

Staff Report

May 6, 2004

TO: City Council

FROM: Jerilyn Cochran, Social Services Administrator

SUBJECT: Cable Update, Franchise Extension, and Formal Process

Recommendations

1. Approve the attached resolution extending the existing cable franchise with Comcast, Inc. until June 30, 2004 or until a new cable franchise is approved, whichever comes first. (see Attachment A).
2. Approve the attached resolution (see Attachment B) to approve an amendment to the current Davis Joint Unified School District Contract for Educational Cable Services to extend cash and in-kind contributions for educational cable access to Davis Joint Unified School District (DJUSD) until June 30, 2004 or until adoption of a new cable franchise ordinance.
3. Approve the attached resolution (see Attachment C) to approve an amendment to the current Davis Community Television Contract for Public Cable Services to extend cash and in-kind contributions for public cable access to Davis Community Television until June 30, 2004 or until adoption of a new cable franchise ordinance.
4. Direct staff to prepare plans and documentation to issue a Request for Renewal Proposals initiating a "formal" cable franchise renewal process in the event that informal negotiations do not result in a cable franchise approved by the Council no later than August 1, 2004.
5. Approve the attached resolution (see Attachment E) authorizing to approve the sale of a portion of Yolo County Assessor's Parcel Number 069-020-66 to the Comcast Corporation for use as a hub station and customer service counter for cable and other information/telecommunication services in Davis.

Fiscal Impact

Under the extended terms of the Franchise, the city would continue to receive 5 percent of gross cable revenues and DCTV would continue to receive a pass-through of \$75,000 annually for equipment and facilities.

Extending the contract between the City and DCTV extends to provision of sixty percent of the cable franchise revenues to DCTV. For FY 2003/2004 sixty percent of the franchise revenue will be approximately \$200,000.

The contract extension will be based on the annual city cash contribution of \$10,000 to DJUSD. In addition, the city will contribute in-kind services, primarily staff time, equipment and resources to broadcast DJUSD School Board meetings. The costs of the contract will be paid from the Cable fund and are in the current 2003-2004 city budget. During the period of the contract extension, DJUSD will receive approximately fifteen percent of the annual in-kind and cash contributions.

Directing the drafting of a Request for Project Proposals would be done largely with existing staff, aided by the city attorney and contract cable consulting staff. The additional consulting work will be paid using cable revenues previously set-aside for franchise renewal costs.

Background and Analysis

The City of Davis has managed the right-of-way for cable company access since the advent of cable services in Davis in the late 1970s. The Cable Communications Policy Act of 1984 granted local governments the right and responsibility to govern access to their right of way for cabling systems.

In Davis, the access is currently authorized via Ordinance No. 1483, the "Davis Cable Communications Franchise Ordinance" (1988) which articulates the terms by which right-of-way is granted in Davis. A current cable franchise for this right-of-way is held by Comcast, Inc. a company formed by a recent merger between AT&T Broadband and Comcast. Ordinance No. 1482 specifically lists the terms of the current cable franchise, including the termination of the agreement on May 31, 2004, per two month extension of the ordinance approved by Council in March 2004. The current agreement provides annual revenues of approximately 5 percent of franchise fees and in-lieu fees for operation of the city cable program, including studio and network equipment.

In 2001, AT&T/Comcast requested that the city consider renewal of the current franchise through an informal renewal process. It is had been hoped that through the informal approach to cable franchise negotiations a new franchise could be approved by the city without complicated legal hearing processes. Since 2001, a Telecommunications Task Force has been meeting at least twice a month, a new cable ordinance has been approved, a draft needs assessment of community cable-related needs has been completed, and franchise negotiations have proceeded with mixed results.

In December 2003, Council approved Resolution No. _____, called "Resolution by the City Council Setting Standards for Meeting Community Needs in the Franchise Contract Between the City of Davis and Comcast." This resolution was designed to guide the future evaluation of the terms of the next cable franchise (see Attachment D).

