fiber, it shall be assumed that the I-Net Plant had been designed and installed at the same time as the aerial fiber plant.

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

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

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

(iii) Grantee shall provide a statement of the actual Total Costs involved as set forth in Exhibit B and accepted in section 6.3, *provided that*, if the actual Total Costs for any segment denominated on Exhibit B shall be alleged to have exceeded one hundred ten percent (110%) of the estimate for that segment as set forth on Exhibit B, COMCAST shall provide the detailed work papers showing the methodology utilized in deriving the estimate for that segment on Exhibit B and a written explanation as to why the actual Total Costs thus exceeded the estimate.

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

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

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

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

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

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

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

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

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

7. Initial I-Net Construction.

7.1 In consultation with the City, Grantee shall, where it can do so at no additional cost, incorporate the I-Net requirements provided by the City pursuant to this Agreement and the Franchise into its Upgrade design.

(a) As each phase of the design is completed, Grantee shall provide the City with (i) preliminary written Total Estimated Costs, calculated pursuant to Section 6, and (ii) maps showing the proposed design and routing, for each City-identified I-Net site or component (the "Estimated Cost and Design Notice").

(b) Following receipt of each of the Estimated Cost and Design Notice, the City shall have thirty (30) days to deliver to Grantee written notice that the City either (i) has finally approved the proposed I-Net design and Grantee's Total Estimated Costs and the associated maps and routing diagrams, or (ii) give Grantee written notice that it intends to request Grantee to make such changes as may be required to ensure that the design is consistent with the City's requirements.

(c) If the City does not so notify Grantee within thirty (30) days after its receipt of an Estimated Cost and Design Notice, Grantee may proceed with the Upgrade of the Subscriber Network for the phase described in the said notice, and shall not be required to construct the I-Net design submitted therein; *provided, however*, that the City may later direct Grantee to construct that portion of the I-Net in accordance with Section 8 hereof.

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

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

(f) Following its receipt of a Revised Notice, the City shall follow the procedures described in paragraph (b), above, except that the City shall have only ten (10) days in which to deliver to Grantee a notice of acceptance or further amendment. If the City does not act within that ten (10) day period, Grantee may proceed with the Upgrade of the Subscriber Network for that phase and shall not construct the I-Net design submitted. The City shall act at all times in an expeditious manner so as not to delay the Upgrade to the Subscriber Network.

7.2 Change Orders.

(a) The City may, up to the point where Grantee begins construction on the area where a given I-Net portion is located, direct Grantee to construct or not construct any specific portions or segments of the I-Net, or to change its equipment requirements, and the parties agree that these changes will not delay the completion of the project or prevent Grantee from completing the I-Net initial construction as part of Grantee's Upgrade of its Subscriber Network.

(b) If the City wishes to add or delete sites or change its equipment requirements after construction of a given phase has commenced, Grantee will not be required to make the changes or to complete them as part of the construction of the Subscriber Network unless the City provides Grantee a written Change Order, specifying the requested changes and agreeing to

(i) pay any additional costs caused by the Change Order, in addition to the Incremental Construction Costs; and (ii) provide appropriate extensions of time in order to permit Grantee to make the change in an orderly fashion. After receiving such a written Change Order, Grantee will provide the City a written statement of the revised Total Estimated Costs for such phase, including the requested changes, and an estimate of the time extensions (if any) that would be required to implement the Change Order. After receipt of Grantee's response to a Change Order the City will have five (5) days in which to either accept or reject the new Total Estimated Costs estimate and extensions of time. If the City accepts Grantee's revised proposal, and directs Grantee to proceed with the change, Grantee will do so on the basis of the Change Order and Grantee's response thereto, both of which shall be binding on the City.

