

## **Staff Report**

February 1, 2005

**TO:** City Council

**VIA:** Jim Antonen, City Manager  
Donna Silva, Parks and Community Services Director

**FROM:** Jerilyn Cochran, Social Services Administrator

**SUBJECT:** Cable Update, Franchise Extension

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### **Recommendations**

1. Receive an update on franchise negotiations and the audit of franchise revenues.
2. Approve the attached resolution extending the existing cable franchise with Comcast, Inc. until June 30, 2005 or until a new cable franchise is approved, whichever comes first. (see Attachment A).
3. 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, 2005 or until adoption of a new cable franchise ordinance.
4. 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 contributions for public cable access to Davis Community Television until June 30, 2005 or until adoption of a new cable franchise ordinance.

### **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. 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 2004-2005 city

budget. During the period of the contract extension, DJUSD will receive approximately fifteen percent of the annual in-kind and cash contributions.

**Council Goals:** The negotiation of the new cable franchise is related to at least two Council goals: **1) Fiscal Stability:** Effective negotiation of the new cable franchise will result in funding which the city can use to provide high quality city services that meet the needs of residents, specifically for public, educational and government television, for the development of an institutional network and for oversight of the franchise related to city right-of-way; **2) Telecommunications:** The Council Tier Two goals related to Telecommunications specifically reference completing the cable contract, assuring that cable modems are available in Davis and development of an institutional network.

**Executive Summary:**

In December 2004 Council asked for a progress report no later than February 2005 on several renewal of the cable franchise. This report discusses the need to extend contracts with Comcast, with Davis Community Television and with the Davis Joint Unified School District for several months.

**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 February 28, 2005. 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.

On December 14, 2004 Council instructed staff to do the following:

- Complete an audit of the revenues received from Comcast for the latest fiscal year.
- Complete negotiations of the final proposed franchise agreement language, assuring that no other costs would be incurred by the city as a result of the agreement
- Return with the audit and documents by February 28, 2005.

**Update on Cable Franchise Negotiations**

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.

In December, Council asked that staff work as expeditiously as possible to complete new franchise language. Staff, the city attorney and Comcast representatives have met on eight occasions since December to negotiate language for the Franchise Agreement and the Institutional Network Agreement. Draft language will be reviewed by the Telecommunications Task Force in February. While significant progress has been made, the final franchise agreement language is complex and has been difficult to finalize. All parties agreed it was best to bring the final proposed language to the Council in March. All parties have been negotiating in good faith, but consultation with the city's cable consultants and Comcast legal staff about proposed language and various language issues has been necessary over the eleven weeks since the item was last before Council. Staff is making every effort to assure that the language does not commit the city to pay for any additional cable-related services.

The final proposed Franchise Agreement language is expected to come before Council on March 15, 2005. At that time, Council will have all available information to make a decision about whether to accept the terms reached under the informal negotiation process. In addition, it is anticipated that, if the franchise is approved, that a "transition period" will be needed in order for the new fees and charges to become effective. Thus, it is recommended that the existing franchise and related agreements be extended until June 30, 2005 to accommodate either an effective transition or to continue negotiations, as needed.

#### **Progress on Cable Revenue Audit and Council Requests:**

Significant progress has been made in the audit and the development of draft franchise agreements. The primary audit processes are complete as of the writing of this report, but Lou Karrison, partner in the firm of Sikich Gardner & Co, LLP of Aurora, IL will complete a final audit report in February. This report will be available when Council considers the cable franchise in March.

#### **Extensions for Comcast, Davis Joint Unified School District and Davis Community Television**

Because the final informal 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, 2005 is attached (see Attachment A.) Without an extension, Comcast is not technically liable to meet their commitments under the existing ordinance.

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.

If it is possible for the franchise negotiations draw to a conclusion soon, a new agreement for public programming and educational services will also be proposed for Council approval.

Council agreed in December 2004 to extend support of the public access channel and the educational channel. This proposed contract extension will continue the city commitment to June 30, 2005. The contract extension will essentially allow for continuation of current public and educational programming until a new franchise agreement can be finalized.

**RESOLUTION NO. \_\_\_\_\_, SERIES 2005**

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS  
EXTENDING ORDINANCE 1482, THE CABLE TELEVISION FRANCHISE THROUGH  
JUNE 30, 2005**

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 June 30, 2005.**

The City hereby agrees and consents to extend the current cable franchise, Ordinance No. 1482, through June 30, 2005 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 \_\_\_\_\_, 2005, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

\_\_\_\_\_  
Ruth Uy Asmundson, Mayor

ATTEST:

\_\_\_\_\_  
Bette Racki, City Clerk

**RESOLUTION NO. \_\_\_\_\_, SERIES 2005**

**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, 2005**

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 2004-2005 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, 2005.**

The City hereby agrees and consents to extend the term of the current agreement for educational television services through June 30, 2005 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 \_\_\_\_\_, 2005, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

\_\_\_\_\_  
Ruth Uy Asmundson, Mayor

ATTEST:

\_\_\_\_\_  
Bette Racki, City Clerk

**RESOLUTION NO. \_\_\_\_\_, SERIES 2005**

**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, 2005**

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 2004-2005 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, 2005.**

The City hereby agrees and consents to extend the term of the current agreement for public television services through June 30, 2005 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 \_\_\_\_\_, 2005, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

\_\_\_\_\_  
Ruth Uy Asmundson, Mayor

ATTEST:

\_\_\_\_\_  
Bette Racki, City Clerk