Because the negotiations are taking longer than originally estimated it is necessary to extend the current agreement for a short period of time. A resolution extending the term of Ordinance 1482

through June 30, 2004 is attached (see Attachment A.) Without an extension, Comcast is not technically liable to meet their commitments under the existing ordinance.

Progress on Negotiations

The informal negotiations have taken over one year. Staff and the Telecommunications Task Force had hoped to report that informal negotiations were successfully concluding this spring. Because of spotty and inadequate communication about the current infrastructure rebuild and basic legal documents, and because of issues related to the negotiation of support for Public, Education and Government channels, the Telecommunications Task Force supports the extension of the franchise for only one month and only contingent on initiation of the documents to be used in a formal process.

While as of the writing of this report no conclusive list of primary deal points is yet available from the negotiations, progress toward meeting some of the major needs has been made. City staff are meeting with Comcast on Friday morning May 14, 2004 and may have more progress to report at the Council meeting. The primary areas of concern mentioned in Resolution No. _____ have seen progress in the informal negotiation process as follows:

Area of interest from Resolution	Progress to date in negotiations:
Upgrade cable infrastructure to meet the community’s need for true broadband services including high-definition, interactive television and high-speed Internet;	Comcast is currently implementing a rebuild of the Davis cable system., However, customer service/neighborhood outreach standards expected and promised during the rebuild have not been met in some instances. Comcast has prepared plans for cable system hub site, but has not submitted the plans to the city.
Provide service throughout the city, including to businesses and the downtown	Comcast is currently implementing the rebuild and has stated that they will serve all areas of Davis
Allocate adequate channels, cable system capacity and functionality for local Public access, Educational and Government (PEG) broadcast and Institutional Network (INET) purposes, including: <ul style="list-style-type: none"> • additional channels required to meet identified needs • future conversion of PEG channels to full high-definition, interactive, on-demand capability on par with the capabilities of commercial broadcasters. 	Comcast has offered an additional number of channels for current broadcast use and is continuing discussions to determine the number of channels and capacity to be available to Davis after a digital conversion. Discussion of expanding capacity in the system will be part of negotiation over the term of the franchise.
Provide PEG and INET equipment and facilities funding sufficient to revitalize facilities and equipment to provide for a transition to high-definition digital, high-speed voice,	Funding for INET and PEG are of significant discussion during the negotiations. Comcast has completed a survey of Davis residents which indicates that Davis residents are intolerant of new charges to pay for PEG services. Various residents, staff and the

Area of interest from Resolution	Progress to date in negotiations:
<p>data and video transfer and on-demand transmission.</p>	<p>Task Force have taken issue with the wording of the questions and note that the results of the Comcast survey differ from information collected during the compilation of the needs report. Staff and the Task Force recommend proceeding with another survey, as needed, in the formal process.</p> <p>The primary issue in negotiations is the amount of money to be invested by Comcast in the capitol and needs of the local PEG channels and the amount of money to be invested each month in the maintenance and replacement of the equipment. Staff has received a recent offer from Comcast which has increased the amount of up-front capitalization of PEG equipment. At the May 14 meeting, staff may also receive a concrete offer from Comcast for monthly capitalization of necessary equipment and support for the PEG and INET systems.</p>
<p>Provide, as the cable infrastructure is upgraded, fiber-optic capacity and fiber-optic links dedicated for use as a high-speed Institutional Network connecting major public-access, educational and governmental sites.</p>	<p>As engineering for the system has progressed, 37 city, school district, university and community sites have been engineered for fiber connections. Comcast has given cost estimates for fiber and both the city and school district have provided funding for the fiber installation. A draft I-Net agreement was approved by Council on March 9. The agreement has not been signed because of missing support documentation which has not been submitted by Comcast. Staff has asked for the documentation on numerous occasions and has only this week received a portion of the information requested.</p>

Extensions for Davis Joint Unified School District and Davis Community Television

The City of Davis grants right-of-way to the local cable provider (Comcast) for infrastructure to enable cable service in Davis. In exchange, the city receives compensation in the form of cash, equipment and in-kind services from Comcast. This exchange is enumerated in the cable franchise agreement.