7.3 Activation. The initial construction of the I-Net shall be substantially completed concurrent with Grantee's completion of the Subscriber Network Upgrade. More particularly, as construction of the Upgraded Subscriber Network is completed in a Node Area, I-Net work within that geographic area will also be completed and the I-Net may be capable of being activated within six (6) months thereafter. For purposes of this paragraph, I-Net Activation shall mean that all the necessary equipment to activate the I-Net site or component has been installed and tested in accordance with Section 7.4, below, by Grantee, excluding the installation and activation of any end user equipment required to utilize the I-Net.

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

7.5 Billing Procedures; Invoices.

(a) No payments shall be paid to Grantee for I-Net construction until the City has received completed invoices therefor. Invoices for I-Net construction (and equipment, if any) may be submitted to the City on a monthly basis. In order for an invoice to be complete, it must contain:

(i) supporting documentation describing the work performed in detail and showing that any agreed-upon conditions precedent to payment have been satisfied;

(ii) evidence that Grantee has performed acceptance testing on segments installed, and that those segments are performing as provided in Section 7.4, above; and

(iii) an itemized statement of the actual Total Costs involved as accepted in section 6.3.

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

7.6 Dispute Procedures.

(a) The City may not dispute any invoice, except for pointing out errors or omissions, unless it shows actual Total Costs that are more than ten percent (10%) in excess of the Total Estimated Costs previously submitted by Grantee for the work involved. If the City elects to dispute any invoice, it shall pay any amounts that are not disputed, and within the time provided in Section 7.6(b) provide a written and itemized explanation as to the amount(s) disputed (the "Dispute Notice").

(b) Any failure by the City to timely submit payment or notice of a dispute as to payment shall entitle Grantee, after providing the City thirty (30) days prior written notice, to offset the amount owed against any franchise fees owed to the City, unless and to the extent that the amount in dispute is subsequently paid by the City.

(c) If Grantee receives a Dispute Notice within the time provided in Section 7.6(b), above, and the Parties cannot, within twenty (20) days, resolve the dispute, the Parties shall submit the dispute to Judicial Arbitration & Mediation Services, Inc. ("JAMS") for non-binding mediation. The fees of the mediator shall be shared equally by the parties. In order to commence mediation, the Parties shall give written mediation demand to the other party.

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

Network Upgrade while providing sufficient time to permit the City to review and approve design plans and cost estimates.

8. Future I-Net Construction or Upgrades. The City may request Grantee upgrade the I-Net or construct additional I-Net Plant at any time throughout the initial term of the Franchise and any extension thereof. After receiving a request for additional I-Net work, Grantee will provide the City an estimate of the Total Costs associated with the additional work. 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.

9. I-Net Service and Maintenance. The City agrees that all I-Net users will exhaust any and all troubleshooting of their own equipment in accordance with manufacturer guidelines before contacting Grantee for service or maintenance on the network. Grantee shall be reimbursed for any maintenance calls which are subsequently determined to be a problem with the I-Net users equipment.

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

(a) For Fiber Optic path disruptions or continuity failure between the Headend and Hubs where the I-Net is sheathed or carried with Subscriber Network Fiber Optics, Grantee shall respond and begin repair within four (4) hours.

(b) For any other Fiber Optic path disruptions or continuity failure, Grantee shall respond within twenty-four (24) hours.

(c) All repairs shall be made by Grantee as quickly as practicable.

9.2 Maintenance. Maintenance of the I-Net Fiber Optics will be performed by Grantee as necessary to conform to any federal or State technical requirements.

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

10.4 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.

10.5 No Third Party Beneficiaries. The terms and provisions of this Agreement shall create no right in any Person, firm or corporation 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.

10.6 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.

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

10.8 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.

10.9 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.

10.10 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.

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

10.12 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.

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

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

THE CITY OF DAVIS

CITY OF DAVIS

By: _____
Name: _____
Title: _____

GRANTEE

COMCAST OF CALIFORNIA IX, INC.

a California corporation

By: _____
Name: Rick Germano_____
Title: Regional Senior Vice
President, Comcast_____

EXHIBIT A
List of I-Net Sites