As part of the current cable franchise agreement, public, educational and government (PEG) channels are available for use locally. In Davis, the City manages the government channel, Davis Community Television (DCTV) manages the public channel and Davis Joint Unified School District (DJUSD) manages the educational channel. For the past eight years, an agreement and subsequent extensions have been in place to provide part of the cable revenue to DCTV to provide public access and programming and to DJUSD to provide educational access and programming.

As the franchise negotiations draw to a conclusion a new agreement for public programming and educational services will also be proposed for Council approval.

Council agreed in June 2003 to extend support of the public access channel and the educational channel. This proposed contract extension will continue the city commitment to June 30, 2004. The contract extension will essentially allow for continuation of current public programming until a new franchise agreement can be developed.

Formal Process

At the end of the last franchise extension in March 2004, the Telecommunications Task Force made a recommendation for the Council relative to another extension. The Task Force recommended the following: If a preliminary list of deal points addressing each of the standards listed above fails to be adopted by Council by the end of the next extension, then the city should begin processing the information necessary to participate in a formal negotiating process. This recommendation was again affirmed at the April 26, 2004 Telecommunication Task Force meeting.

The formal process is described in detail in Attachment E. The process includes completing the needs assessment including ascertainment of needs and documentation of system, performance and customer service failures in the last franchise. In Davis, this would mean completing additional surveys, audits and a draft "Request for Renewal Proposals (RFRP)."

Since the informal negotiations are not concluded and because of the standing recommendation of the Task Force, it seems prudent to proceed with completing the ascertainment process and drafting the Request Renewal Proposals.

Sale of Land

Council has approved negotiations and a purchase agreement for the sale of land to Comcast as their "hub" site in Davis. The parcel is on Research Park Drive, adjacent to I-80 and immediately east of the Pole Line Road over crossing. While the parcel is across the street from Playfields Park, it was actually acquired by the city in the transaction for Playfields Park and is currently and informally used as seasonal overflow parking for the park. This parcel is marked on the map on the following page..

A "hub" is used by a cable company to send signals throughout the local cable system. There are no aerial devices and signals are sent only through cables. The hub structure is likely to be a 20' x 30' building, with grounding wires up to 16 ft. below the ground. There will also be parking for staff to occasionally use when they are working at the hub. A diesel generator will serve as backup power at the site, and will be operated for 15-20 minutes once a week and during power emergencies.

In March 2004 staff received Council approval for to enter into negotiations for the use of by Comcast as the hub site. Separately, staff will need to process a rezoning of this parcel. Negotiation of this sale is important as it would be used in the imminent rebuild of the Davis cable system and construction of the I-Net.

An appraisal of the property has been completed which resulted in valuation of the parcel at \$185,000. Subsequent to the appraisal, the utility connection issues were assessed far in excess of what was originally anticipated in the appraisal, thus reducing the value of the property. Staff discussed the issue with Comcast and agrees that the purchase price should be reduced by \$15,000 in light of the utility connection issues. Comcast has agreed to the purchase price of \$170,000 as well as the following conditions on the use and maintenance of the agreement.:

- Maintenance of land: Escrow will not close until a maintenance and use agreement is executed. Comcast will agree to maintain the property at the west end of the parcel up to the beginning of the Pole Line Overcrossing maintenance area. As in other transfers of property executed by the city, there will be other maintenance and use conditions placed on the new owners.
- Comcast agrees to provide landscaping on the northern border of I-80 consistent with and in excess of that required by the I-80 corridor landscape plan approved by the City and Caltrans.
- Escrow will not close without planning entitlements and a recordation of a separate parcel.
- The property is exempt under Gov. Code 542216(e)(2) from surplus property requirements based on buildable area of 5000 sq. ft. or less.
- A separate rezoning which has been initiated by Comcast and staff and which will be submitted to Council for consideration in June.
- Access to the property will be allowed through a temporary permit during rebuild construction and before the sale is completed.

Staff recommends the approval of the sale of the property at the proposed price (\$170,000). The land has not been proposed for other purposes. It is at a significant distance from current or zoned housing and is well positioned to access conduit to bring improved technology infrastructure over Interstate 80.



RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING ORDINANCE 1482, THE CABLE TELEVISION FRANCHISE THROUGH
JUNE 30, 2004**

WHEREAS, the provision of cable services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, provision of cable services necessitates an agreement for use of city right-of-way between the City of Davis and all cable providers; and

WHEREAS, the City has an existing cable franchise with Comcast Corporation; and

WHEREAS, the Comcast has requested that the city cooperate in informal negotiations to renew the franchise with the City of Davis; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive cable services under the current franchise terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, Ordinance No. 1482, the current cable franchise, should be amended as follows:

Section 1. Extension of the term of the agreement through June30, 2004.

The City hereby agrees and consents to extend the current cable franchise, Ordinance No. 1482, through June 30, 2004 or until a new cable franchise is approved by the City Council and Comcast, whichever occurs first, subject to the terms and conditions set forth below.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in the Franchise Agreement:

A. All terms and conditions of the cable franchise shall remain in full force and effect during the extension period.

B. The extension shall have no adverse effect on Franchisee's compliance, nor shall the extension be grounds for any change or modification in the remaining terms, conditions and obligations of the franchise. Further, the extension of the franchise agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of the cable system.

C. The City's agreement to extend the Franchise Agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the franchise, whether those rights arose before or after the change in control to Comcast and the fact that such deficiencies may have existed prior to the change in control shall not be a defense against correction of the deficiencies or non-compliance.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk

RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING THE AGREEMENT FOR EDUCATIONAL TELEVISION SERVICES
BETWEEN DAVIS JOINT UNIFIED SCHOOL DISTRICT AND THE CITY OF DAVIS
THROUGH JUNE 30, 2004**

WHEREAS, the provision of educational television services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, the City Council of the city of Davis has approved support for educational television services for the 2003-2004 budget year; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive public television services terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, the current agreement for public television services between the City of Davis and Davis Joint Unified School District should be amended as follows:

Section 1. Extension of the term of the agreement through June 30, 2004.

The City hereby agrees and consents to extend the term of the current agreement for educational television services through June 30, 2004 or until a new cable franchise is approved by the City Council and Comcast, whichever occurs first, subject to the terms and conditions set forth below.

The City Council authorizes the City Manager or his designee to execute the contract amendment and any other documents related to the current agreement, as needed.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in current agreement:

Cable Franchise Ordinance Extension Resolution

A. All terms and conditions of the current agreement shall remain in full force and effect during the extension period.

B. The extension shall not be grounds for any change or modification in the remaining terms, conditions and obligations of the agreement. Further, the extension of the agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of educational television services.

C. The City's agreement to extend the agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the agreement.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk

RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING THE AGREEMENT FOR PUBLIC TELEVISION SERVICES BETWEEN
DAVIS COMMUNITY TELEVISION AND THE CITY OF DAVIS
THROUGH JUNE 30, 2004**

WHEREAS, the provision of public television services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, the City Council of the city of Davis has approved support for public television services for the 2003-2004 budget year; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive public television services terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, the current agreement for public television services between the City of Davis and Davis Community Television should be amended as follows:

Section 1. Extension of the term of the agreement through June 30, 2004.

The City hereby agrees and consents to extend the term of the current agreement for public television services through June 30, 2004 or until a new cable franchise is approved by the City Council and Comcast, whichever occurs first, subject to the terms and conditions set forth below.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in current agreement:

- A. All terms and conditions of the current agreement shall remain in full force and

Public Television Agreement Extension Resolution

effect during the extension period.

B. The extension shall not be grounds for any change or modification in the remaining terms, conditions and obligations of the agreement. Further, the extension of the agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of public television services.

C. The City's agreement to extend the agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the agreement.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk

RESOLUTION NO. _____, SERIES 2003

**RESOLUTION BY THE CITY COUNCIL SETTING STANDARDS
FOR MEETING COMMUNITY NEEDS IN THE FRANCHISE CONTRACT
BETWEEN THE CITY OF DAVIS AND COMCAST**

WHEREAS, communities in California have recently and successfully negotiated strong, state-of-the-art contracts with Comcast and other cable companies that have provided substantial and vital public-interest benefits for city residents and civic institutions; and

WHEREAS, a 10-year contract with the City of Davis will likely generate in excess of \$100 million in gross revenues for Comcast; and

WHEREAS, in order to deliver their services to the homes and businesses in Davis, Comcast requires access to easements and public rights-of-way, which the City is authorized to regulate on behalf of residents; and

WHEREAS, federal law permits cities to require cable operators using these easements compensate the city in an amount up to 5 percent of their gross revenues; and

WHEREAS, cities may also negotiate community benefits as part of this rent, including channel capacity, equipment, facility and transmission support for public, educational and government (PEG) access programming and services; and

WHEREAS, the City of Davis, as required by the cable franchise renewal process, underwent an exhaustive and thorough community needs assessment which resulted in a detailed ascertainment report that details the community's needs and interests; and

WHEREAS, these needs and interest form the basis for the City's negotiating positions; and

WHEREAS, the Davis community strongly values local, community-based media which are well-supported and offers modern, digital equipment and facilities to enhance communication services in our town; and

WHEREAS, non-commercial community media represents one of the last great bastions of true democratic communication, in a climate of unprecedented media consolidation; and

WHEREAS, the Davis community has developed and supported exemplary public access, educational and government channels which have provided an important source of cohesion and identity for our community; and

WHEREAS, the government channel is a vital component of Davis, tradition of open, participatory government; the education channel has offered coverage of student performances,

sports and graduation ceremonies; and DCTV's community access programming has provided a key means of expression, education and outreach for Davis, diverse internal communities; and

WHEREAS, to remain competitive in the marketplace, Comcast needs to replace the existing cable infrastructure in Davis with one capable of providing modern, high-speed, interactive services and broadband Internet access; and

WHEREAS, Comcast has an enormous opportunity to grow its cable TV business in Davis because only around 50% of the homes and apartments in Davis subscribe to cable now -- while other cities in the region have up to 80% subscription rates; and

WHEREAS, a major advantage that Comcast has over its largest competitor -- satellite TV -- is that Comcast offers local public, educational and government access programming; and

WHEREAS, if properly supported and promoted, high quality public, educational and government digital television programming will be an attraction that will increase the number of Comcast subscribers in Davis; and

WHEREAS, during the life of the next franchise, broadcast and cable television will make the transition to digital, high-definition, on-demand and interactive television formats, and it is vital that our PEG channels be able to provide community content with the same digital and interactive capability as commercial programming, which will require substantial equipment and facilities funding; and

WHEREAS, deployment of a parallel Institutional Network will enhance and streamline critical municipal services, and improve and decrease the long-term cost of communication for and between key government and educational institutions, as well as provide the capacity for live telecasts from remote locations, essential for live coverage of community events and meetings; and

WHEREAS, the existing City cable franchise provided for an Institutional Network (INET) that was never completed; and

WHEREAS, outcomes of a successful negotiation with Comcast could include an upgraded digital broadband infrastructure, a dynamic community media center, a well-designed Institutional Network and other community benefits, all of which are today's basic telecommunications services that are essential for modern communities, and are vital economic development tools that would serve to attract and retain businesses in Davis in the years ahead; and

WHEREAS, the City of Davis has historically shown its commitment to public, educational and government access television by allocating the entire franchise fee paid by the cable operator to the support of these local channels; and

WHEREAS, City expenditures to provide and maintain PEG equipment and facilities have consistently been greater than that provided for in the existing franchise;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, that the franchise renewal contract between the City of Davis and Comcast should be designed to meet the community's cable-related needs as identified in the Telecommunications Task Force's preliminary report. In particular, the contract should:

1. Upgrade cable infrastructure to meet the community's need for true broadband services including high-definition, interactive television and high-speed Internet;
2. Provide service throughout the City, including to businesses and the downtown;
3. Allocate adequate channels, cable system capacity and functionality for local Public access, Educational and Government (PEG) broadcast and Institutional Network (INET) purposes, including:
 - additional channels required to meet identified needs
 - future conversion of PEG channels to full high-definition, interactive, on-demand capability on par with the capabilities of commercial broadcasters.
4. Provide PEG and INET equipment and facilities funding sufficient to revitalize facilities and equipment to provide for a transition to high-definition digital, high-speed voice, data and video transfer and on-demand transmission.
5. Provide, as the cable infrastructure is upgraded, fiber-optic capacity and fiber-optic links dedicated for use as a high-speed Institutional Network connecting major public-access, educational and governmental sites.

PASSED AND ADOPTED by the City Council of Davis on this _____, day of _____, 2003, by the following votes:

AYES:

NOES:

ABSENT:

SUSIE BOYD
Mayor

BETTE RACKI, City Clerk

Excerpt from Draft Needs Assessment Report

December 2003

Description of Formal Process for Completing a Cable Franchise

The statutory formal renewal process can be requested by either party during the period between 36 and 30 months from the expiration date of the franchise. It is designed to afford the cable provider an opportunity for a fair hearing on its renewal proposal and it provides the basis under which a city may deny renewal. Under the Cable Act, the formal renewal process involves four stages: an ascertainment process, request for renewal proposals, submission of renewal proposals, and an administrative proceeding if renewal is preliminarily denied and the cable provider requests the proceeding. These are described in more detail below:

First, a city must conduct a proceeding to identify future, cable-related needs and interests of the community, and to review the past performance of the cable operator(s) serving the community.

Second, once that proceeding is complete, the city may issue a request for renewal proposals (“RFRP”). Because each renewal proposal must be evaluated on its own merits, this RFRP cannot be a competitive bidding document. The Cable Act allows the city to establish requirements in an RFRP, including:

- (1) “**Channel capacity . . . for public, educational or government use**, and channel capacity on **institutional networks . . . for educational or governmental use**, and . . . rules and procedures for the use of channel capacity . . .”
- (2) “**Facilities and equipment.**” The legislative history explains that this includes requirements for institutional networks, studios, equipment for public, educational and government use, two-way networks, and so on.
- (3) The Cable Act also states that: “A franchising authority may establish and enforce **customer service requirements** of the cable operator and **construction schedules** and other construction-related requirements. . .” This language permits the city to establish these requirements unilaterally in a regulatory ordinance, along with various other requirements established pursuant to the city’s police and other governmental powers.
- (4) The Cable Act states that a city may **not**, “establish requirements for video **programming** or other information services.”
- (5) The Cable Act also states that: “Except as otherwise permitted by [the PEG access and leased access provisions of the Cable Act], a franchising authority may **not** require a cable operator to provide any **telecommunications service or facilities**, other than institutional networks as a condition of...a franchise renewal.”

Third, operators must submit a renewal proposal in response to the city's RFRP. Under the Cable Act, "any such proposal shall contain such material as the franchising authority may require." If an operator submits a timely and proper response, the city has four months to evaluate the proposal and to decide whether to grant renewal based on the proposal, or to preliminarily deny renewal.

Fourth, if renewal is desired by the operator but denied by the city, the city must commence an administrative proceeding. In evaluating renewal under the formal process, 47 U.S.C. 546 allows consideration of only the following four criteria:

CRITERION A: *Whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law,*

CRITERION B: *Whether the quality of the operator's service, including signal quality, response to customer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs,*

CRITERION C: *Whether the operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal, and*

CRITERION D: *Whether the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.*

This Preliminary Report on Community Needs, therefore, fulfills the initial obligations of the City of Davis under stage one of the formal federal renewal/non-renewal process. Should the formal renewal process be implemented, the City will complete a final ascertainment report of future needs and interests, as well as past performance, and recommend City Council adoption. Upon adoption, the City of Davis would issue a request for renewal proposals (RFRP) to AT&T Comcast. If the Comcast proposal does not satisfy the federal criteria, the City will not renew the franchise. AT&T Comcast must then submit a proposal that responds to the RFRP in a manner that satisfies the criteria set forth in 47 U.S.C. 546. If the proposal does satisfy the federal criteria, then the City would renew the franchise.

The essence of the formal process is a determination by the City Council, reviewable by a federal court, of whether or not AT&T Comcast's formal renewal proposal responds to the RFRP in a manner that satisfies the criteria set forth in 47 U.S.C. 546.

It is important to understand that the renewal/non-renewal process established under federal law is not a competitive process. The City of Davis cannot deny AT&T Comcast's proposal because some other entity is willing to provide more than AT&T Comcast is willing to provide. Nor can the City refuse to act on AT&T Comcast's renewal request and allow the franchise to expire. However, the formal process does require AT&T Comcast to submit a proposal "reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." Thus, by identifying cable-related needs and interests accurately and

completely, the City of Davis places itself in a position to demand that AT&T Comcast submit a proposal satisfactory to the community -- or face non-renewal.

As required by federal law, this report identifies future *cable-related* needs and interests. It was made clear during this part of the ascertainment process that the businesses and residents of Davis have many important communications-related needs and interests which may be provided by a cable company, but which do not come under the regulatory authority of a municipality. While this report is not intended to minimize those needs and interests, the federal law requirement is for the City of Davis to focus on identifying *cable-related* needs and interests.

Under federal law, there are subjects for which a municipality may establish requirements in a cable TV Request for Renewal Proposal (“RFRP”), subjects for our municipal requirements and subjects on which a municipality may act unilaterally. The city may not: 1) negotiate most rate charges by the company other than the lowest cost tiers of service; 2) require or prohibit the carriage of specific programming services other than PEG access; 3) require a specific transfer technology, but the city may require cable system capacity and functionality.

The city may act unilaterally on consumer satisfaction, franchise fee, franchise enforcement and administration, renewal term, and transfer of ownership. In addition to the matters set forth in this preliminary report on community needs, the City of Davis proposes to require cable operators to satisfy the requirements contained in the City's cable franchise ordinance (attached to this ascertainment as Appendix I.). The provisions included in the cable ordinance are justified by, and consistent with, the needs and interests of the Davis community. However, in the City's view, these requirements are not subject to a “needs and interests” test, since setting the requirements of the basic regulatory structure for cable TV in Davis involves an exercise of the City's basic police and governmental powers.

To protect the City's position in the federal renewal/non-renewal process with AT&T Comcast, the City of Davis will seek to negotiate similar franchises with all potential competitors, based on this preliminary report of community needs, or if developed, a final ascertainment report. However, the City takes the position that initial franchises are not subject to the renewal/non-renewal procedures of federal law and shall not be compared to any renewal franchise.

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:

Ruth Uy Asmundson, Mayor

ATTEST:

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 SEVENTY THOUSAND DOLLARS (\$170,000.00). 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: _____

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: _____